Neutral Citation Number: [2026] EWCA Civ 976

Case No: CA-2025-001677

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Mr Justice Richards
[2025] EWHC 682 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2026

Before:

LORD JUSTICE NEWEY
LORD JUSTICE SNOWDEN
and
LADY JUSTICE FALK

- -

Between:

(1) TITANIUM CAPITAL INVESTMENTS LIMITED **(2) PHILIP FALZON SANT MANDUCA**	**Claimants/ Respondents**
- and -	
(1) JONATHAN HUGHES **(2) HUGHES GROUP LIMITED** **(3) MEDICAL SUPPLIES DIRECT LIMITED** **(4) LYN HUGHES (NEE BLYTH)**	**Defendants/ Appellants**
(5) BERKELEY HEALTH LIMITED	**Defendant**
- and -	
ORARIN FALZON SANT MANDUCA	**Third Party/ Respondent**
- and -	
FREDERICK FALZON SANT MANDUCA	**Fourth Party/ Respondent**
- and -	
NEWFOUNDLAND DIAGNOSTICS LIMITED	**Fifth Party/ Respondent**
- and -	
MICHAEL HODNETT	**Sixth Party/ Respondent**
- and -	
NEUROCED LIMITED	**Seventh Party**

- -
- -

Lexa Hilliard KC, Kate Rogers and Samuel Lane (instructed by **Gardner Leader LLP**) for the **Appellants**
Charles Béar KC and Edward Crossley (instructed by **Brabners LLP**) for the **Respondents**

Hearing dates: 27-30 April 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 28 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. This appeal from a decision of Richards J ("the Judge") relates to a partnership between Mr Jonathan Hughes, the first defendant, and Mr Philip Manduca, the second claimant, which was formed in the autumn of 2020 and dissolved in June of the following year. While by no means all that is in dispute, a principal issue concerns the liability, if any, of Mr Hughes to account to the partnership for profits which he and companies associated with him achieved from the sale of lateral flow tests to detect Covid-19 ("LFTs") in the "twilight period" between dissolution and final winding-up. The answer depends in part on how sections 29 and 42 of the Partnership Act 1890 ("the 1890 Act") are to be interpreted.

Basic facts

2. This section of this judgment is for the most part derived from the judgment given by the Judge on 20 March 2025 ("the Judgment").

3. In September 2020, Mr Manduca approached Mr Hughes about the possibility of entering into a partnership to sell LFTs. Within a month or so, they had reached an oral agreement to do so on the basis that profits and losses would be shared equally between them and that the partnership ("the Partnership") would trade under the name "Hughes Healthcare". Mr Manduca and Mr Hughes both considered that a prize to aspire to was the award of a contract by the United Kingdom Government.

4. Neither Mr Manduca nor Mr Hughes introduced any partnership capital, but it was agreed that Mr Hughes would supply the funding necessary to enable the Partnership to buy LFTs and would ensure that it was provided with administrative and logistical support. In practice, that support was obtained through Hughes Group Limited ("HGL"), the second defendant, a successful construction company which Mr Hughes owned. With a view to demonstrating that the Partnership had "substance", the business of the Partnership was described as a "division of HGL".

5. Mr Manduca and Mr Hughes identified Acon, a Chinese group, as a potential supplier of LFTs and placed their first order with Acon on 18 November 2020. Before, however, any LFTs could be sold to the UK Department of Health and Social Care ("the DHSC"), they had to pass assessments conducted at the science and defence technology campus at Porton Down. In November 2020, Acon's LFTs had been suspended from the Phase 2 evaluation at Porton Down, but at Mr Manduca's instigation the tests were re-admitted to the process and, by 27 April 2021, they had completed all necessary stages of Porton Down's validation. On 14 May 2021, the tests also obtained EU-wide accreditation by way of a CE Mark.

6. Acon sold its LFTs under branding of its own ("Flowflex"), but it was prepared to supply the Partnership with tests bearing "Hughes Healthcare" branding as well. The Partnership's orders tended to be for tests of that latter kind.

7. The Partnership's sales of LFTs were slow until at least the middle of December 2020, but the business picked up significantly after the then Prime Minister had referred to the importance of rapid testing. Also in December 2020, the fifth party, Newfoundland Diagnostics Limited ("Newfoundland"), was incorporated by Mr Manduca's son Frederick ("Freddy") Manduca, the fourth party, and Mr Michael Hodnett, the sixth

party, a friend of Mr Freddy Manduca. Mr Freddy Manduca and Mr Hodnett had been working for the Partnership on a commission basis, but Newfoundland now became a distributor of Hughes Healthcare LFTs. As matters developed, Newfoundland would buy LFTs from the Partnership for £2.83 plus VAT per test and invoice its customers in its own name, describing itself as the “Distribution Division, Hughes Healthcare”. The £2.83 figure was designed to give the Partnership a profit of £1 per test.

8. In February 2021, Mr Freddy Manduca proposed that Newfoundland should be able to order LFTs direct from Acon. On 23 February, it was agreed that Newfoundland would continue to buy tests from the Partnership, but that was to be on the basis that Newfoundland would pay just 1p more than the cost to the Partnership. The consequences proved unfavourable for the Partnership. Newfoundland purchased the market-leading Acon LFT at a low price and, in Mr Freddy Manduca and Mr Hodnett, had a strong sales force with a track record of successful sales. In contrast, Mr Manduca, Mr Hughes and Mr Dan Butcher, a friend of Mr Hughes who worked in the Partnership’s business from January 2021, were targeting big-ticket sales to large corporates and the DHSC and the remainder of the Partnership’s sales force was ill-equipped to compete with Newfoundland. Moreover, the Partnership was operating on the basis that it would not follow up good leads with whom Newfoundland or Newfoundland’s sub-distributors had previously been in contact.

9. Acon developed a practice of referring back to the Partnership UK customers who had sought to “circumvent” the Partnership by buying direct from Acon. Further, Acon was “selective about who it supplied” (paragraph 127 of the Judgment). Its business model was “to supply its LFTs to a relatively small number of distributors in various jurisdictions including the UK” and it “was not generally interested in selling LFTs direct” (paragraph 127 of the Judgment).

10. The Partnership pressed to be Acon’s exclusive distributor in the UK. In this connection, the Judge said this in paragraph 123 of the Judgment:

> “Acon blew somewhat hot and cold on this question. Acon attached some value to its relationship with the Partnership as the Partnership was selling (via Newfoundland) a good number of its LFTs. Acon also thought that the Partnership had delivered tangible value in helping to secure its readmission into the Porton Down process. However, Acon never conferred on the Partnership the contractual status of exclusive distributor whether in the UK or any other jurisdiction.”

11. In a letter addressed to “Dear Valued Partner” dated 21 January 2021, Acon said that it had decided to grant the exclusive agency of its LFT “to a single partner in the United Kingdom for all projects related to the DHSC government channels and all related business activities …”. In a letter to Acon dated 30 March 2021, the Partnership’s solicitors, Gardner Leader LLP, maintained that this letter confirmed an earlier agreement “to form an exclusive partnership … for the distribution and supply of rapid antigen coronavirus tests for the UK Government’s Department of Health and Social Care, through all associated governmental channels up to 31 December 2021”; referred to the “prospective breach” of that exclusivity as a result of Pharmaceuticals Direct Limited (“PDL”) offering to sell Acon tests as part of the Government procurement which was out to tender; and explained that, if PDL proceeded with the procurement,

they would be "advising our client of its legal options given the significant damaging impact that the prospective breach of exclusivity will have on our client's business". Replying on Acon's behalf on 6 May 2021, Allen & Overy LLP said that there had been no more than an "informal understanding", ending their letter as follows:

> "8. Our client therefore requires you and your client to refrain from making any further incorrect assertions to ACON's other customers, the DHSC and/or any third party that any exclusive distribution agreement exists between ACON and Hughes. Our client also requires you and your client to cease making baseless threats of court proceedings against ACON's other customers. ACON reserves all its rights against your client in relation to any loss and/or reputational damage that it has suffered or may suffer as a result of your and your client's assertions.
>
> 9. We note that both parties have already devoted considerable time and resource to their collaboration in the UK market. We trust that your client recognises the considerable benefits to it of its collaboration with ACON and that it wishes to continue that collaboration. ACON shares that wish, provided that your client ceases making incorrect suggestions as to the basis of its relationship with ACON."

12. In their response of 17 May 2021, Gardner Leader referred to the Partnership having been made aware that both PDL and Medco Solutions Limited ("Medco") had made bids in response to the DHSC's tender "in breach of our client's exclusivity". After inviting Acon to confirm that it accepted that the Partnership had "the exclusive right to distribute and supply the tests to the DHSC and associate channels up to 31 December 2021", Gardner Leader said:

> "22. Please note that should it become apparent upon the award of UK Governmental contracts arising from the Procurement that any other corporate entity stands to benefit by virtue of selling your client's tests, we shall be further advising our client of its options, including challenging any award and/or issuing court proceedings for breach of contract and to seek an order for damages plus costs. In the alternative, our client will plead that your client is estopped from asserting the right to sell tests to other parties pursuant to the Procurement given the clear representations made to our client on which it relied, and acted to its detriment in facilitating the authorisation of the tests at Porton Down, amongst other things.
>
> 23. Notwithstanding all of the above, as is apparent from the tone and manner of our correspondence sent directly to your client, our client shares the same sentiments as

> your client outlined at paragraph 9 of your letter. Our client wishes to continue with its productive collaboration with your client in the UK market in the future. Our client sincerely hopes that any potential future dispute can be avoided with your client recognising the fact that the position it currently enjoys in the UK market place was facilitated by the efforts made by our client, which your client had initially recognised at the outset by virtue of agreeing to the exclusivity agreement confirmed by way of the Letter."

13. However, Allen & Overy reiterated Acon's position in a letter dated 2 June 2021. The letter concluded:

> "19. Our client is heartened by the willingness of your client to continue its partnership with ACON, as expressed at paragraph 23 of your letter. We trust that your client now accepts that this partnership was formed under the mutual understanding that it would be on a non-exclusive basis, unless otherwise formally agreed between the parties.
>
> 20. We reiterate that our client requires you and your client to refrain from making any further incorrect assertions to ACON's other customers, the DHSC and/or any third party that any exclusive distribution agreement exists between ACON and Hughes. Our client trusts that, as per our letter, you have ceased making baseless threats of court proceedings against ACON's other customers and our client expects you to continue to refrain from doing so.
>
> 21. ACON continues to reserve all its rights against your client in relation to any loss and/or reputational damage that it has suffered or may suffer as a result of your and your client's assertions."

14. At much the same time, it was agreed that Newfoundland would no longer obtain its LFTs via the Partnership. The Partnership considered that Acon could not realistically be kept waiting for payment, but Newfoundland's customers were sometimes slow to pay. The result by 9 April 2021 was that Newfoundland owed HGL £663,671.60. Newfoundland tried to clear the debt, but it still owed HGL some £250,000 by 28 May. The situation was unsustainable and so Mr Hughes, feeling that he had no choice in the matter, agreed in June that in future Newfoundland could and should order LFTs direct from Acon. The first such order was placed on 14 June.

15. This change coincided with another development. On 10 June 2021, an unconnected company called "Hughes Healthcare Limited" having been struck off, Mr Manduca arranged for the incorporation of a new company with that name ("HHL"). Mr Manduca took this step to ensure that the name was preserved for the benefit of the Partnership's

business, but that was not how Mr Hughes understood things. In an email to Mr Manduca of 14 June, he gave the fact that Mr Manduca had "set up a company independently" as a reason for thinking that he (Mr Manduca) did not see a future for the Partnership. Mr Hughes made the same point the next day when explaining why he had turned off the access of Mr Manduca, his wife, Mr Freddy Manduca and Mr Hodnett to their Hughes Healthcare email accounts, which were hosted on HGL servers. Also on 15 June, Mr Hughes sent an email to Ms Anita Shuai, who had been the Partnership's main point of contact at Acon since March, in which he said:

> "Philip [i.e. Mr Manduca] & Orarin [i.e. Mrs Manduca] have secretly set up another business and have been taking trade away from us. They also have [not] been straight with the Indian government re the Veritas test. I can't do cheating, there's too much for me to lose."

(The reference to "the Veritas test" related to an idea which Mr Hughes and Mr Manduca had been exploring since February 2021 to manufacture a "Hughes Veritas" branded test in Northern Ireland.)

16. On 16 June 2021, the Partnership learned that it had been unsuccessful in its tender to the DHSC. The contract was instead awarded to Medco which, too, was proposing to supply Acon tests.

17. On 27 June 2021 Mr Hughes sent Mr Manduca an email which it is common ground served to dissolve the Partnership. The email read:

> "Please take this email as formal termination of our partnership. I've had several conversations with Freddy recently and it's very clear you are doing business in isolation from our partnership (I will refrain from detailing in this email) hence I have lost trust and cannot continue any further business activities with you."

18. At this point, the Partnership's most significant customer was Collinsons. Mr Hughes suggested in evidence that the Partnership had no other client, but the Judge found that to be an overstatement.

19. The Judge concluded that Mr Hughes and Ms Lyn Blyth, who is the fourth defendant and now married to Mr Hughes, formed a plan to dissolve the Partnership and take over its business from around 15 June 2021. They genuinely believed this to be a legitimate response to what they saw as the Manducas' treachery. In particular, they had in mind the establishment of HHL, perceived sharp dealing in connection with some proposed sales to India and "the fact that Newfoundland, which had an affiliation with the Manducas through [Mr Freddy Manduca], had a large and vibrant business, whereas the Partnership's business was much smaller" (see paragraph 233 of the Judgment).

20. The Judge considered that, while it had been reasonable for Mr Hughes to have misgivings about the Indian proposal, the concern about HHL was wrong and unreasonable. As for Newfoundland's success, the Judge said this in paragraph 235 of the Judgment:

> "As I conclude later in this judgment, in the period up to the Dissolution Email, [Mr Manduca] had an interest in Newfoundland that he had not disclosed. However, [Mr Hughes] and [Ms Blyth] were not aware of this at the time. [Mr Hughes] also overlooked the fact that Newfoundland's success was a direct consequence of decisions with which he had agreed and in some instances proposals he had made …. Following review of the Manducas' emails on 25 or 26 June 2021, [Mr Hughes] and [Ms Blyth] came to believe that Newfoundland's success was driven by [Mr Manduca's] diversion of leads to Newfoundland and away from the Partnership. However, my analysis of the diverted leads set out below shows that to be wide of the mark. Most of the leads said to be diverted were contacts of Newfoundland which, in approving the system of cross-checking, [Mr Hughes] had agreed that Newfoundland was entitled to pursue."

21. The Judge mentioned in this passage the undisclosed interest in Newfoundland which he found Mr Manduca to have had. In that connection, the Judge concluded that there was an arrangement between Newfoundland and Mr Manduca in place between 5 January 2021 and the dissolution of the Partnership to the effect that Mr Manduca would share in 30% of Newfoundland's pre-tax profits. The Judge rejected Mr Manduca's and his son's denials of the existence of such an arrangement. It was common ground between the parties that it would be contrary to Mr Manduca's fiduciary duties as a partner for him to have had any share in Newfoundland's profits during this period.

22. With regard to the diversion of leads to Newfoundland, the Judge held that Mr Manduca had breached his fiduciary obligations by permitting Newfoundland to pursue opportunities with Digital 2000 and Cignpost. The Judge further found there to have been "potential" breaches of fiduciary duty in relation to SMI Group Limited, Heathbrook Limited, Quadratech and Nuno Tavares in the sense that Mr Manduca should not have permitted Newfoundland to pursue those opportunities but it did not make any sales in consequence of the referrals.

23. Following the Partnership's dissolution, Mr Manduca continued to sell LFTs to Collinsons and Radisson, another client of the Partnership, booking the sales through HHL. In the course of the present proceedings, Mr Manduca accepted that he was liable to account to the Partnership for any benefit that he or HHL realised on those sales.

24. For their part, Mr Hughes and Ms Blyth changed the name of the third defendant ("MSDL"), which they owned, to "Medical Supplies Direct Limited" on 2 July 2021, and the Judge found that Mr Hughes and MSDL "seamlessly carried on the 'Hughes Healthcare' business": see paragraph 420 of the Judgment. The Judge said this about contacts which Mr Hughes had with Acon:

> "218. [Mr Hughes] enjoyed a warm relationship with Anita Shuai in contrast to [Mr Manduca's] frosty relationship with her. That was partly because [Mr Manduca] had shown much more interest in taking legal action against Acon for its asserted breach of the exclusivity

> arrangements whereas [Mr Hughes] was more emollient on this issue. However, there was a personal element too. Anita Shuai admitted to [Mr Freddy Manduca] in a WhatsApp chat on 6 August 2021 that she liked [Mr Hughes] much more than [Mr Manduca] because she perceived that [Mr Manduca and his wife] adopted a hectoring and demanding tone with her which [Mr Hughes] did not. [Mr Hughes] leveraged that warm personal relationship to seek to persuade Anita Shuai that because as he said, he owned the 'Hughes Healthcare' brand, Acon should not supply either Newfoundland or the Manducas with branded LFTs.
>
> 219. Anita Shuai was positively helpful to [Mr Hughes] in those discussions. She suggested that a good starting point if [Mr Hughes] wanted to cut Newfoundland and the Manducas off from a supply of Acon tests would be for [Mr Hughes] to send a letter 'in warning tone' to Acon asserting that anyone purchasing 'Hughes Healthcare' branded tests from Acon would be infringing [Mr Hughes'], or HGL's intellectual property rights. [Mr Hughes] took Anita Shuai's cue. With the ground having been paved, on 8 July 2021, HGL purported to grant Acon a non-exclusive, royalty-free licence, to use the 'Hughes Healthcare Trademarks'. However, as I have concluded, HGL had no intellectual property rights in the name 'Hughes Healthcare'. That was the Partnership's trading name and goodwill in that name belonged to the Partnership rather than HGL. On 26 July 2021, Anita Shuai sent an email to [Mr Hughes], Polly Phillips and [Ms Blyth] stating that Acon would not sell Hughes Healthcare branded tests to anyone without [Mr Hughes'] authorisation.
>
> 220. Following that, at least for a period, Acon would not supply either Newfoundland or [Mr Manduca] with branded LFTs. However, Newfoundland continued to be able to order unbranded tests [i.e. tests with Acon's own branding rather than 'Hughes Healthcare' branding]. It is not clear to me, and I make no finding, as to whether [Mr Manduca] continued to be able to order unbranded tests from Acon."

25. Between them, HGL and MSDL sold 63,389,370 LFTs after the Partnership had been dissolved. Some sales were made to Waitrose, UK Wholesales, Boots, PFW Labels and Hillside Hand Dryers. Much the most important purchaser was, however, the Danish Government, which bought some 43 million of the LFTs. Thus:

    i) On or around 29 November 2021, the Danish Government ordered 8 million "Hughes Healthcare" branded tests from MSDL;

ii) In December 2021, the Danish Government placed a further order with MSDL for 35 million "unbranded" tests (i.e. tests with Acon's own branding rather than "Hughes Healthcare" branding) to be delivered in January and February 2022; and

iii) MSDL delivered LFTs in satisfaction of the Danish Government's orders and the Danish Government made payment to MSDL of the contract price agreed.

26. According to Mr Hughes, MSDL made a clear profit of about £17 million from the Danish transactions ("the Danish Deal").

27. The Danish Government had been put in contact with Mr Butcher in late November 2021 via Mr Bent Von Eitzen of CAP, a business based in Denmark which put on conferences for medical and other industries and which had in February 2021 entered into what was called an "Exclusive Distribution Agreement". (The Judge observed that that agreement "was, despite its name, largely concerned with questions of confidentiality": paragraph 387 of the Judgment.) The Danish Government had not been a customer of the Partnership. Nor had Waitrose, Boots or UK Wholesales (which had instead been a customer of Newfoundland) placed orders for LFTs with the Partnership by the time of its dissolution. In contrast, Hillside Hand Dryers had bought from the Partnership, and so had PFW Labels, though it was "not … a particularly loyal customer of the Partnership" and would shop around for the lowest price (paragraph 415 of the Judgment).

28. Mr Manduca used the first claimant, Titanium Capital Investments Limited ("Titanium"), of which he was the sole director and shareholder, as "a repository for [his] business dealings" (paragraph 164 of the Judgment). Invoices for Mr Manduca's share of Partnership profits were issued in Titanium's name. Titanium also received payments from Newfoundland in respect of Mr Manduca's secret 30% interest in the latter company's profits.

The proceedings

29. The present proceedings were issued by Titanium and Mr Manduca in 2021. They came to include also claims by Mr Hughes against Titanium, Mr Manduca, Mrs Manduca, Mr Freddy Manduca, Newfoundland and Mr Hodnett.

30. On 28 April 2023, Master Kaye gave directions for a split trial. By a further order dated 1 August 2023, Master Kaye directed that the list of issues for the first trial should be as attached to the order. The list included the following:

> "18. Has Mr Hughes breached his duties to Mr Manduca as partner and/or ex-partner? If so, how?
>
> …
>
> 26. Specifically:
>
> (1) Has Mr Hughes diverted partnership business opportunities to HGL and/or MSDL and/or otherwise to his benefit or failed to account for them, post dissolution of the partnership?

(2) Has Mr Hughes used the name and/or business connections of the partnership other than for the benefit of the partnership and its business, post dissolution of the partnership? If so, how?

(3) Has Mr Hughes continued the business of the partnership after its dissolution (whether himself or through HGL and/or MSDL and/or otherwise to his benefit)? If so, in what way?

…

28. Has Mr Manduca breached his duties to Mr Hughes as partner and/or ex-partner? If so, how?

…

30. Has Mr Manduca, Frederick Manduca, Mr Hodnett, Titanium, Newfoundland and/or NeuroCED knowingly received confidential information and/or assets belonging to the partnership other than for the benefit of the partnership and its business or other than as part of their agreed arrangements? If so, what has been received?

31. Has Mr Manduca, Mrs Manduca, Frederick Manduca, Mr Hodnett, Titanium, Newfoundland and/or NeuroCED conspired together to cause loss to Mr Hughes and/or HGL and/or MSDL by unlawful means? If so, how?"

31. The first trial occupied the Judge for the best part of three weeks in November and December 2024. This appeal is against the judgment which he gave following that trial (i.e. the Judgment).

32. So far as relevant, the Judge held, in outline, that:

i) Mr Hughes is obliged to account to the Partnership under section 29 of the 1890 Act for benefits derived by himself, HGL or MSDL from the Danish Deal and other post-dissolution sales of LFTs to the extent that they derived from the Partnership's property, name or business connexions;

ii) In principle, all of the benefits that Mr Hughes (through HGL and MSDL) received from the sale of 63,389,370 branded and unbranded LFTs following dissolution of the Partnership were, *at least to an_extent*, "derived from" a business connexion of the Partnership since they involved selling tests purchased from Acon, but other factors also led to those benefits being achieved, particularly in relation to the Danish Deal, and it will be a matter for the second trial ("Trial 2") to determine the extent of Mr Hughes' obligation to account to the Partnership under section 29;

iii) The precondition for the application of section 42 of the 1890 Act is satisfied since Mr Hughes did, through HGL and MSDL, carry on the business of the Partnership in the "twilight period", but it will be a matter for Trial 2 to determine the extent of the obligation, if any, that arises in consequence;

iv) To the extent that Mr Hughes failed to account under section 29 of the 1890 Act, he breached his general fiduciary law obligations;

v) It will be a matter for Trial 2 finally to determine whether Mr Hughes, MSDL and Ms Blyth are liable for knowing receipt in connection with Mr Hughes' breach of fiduciary obligation;

vi) Mr Hughes, Ms Blyth, MSDL and HGL are liable for unlawful means conspiracy;

vii) To the extent that Mr Manduca realised benefits between 5 January 2021 and 27 June 2021 from his "secret interest" in Newfoundland, he was in breach of fiduciary obligation and is obliged to account for such benefits, including under section 29 of the 1890 Act;

viii) An obligation to account under section 29 of the 1890 Act also arises to the extent that Mr Manduca has realised a benefit from a "diversion" of an opportunity to Newfoundland, though there will be a need to address the potential for double-counting with liability under (vii) above;

ix) The extent to which Mr Manduca should account in relation to post-dissolution sales of LFTs should be considered in Trial 2;

x) A counterclaim for knowing receipt which the defendants had made failed because their closing submissions had said nothing about the state of *knowledge* of those against whom it was made;

xi) An unlawful means conspiracy counterclaim which the defendants had advanced also failed as it had not been made good in closing submissions.

The Partnership Act 1890

33. The long title of the 1890 Act explains that it is an Act "to declare and amend the Law of Partnership".

34. Sections 19-31 of the 1890 Act have the heading "Relations of Partners to one another". By section 26, where (as in the present case) no fixed term has been agreed upon for the duration of a partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

35. The other sections from this group of relevance to this appeal are sections 29 and 30. These are in these terms:

> "**29 Accountability of partners for private profits.**
>
> (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners

from any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

30 Duty of partner not to compete with firm.

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business."

36. Sections 32-44 of the 1890 Act have the heading "Dissolution of Partnership, and its consequences". By section 32, a partnership entered into for an undefined time is dissolved by any partner giving notice to the others of his intention to dissolve the partnership and, if such a notice does not specify a date of dissolution, the partnership is dissolved as from the date of the communication of the notice.

37. Sections 38 and 42 were both the subject of debate before us. They read as follows:

"**38 Continuing authority of partners for purposes of winding up.**

After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, and in relation to any prosecution of the partnership by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

…

42 Right of out-going partner in certain cases to share profits made after dissolution.

(1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of

> accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.
>
> (2) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section."

38. Finally, section 46, which appears in a group of sections with the heading "Supplemental", provides:

> "**Saving for rules of equity and common law.**
>
> The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act."

<u>The appeal</u>

39. Mr Hughes, HGL, MSDL and Ms Blyth appeal against the Judge's decision.

40. The issues to which the appeal gives rise can be considered under the following headings:

i) Liability under section 29 of the 1890 Act;

ii) The conspiracy claim against Mr Hughes, Ms Blyth and MSDL;

iii) The knowing receipt claim against Mr Hughes, Ms Blyth and MSDL;

iv) Liability under section 42 of the 1890 Act;

v) Mr Hughes' unlawful means conspiracy claim; and

vi) Mr Hughes' knowing receipt claim.

41. There is no respondent's notice.

Liability under section 29 of the 1890 Act

The Judge's reasoning

42. In paragraph 245 of the Judgment, the Judge identified the questions posed by section 29 of the 1890 Act in the context of the case before him as these:

> "i) Did [Mr Hughes], or as the case may be [Mr Manduca], derive a 'benefit'?
>
> ii) Did they do so without the consent of the other?
>
> iii) Did that benefit, or to what extent did that benefit, derive from any one of (a) any transaction concerning the partnership, (b) any use of the Partnership's property, (c) any use of the Partnership's name, or (d) any use of the 'Partnership's business connexion'?"

43. The Judge observed in this connection that "maturing business opportunity" "forms no part of the statutory language of s29" (paragraph 245 of the Judgment), that "Parliament has not expressed the requirement to account under s29 of PA 1890 as being conditional on a partner being subject to any particular fiduciary obligations at any particular point of time" (paragraph 261) and that "even if [Mr Manduca] has committed breaches of fiduciary obligation, any liability to account imposed by s29 of PA 1890 on [Mr Hughes] would not be affected" (paragraph 269).

44. In paragraph 279 of the Judgment, the Judge noted that it had been argued on behalf of Mr Hughes that a "business connexion" for the purposes of section 29:

> "[must] have a character that is specific to the partnership. It cannot be the case that, for example, because the partnership has purchased goods from a certain shop or supplier, that a former partner cannot purchase goods from the same shop or supplier. In order for the business connection to be an asset belonging to the partnership, it must have some character of exclusivity, or of a special relationship such as a preferential price, otherwise it is not a connection or opportunity belonging to the partnership."

45. The Judge disagreed. He said in paragraph 280 of the Judgment:

> "I consider that to be an unjustified gloss on the meaning of the ordinary phrasing of s29. There is no statutory requirement for a 'character of exclusivity', or any 'special relationship'. Rather, whether something amounts to a 'business connexion' is a question of fact and degree to be considered in the light of all relevant circumstances."

46. The Judge went on in paragraph 281 of the Judgment:

> "In my judgment, the relationship with Acon amounted to a 'business connexion' that consisted of the Partnership's ability to purchase a highly regarded LFT from Acon in circumstances

> where (i) most people who sought to compete with the Partnership could not because Acon were selective about who they supplied, (ii) the ability to purchase tests from Acon was the life-blood of the Partnership and (iii) Acon took steps to ensure that potential customers did not 'circumvent' the Partnership by its practice of referring back to the Partnership attempts at circumvention. Acon was a 'business connexion' even though the Partnership did not (at least in Acon's eyes) hold any position as an exclusive distributor in the UK. Acon did not need to offer the Partnership any preferential pricing terms in order to be a 'business connexion'."

47. On that basis, the Judge concluded in paragraph 424 of the Judgment:

> "[Mr Hughes] is obliged to account to the Partnership under s29 for the following benefits derived by [Mr Hughes], HGL or MSDL:
>
> i) Benefits from the Danish Deal to the extent that they were derived from the Partnership's property, name or business connexions.
>
> ii) Benefits from sales to Waitrose, UK Wholesales, Boots, PFW Labels and Hillside Hand Dryers in the twilight period to the extent derived from the Partnership's property, name and business connexions.
>
> iii) Other benefits from sales in the twilight period to the extent derived from the Partnership's property, name and business connexions."

48. The Judge explained in paragraph 428 of the Judgment that, "In principle, all of the benefits that [Mr Hughes] (through HGL and MSDL) received from the sale of 63,389,370 branded and unbranded LFTs following dissolution of the Partnership were, at least to an extent, 'derived from' a business connexion of the Partnership since they involved selling tests purchased from Acon". He noted, however, that "it was the <u>combination</u> of various factors, some falling within s29 and some not, that enabled [Mr Hughes] to obtain 'benefits' from the Danish Deal", that he had "heard no submissions on how the 'derived from' test should be applied in those circumstances" and that that question would "be a matter for Trial 2 to the extent necessary" (paragraph 252).

49. The Judge also said this in paragraph 427 of the Judgment:

> "In this judgment, I have concluded that the following matters are embraced within the concept of the Partnership's property, name and business connexions:
>
> i) The Partnership's name was 'Hughes Healthcare'. The Partnership, rather than HGL owned the goodwill in that name and it was not reliant on any

licence from HGL to use that name, or the 'Hughes' constituent of it ….

ii) The Partnership's relevant property included:

a) goodwill. That goodwill was not of negligible value at the time of the Partnership's dissolution. That goodwill included, but was not limited to: (i) goodwill in the Hughes Healthcare name, (ii) goodwill consisting of having a functioning and viable business that was able to conduct sales over the hugheshealthcare.co.uk website and telephone number;

b) information that it owned that was confidential to it. That included details of its customers and the history of previous deals with them.

iii) The hugheshealthcare.co.uk website was not an item of Partnership property as [Mr Hughes] was the proprietor of that website … and any licence that he gave the Partnership did not survive dissolution. However, as I have noted, the ability to generate sales over the website was an aspect of the Partnership's goodwill.

iv) I have explained that Acon was a 'business connexion' of the Partnership … and there may be other relevant 'business connexions'."

The parties' positions

50. Ms Lexa Hilliard KC, who appeared for the appellants with Ms Kate Rogers and Mr Samuel Lane, submitted that the Judge misconstrued section 29 of the 1890 Act. As encapsulated in a note on the subject which they prepared during the hearing before us, their position is that a partnership's "business connexion" is a sub-species of its goodwill. More specifically, it is the partnership's relationships with customers (and, perhaps, other parties) which are of such a character that they "belong" to the firm; can be considered a partnership asset; command some degree of loyalty and attraction; and have some saleable value. So understood, Acon was not a "business connexion" on the facts found by the Judge. In any event, Mr Hughes and Mr Manduca both carrying on separate businesses post-dissolution did not engage section 29: the Partnership business having ended, their trading involved no conflict of interest or exploitation of their fiduciary positions. Further, the Partnership's business model was the sale of "Hughes Healthcare" branded LFTs and so the purchase and sale of LFTs bearing only Acon's branding was outside the scope of any liability under section 29. Finally, the breaches of fiduciary duty committed by Mr Manduca prevent him from complaining since such wrongdoing serves to release the other partner from his obligations to the wrongdoer and/or the conduct makes it inequitable to grant relief.

51. In contrast, Mr Charles Béar KC, who appeared for the respondents with Mr Edward Crossley, supported the Judge's decision. Section 29 of the 1890 Act, he argued, is a

free-standing provision which means what is says and whose application is not circumscribed in the way suggested by the appellants. On the facts he found, the Judge was not only entitled but right to find that Acon was a "business connexion". Moreover, section 29 remained applicable notwithstanding the Partnership's dissolution: while Mr Hughes and Mr Manduca may each have sought to carry on business after the dissolution, the Judge did not find Mr Manduca to have consented to Mr Hughes continuing to buy and sell LFTs. Nor was the Partnership's business limited to LFTs branded with the "Hughes Healthcare" name. Nor again do Mr Manduca's own breaches of duty matter. They will neither have released Mr Hughes from his own obligations nor made the grant of relief to Mr Manduca inappropriate.

The meaning of "business connexion"

52. Section 29 of the 1890 Act provides for a partner to account to the firm for any benefit derived from "any use by him of the partnership property name or business connexion".

53. In the light of the decision of the House of Lords in *Bank of England v Vagliano Brothers* [1891] AC 107 ("*Vagliano*"), the starting point when construing section 29 must be the words of the section. *Vagliano* concerned the Bills of Exchange Act 1882, whose long title explained that it was an Act "to codify the law relating to Bills of Exchange, Cheques and Promissory Notes" and which provided in section 97(2) for the "rules of common law including the law merchant" to "continue to apply to bills of exchange, promissory notes, and cheques" "save in so far as they are inconsistent with the express provisions of this Act". In arriving at its decision, the Court of Appeal had undertaken an examination of the law as it stood at the time the Act was passed. Lord Herschell did not consider that that was the correct way to approach "such a statute as the Bills of Exchange Act 1882, which was intended to be a code of the law relating to negotiable instruments". He went on at 144-145:

> "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.
>
> If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the

> provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground."

54. There are, however, several reasons for looking beyond the bare wording of the 1890 Act when considering the meaning of "business connexion" in section 29.

55. First, and most fundamentally, the words are not unambiguous. To the contrary, they can be said to be "of doubtful import", to use Lord Hershell's phrase.

56. Secondly, notwithstanding its long title's reference to "amend[ing]" as well as "declar[ing]" the law, there are indications that section 29 was seen at the time as reflective of the pre-existing authorities. An 1891 supplement to Lindley, "*A Treatise on the Law of Partnership*", addressing the 1890 Act stated that section 29 "introduces no change into the previous law". For his part, Sir Frederick Pollock, who had drafted the bill which ultimately, in amended form, became the 1890 Act, commented in the preface to the 1895 (6th.) edition of his "*A Digest of the Law of Partnership*" that decisions which he had cited by way of illustration "remain authoritative so far as they are consistent with the terms of the Act, and a summary view of them will often be convenient, sometimes almost necessary, for the understanding of the law as now declared by the Legislature". Sir Frederick Pollock also said:

> "It will be observed that the Partnership Act does not purport to abrogate the case-law on the subject, but on the contrary declares that 'the rules of equity and common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act' (sect. 46). The Act, therefore, has to be read and applied in the light of the decisions which have built up the existing rules. Should any practitioner imagine that he might now relegate Lord Justice Lindley's book, for example, to an upper shelf, he would soon be undeceived."

57. Thirdly, the circumstances in which partners are liable to account for benefits they have received might be expected to be comparable to those in which other fiduciaries are accountable. In *Helmore v Smith* (1887) 35 Ch D 436, Bacon V-C said at 444, "If fiduciary relation means anything I cannot conceive a stronger case of fiduciary relation than that which exists between partners". An indication that there is in this respect alignment between partnership law and the wider law relating to fiduciaries might also be said to be found in *Don King Productions Inc v Warren* [2000] Ch 291 ("*Don King Productions*"), which concerned a partnership for the promotion and management of professional boxers. One of the questions in the case was whether the benefit of promotion or management agreements concluded by a partner after the date of

dissolution but before the winding-up of the partnership was held on trust for the partnership. Morritt LJ, with whom Aldous and Hutchison LJJ agreed, answered the question in the affirmative by reference to the "no conflict" and "no profit" rules identified by Deane J in *Chan v Zacharia* (1984) 154 CLR 178 which are recognised as applying to fiduciaries generally. He made no reference in his judgment to section 29.

58. In the circumstances, it is worth referring to three cases dealing with the law as it stood before the 1890 Act came into force. The earliest is *Willett v Blanford* (1842) 1 Hare 253. There, Wigram V-C made a number of references to "connexions" when considering the extent to which a surviving partner is liable for post-dissolution profits. He said this at 270-271:

> "Again, the whole or the substantial part of a trade may consist in goodwill leading to renewals of contracts with old *connexions*. In such a case it is the identical source of profit which operates both before and after dissolution ….
>
> Circumstances may be suggested of a very different kind …. Or, there may be the case of two persons being partners together, in equal shares; one finding capital alone and the other finding skill alone; and suppose the latter, before his skill had established a *connexion* or goodwill for the concern, should die, and the survivor, by the assistance of other agents, should carry on the concern upon the partnership premises, it could scarcely be contended after a lapse of years that the estate of the deceased partner was entitled as of course to a moiety of the profits made during that lapse of time after his death; and if his estate would not be so entitled where the deceased partner had left no capital, it would be difficult to establish a right to a moiety only, because he had some small share of the capital and stock-in-trade engaged in the business at his death, without reference to its amount and the other circumstances of the case.
>
> If, on the other hand, the skill of an individual without capital had been exercised as a partner in a concern, until it had created a *connexion* and goodwill, and, upon his death, his surviving partner, instead of giving to the estate of the deceased the benefit of that goodwill by a sale of the concern, should think proper to carry on the concern for his own benefit until the *connexion* and goodwill were lost, it would not be difficult to justify a decree which, in such a case, should declare the estate of the deceased entitled to share any profits made after his death" (emphases added).

59. The next case is *Dean v MacDowell* (1878) 8 Ch D 345. In that case, this was said about the duties of partners:

i) James LJ said at 350-351:

> "one partner must not directly or indirectly use the partnership assets for his own private benefit. He must not, in anything connected with the partnership, take any profit clandestinely for himself, nor must he carry on the business of the partnership or any business similar to the business of the partnership in his own or another name separate from it, otherwise than for the benefit of the partnership";

ii) Cotton LJ said at 354:

> "If profit is made by business within the scope of the partnership business, then the partner who is engaging in that secretly cannot say that it is not partnership business. It is that which he ought to have engaged in only for the purposes of the partnership. Again, if he makes any profit by the use of any property of the partnership, including, I may say, information which the partnership is entitled to, there the profit is made out of the partnership property, and therefore, of course, it must be brought into the partnership account. So, again, if from his position as partner he gets a business which is profitable, or if from his position as partner he gets an interest in partnership property, or in that which the partnership require for the purposes of the partnership, he cannot hold it for himself, because he acquires it by his position of partner, and acquiring it by means of that fiduciary position, he must bring it into the partnership account"; and

iii) Thesiger LJ identified three principles at 355-356:

> "The first of those principles is that a partner shall not derive any exclusive advantage by the employment of the partnership property …. The second principle which is to be collected from the cases is, that a partner is not to derive any exclusive advantage by engaging in transactions in rivalry with the firm …. The third principle which is to be collected from the cases is, that a partner is not allowed in transacting the partnership affairs to carry on for his own sole benefit any separate trade or business which, were it not for his connection with the partnership, he would not have been in a position to carry on."

60. The last of the three cases is *Aas v Benham* [1891] 2 Ch 244. The Court of Appeal heard that a couple of months after the 1890 Act had come into force, but it will have been decided on the basis of pre-Act law: the relevant events and the decision under appeal both pre-dated the passing of the Act. Lindley LJ nevertheless echoed the terms of section 29 of the 1890 Act when he said at 255 that "[i]t is clear law that every partner must account to the firm for every benefit derived by him without the consent of his co-partners from any transaction concerning the partnership or from any use by him of the partnership property, name or business connection". Kay LJ spoke of Cotton LJ's judgment in *Dean v MacDowell* providing "a statement of the law of partnership in language more expanded than that in sect. 29 of the Partnership Act of 1890". Both

Lord Justices appear to have seen the reference in section 29 to "the partnership property name or business connexion" as reflective of the pre-existing law.

61. Turning to principles of general application to fiduciaries, I have already mentioned the "no conflict" and "no profit" rules which Deane J expressed as follows in *Chan v Zacharia* (a case concerning a partnership) at 198-199:

> "The variations between more precise formulations of the principle governing the liability to account are largely the result of the fact that what is conveniently regarded as the one 'fundamental rule' embodies two themes. The first is that which appropriates for the benefit of the person to whom the fiduciary duty is owed any benefit or gain obtained or received by the fiduciary in circumstances where there existed a conflict of personal interest and fiduciary duty or a significant possibility of such conflict: the objective is to preclude the fiduciary from being swayed by considerations of personal interest. The second is that which requires the fiduciary to account for any benefit or gain obtained or received by reason of or by use of his fiduciary position or of opportunity or knowledge resulting from it: the objective is to preclude the fiduciary from actually misusing his position for his personal advantage. Notwithstanding authoritative statements to the effect that the 'use of fiduciary position' doctrine is but an illustration or part of a wider 'conflict of interest and duty' doctrine (see e.g., *Phipps v. Boardman* [1967] 2 A.C. 46, 123; *N.Z. Netherlands Society 'Oranje' Inc. v. Kuys* [1973] 1 W.L.R. 1126, 1129), the two themes, while overlapping, are distinct. Neither theme fully comprehends the other and a formulation of the principle by reference to one only of them will be incomplete. Stated comprehensively in terms of the liability to account, the principle of equity is that a person who is under a fiduciary obligation must account to the person to whom the obligation is owed for any benefit or gain (i) which has been obtained or received in circumstances where a conflict or significant possibility of conflict existed between his fiduciary duty and his personal interest in the pursuit or possible receipt of such a benefit or gain or (ii) which was obtained or received by use or by reason of his fiduciary position or of opportunity or knowledge resulting from it. Any such benefit or gain is held by the fiduciary as constructive trustee ...."

The "no profit" rule thus requires a fiduciary to account for any benefit or gain "obtained or received by use or by reason of his fiduciary position or of opportunity or knowledge resulting from it".

62. The "no profit" rule (or, as it is sometimes called, the "profit rule") was the subject of discussion by the Supreme Court last year in *Recovery Partners GP Ltd v Rukhadze* [2025] UKSC 10, [2026] AC 209 ("*Recovery Partners*"). Lord Briggs, with whom Lords Reed, Hodge and Richards agreed, explained in paragraph 2 that what he termed the "profit rule" requires a fiduciary to "account to the principal for any profits which the fiduciary makes from that fiduciary relationship, unless the principal has given its

fully informed consent to the fiduciary keeping them for himself". After describing the question whether a particular profit falls within the duty to account as "sometimes difficult", Lord Briggs said in paragraph 25:

> "Undertaking the role of a fiduciary does not, of itself, prohibit the fiduciary from carrying on other profitable activities which have nothing to do with the subject matter of the fiduciary relationship. The director of a company making cars may perfectly legitimately carry on an activity of betting on horse races out of working hours, and keep any profits he makes for himself. But the opposite would be true of an executive director of a company operating a horse racing stable, if his betting was informed by what he learned while at work, unless the company gives its consent. Similarly (subject of course to any contractual restraint) the director of a company may, after resignation, set up and make profit from carrying on a similar business to that of the company, provided that he does not use information, or pursue opportunities that came to him, from his fiduciary position in the company. The duty, which may well extend beyond the end of the fiduciary relationship, is to account for profits made from, out of, or otherwise sufficiently connected with, the fiduciary relationship."

63. *In re Jarvis* [1958] 1 WLR 815 ("*Jarvis*"), which Mr Béar argued had similarities to the present case, involved an application of the equitable rules in the context of trusteeship. There, a testator who had carried on business as a tobacconist, confectioner and newsagent left the business to his daughters and also appointed them as his executors and trustees. By the time the testator died in 1941, the premises had been badly damaged by bombing and no real business was conducted there until they were restored in 1944. At that stage, the defendant, one of the daughters, obtained a new tenancy in her own name and she then revived the business and ran it in conjunction with a tobacco, confectionery and ice cream business which she had established nearby some years earlier. As Upjohn J explained at 819, "[h]er quota of cigarettes and an allocation of newspapers were obtained from suppliers of the old business".

64. Upjohn J concluded that the defendant had incurred a liability to account for profits. He said at 819-820:

> "A trustee must not place himself in a position where his duty and interest conflict, and if he does so he must account for any profit thereby made or for the property thereby acquired …. The old business had been closed down after the bombing, but in a sense its ghost lay there waiting for a new lease of life. When the defendant resurrected the business on the premises at No. 7, Woolwich Road, she was undoubtedly to some extent putting herself in a position where her duty and interests conflicted. In another sense, the business that she opened was a new business, but it was of the same character as the old. It necessarily benefited from the goodwill attaching to the premises, because the newspaper and tobacconist business had been carried on there for 40 or 50 years down to the end of 1940. It may well be

> that the virtual closure for over three years, coupled with the great excess in those days of demand over supply, made the value of the goodwill small: but it was there because of the former activities of the testator, of whose estate the defendant was a trustee. Furthermore, the defendant was able to get some supplies of cigarettes and newspapers by reason of the testator's earlier connexion with the suppliers. It seems to me clear on principle that the defendant must be accountable as a constructive trustee for those benefits which came to her because of her position as a trustee of the testator's estate."

The "goodwill attaching to the premises" and the "earlier connexion with the suppliers" had accordingly led to benefits coming to the defendant "because of her position as a trustee".

65. An association between "connection" (or "connexion") and "goodwill" can be seen not only in *Jarvis* and *Willett v Blanford* but in *Trego v Hunt* [1896] AC 7, decided shortly after the passing of the 1890 Act. In the course of argument in that case, the appellants equated the "the goodwill of a business" with "the connection of the business with its old customers". After referring to the importance of attracting customers to a business, Lord Herschell said at 17-18 that "[i]t is the connection thus formed, together with the circumstances, whether of habit or otherwise, which tend to make it permanent, that constitutes the goodwill of a business". Later in his speech, at 21, Lord Herschell said that, in a case where the goodwill of a partnership has been sold, "when [a former partner] specifically and directly appeals to those who were customers of the previous firm he seeks to take advantage of the connection previously formed by his old firm, and of the knowledge of that connection which he has previously acquired, to take that which constitutes the goodwill away from the persons to whom it has been sold and to restore it to himself". In a similar vein, Lord Macnaghten said at 24 that the goodwill of a business is "the whole advantage … of the reputation and connection of the firm" and Lord Davey said at 26-27 that the "lay mind" would think it remarkable if a person who had contracted for the goodwill of a business to belong to someone else "should be at liberty to go to the customers of the old firm and solicit them not to deal with the plaintiff, but to deal with him, and thus endeavour to secure for himself the business connection which he has contracted shall belong to the plaintiff".

66. References to both "goodwill" and "connection" are also to be found in *John Taylors v Masons* [2001] EWCA Civ 2106 ("*John Taylors*"). In that case, the parties had been carrying on an auctioneering business in partnership using premises in respect of which East Lindsey District Council ("ELDC") had granted a licence due to expire on 31 December 1998. On 4 December 1998, the defendants both gave the claimants notice terminating the partnership ("LLCA") at the end of the month and applied to the council for a new licence to be granted to them. ELDC granted the defendants a provisional licence from 1 January 1999 and they began to trade as Louth Market Auctioneers. Subsequently, following a tender process in which the claimants also participated, ELDC granted the defendants a three-year licence.

67. At first instance, the defendants were held liable to account for benefits derived from the licences which they had been granted, the judge holding that they "resulted from the use by the Defendants of the partnership's asset of goodwill and also its business connection with its existing customers over a long period of time". The Court of Appeal

upheld that decision. Peter Gibson LJ and Morland J did so by reference to *Don King Productions* without citing the 1890 Act. Peter Gibson LJ explained in paragraph 47:

> "In my judgment on the facts so found, and applying the guidance of Deane J in *Chan v Zacharia* … , as approved by this court in *Don King Productions Inc v Warren* … , the defendants have obtained a benefit or gain in the form of the profitable licences in circumstances in which a conflict did exist between the defendants' fiduciary duty owed to the claimants and the defendants' personal interest in the pursuit of such benefit or gain, and which benefit or gain was obtained by use or by reason of their fiduciary position and opportunity and knowledge resulting from it."

68. The third member of the Court, Arden LJ, after quoting at length from Morritt LJ's judgment in *Don King Productions*, said in paragraph 28 that "[o]n the judge's findings … the appellants obtained the provisional licence by reason of their knowledge and connection with ELDC, and … they were put in a better position to acquire the full licence by reason of the fact that they were the holders of the provisional licence, and therefore the full licence can properly be said to result from the opportunity or knowledge resulting from their fiduciary position". In what followed, however, she referred to section 29 of the 1890 Act. She said:

> "29. In other words the essential steps in the argument in the case are, it seems to me, as follows. First, the opportunity to renew the licence or to obtain a new licence was an asset of the partnership.
>
> 30. Second, the relationship which the old partnership had with the ELDC was a 'business connection' for the purposes of section 29 of the Partnership Act 1890 ….
>
> 31. Likewise the goodwill of the partnership, its business connections generally were an asset of the partnership.
>
> 32. With respect to [counsel for the appellants], … his submissions ignore the fact that [LLCA] had goodwill with its customers and also an opportunity to renew the licence by reason of its relationship with ELDC, which was of a very long-standing nature.
>
> 33. Third, all the assets of the partnership have to be brought into account and divided between the partners on the dissolution of the partnership, and that the winding up of the partnership cannot be said to be completed unless this has happened.
>
> 34. Fourth, the duty to account imposed on a partner extends to assets which have come into existence prior to the dissolution and prior to the completion of the winding-up by reason of the maturation of some

> business opportunity in existence at the date of dissolution, because such opportunities are obtained in a situation of conflict of interest and duty and by use of the fiduciary position.
>
> 35. Fifth, section 29 of the Partnership Act 1890 provides that a partner is accountable for any benefit derived without the consent of his partners from the use of partnership property or business connection ….
>
> 36. Sixth, I agree with the judge that section 29 makes the appellants accountable for the benefit of the goodwill they have appropriated to themselves, and for the profits attributable to or the benefits derived from the use of any assets of the LLCA, including its goodwill from 1st January 1999 to 30th June 1999 and from 1st July 1999."

69. Drawing the threads together, it seems to me that, as used in section 29 of the 1890 Act, "business connexion" relates to relationships with third parties which are of value (or potential value) to the partnership. Put differently, it refers to relationships with third parties which generate, or contribute to, goodwill. Such relationships will most often be with customers. The fact that a person is an existing customer may obviously be of value to a partnership, but it may be that other matters making the partnership attractive to potential customers can also be part of its "business connexion". Relationships with suppliers are rather less likely to be of significant value to a partnership. Take a partnership carrying on business as a newsagent which sells, say, KitKats and the Times newspaper. If it is the case that Nestlé and Times Newspapers are willing to sell their products to retailers generally, I should not have thought that the partnership's relationships with them would add to its goodwill or be "business connexions" within the meaning of section 29. On the other hand, I cannot see why as a matter of principle a relationship with a supplier should not be capable of contributing to goodwill and be deemed a "business connexion". Suppose, to take an extreme case, a partnership had concluded a long-term exclusive contract for the supply of a material which was vital to its business. The arrangement would surely be of substantial value to the partnership, increase its goodwill and be appropriately thought to be encompassed by the words "business connexion".

70. Those conclusions appear to me to be consistent with, and supported by, the authorities I have mentioned. In *Willett v Blanford*, Wigram V-C used the word "connexion" to refer to persons with whom contracts might be renewed and also coupled "connexion" with "goodwill". In *Trego v Hunt*, "goodwill" was linked to "connection" with past customers. In *Jarvis*, Upjohn J attached importance both to "goodwill" attracting custom and "earlier connexion with … suppliers". In *John Taylors*, Arden LJ saw the relationship with ELDC, which was in the position of a supplier, as a "business connection". More generally, what I have said in the previous paragraph is, I think, in line with the concern of both pre-1890 partnership law and more recent principles relating to partners and other fiduciaries with whether a benefit has been obtained through use of "partnership assets", "information which the partnership is entitled to", a partner's "position as partner", a partner's "fiduciary position or … opportunity or knowledge resulting from it" or "information … or … opportunities that came to [a

fiduciary] … from his fiduciary position" (to draw on language used in *Dean v MacDowell*, *Chan v Zacharia* and *Recovery Partners*). Where a supplier is known and accessible generally, a fiduciary need not have made any use of his position or the principal's relationship with the supplier in himself obtaining goods or services from the supplier, but there may be other circumstances in which it may not be legitimate for a fiduciary to buy from a supplier, just as it might not be proper for a fiduciary to seek to sell to a customer of the principal.

71. By one of their grounds of appeal, the appellants contend that the Judge erred in construing section 29 of the 1890 Act as "a freestanding statutory provision which operates independently of and not conditional upon a partner being subject to common law/equitable principles including those developed before the [1890 Act]". My own view, as I have indicated, is that it is appropriate to have regard to both pre-1890 authorities and principles applicable to fiduciaries generally when construing section 29. I do not think, however, that, say, the law relating to other fiduciaries (company directors, for example) can be assumed to correspond precisely with section 29.

72. For the avoidance of doubt, I should add that, in expressing the view that "business connexion" refers to relationships with third parties which are of value (or potential value) to the partnership, I am not of course suggesting that a partner who exploited a business opportunity comparable to those at issue in a corporate context in, say, *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134n and *Bhullar v Bhullar* [2003] EWCA Civ 424, [2003] 2 BCLC 241 would escape liability. Depending on the particular facts, the benefit accruing to the partner might be said to be derived from a "business connexion" of the partnership: the fact that the partnership might not have made profitable use of an opportunity would not of itself preclude its having been of value (or potential value) to the partnership. However, liability could also arise on a different basis (for example, use of partnership "property").

73. Snowden and Falk LJJ explain in paragraph 185 below that they consider that a "business connexion" is a "business relationship of the partnership which is properly to be regarded as an asset belonging to it, such that the partnership has a right to exploit *that relationship* to the exclusion of a partner (or ex-partner)". I shall not rehearse in detail my reasons for not being persuaded by that formulation. I will, however, comment briefly as follows:

i) Snowden and Falk LJJ say in paragraph 159 below that "[j]ust because a partnership has conducted some business with a customer or supplier does not mean that the partnership can somehow treat that customer or supplier as belonging to the partnership, to which it can lay an exclusive claim as a 'partnership … business connexion'". In my view, however, it is plain that a "business connexion" need not be exclusive. For example, a customer who buys from the partnership regularly may be such a "connexion" even though he is free to purchase from others as well and in fact does so. A relationship with a customer can contribute to goodwill and represent a "connexion" regardless of whether there is any subsisting contract with him and despite the fact that the partnership can have no complaint against either him or his supplier if he buys from another source. Likewise, I do not think that a relationship with a supplier necessarily has to be exclusive;

ii) I am not clear when, on the basis of Snowden and Falk LJJ's approach, something short of exclusivity will constitute a "business connexion". I have myself suggested that the focus should be on whether a relationship is of value (or potential value) to the partnership and generates or contributes to goodwill. It is not apparent, at least to me, what criteria Snowden and Falk LJJ would substitute – or, hence, how the Judge should undertake the task that Snowden and Falk LJJ consider should be remitted to him. Saying that a relationship must be one "properly to be regarded as an asset belonging to the [partnership], such that the partnership has a right to exploit [it] to the exclusion of a partner (or ex-partner)" does not seem to me to help much, if at all. My own impression, rightly or wrongly, is that the formulation begs questions rather than answering them. It does not strike me as providing a workable test for determining whether a relationship is a "business connexion".

The significance of dissolution

74. With an ongoing partnership, a partner is both liable to account in accordance with section 29 of the 1890 Act and barred from competing with the firm by section 30. As was stressed by Mr Béar, section 29 continues to apply post-dissolution (see *Sheveleu v Brown* [2018] SLT 1288, at paragraph 35, and *Lindley & Banks on Partnership*, 21st ed., at paragraph 16-51, explaining that "[a]lthough section 29(2) only refers to the death of a partner, it is clear that the obligation under section 29(1) will apply irrespective of the cause of the dissolution"). At that stage, however, section 38 provides for "the authority of each partner to bind the firm, and the other rights and obligations of the partners," to "continue … so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, and in relation to any prosecution of the partnership by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013, but not otherwise". It is thus contemplated that "the members of a dissolved firm will complete any unfinished business, but that they will not take on any *new* work" (*Lindley & Banks on Partnership*, 21st ed., at paragraph 10-425).

75. That being so, a former partner may be free not only to trade in competition with other former partners but even, potentially, to use the name of the old firm. In a passage quoted in part in *Lindley & Banks on Partnership*, 21st ed., at paragraph 10-461, the 1893 edition of Lindley, "*A Treatise on the Law of Partnership*", explained at 438:

> "In the absence of any agreement upon the subject, a retiring partner is as much at liberty to set up for himself, in opposition to the firm he has quitted, as he would be if he had never belonged to it; and on a general dissolution of partnership, all the partners are at liberty to commence business in opposition to each other, as freely as if they had never been partners, unless they have entered into some agreement not to do so. A dissolution *per se* obliges no partner to retire from business, or to refrain from seeking a livelihood in the manner in which he has been accustomed so to do, and in the neighbourhood where he is known."

76. In the case of general dissolution, the goodwill must normally be sold if it has value and, while the winding-up is continuing, a partner will usually be prevented from

attempting to appropriate goodwill for himself (see *Lindley & Banks on Partnership*, 21st ed., at paragraph 10-424). Where, however, there is no goodwill with a saleable value, "each partner will seemingly have an equal right to use the firm name", provided that he does not do so in a way that involves holding out another as a partner in his new business (see *Lindley & Banks on Partnership*, 21st ed., at paragraph 10-430). In this connection, *Lindley & Banks on Partnership*, 21st ed., comments as follows in a footnote to paragraph 10-430:

> "From one perspective it could be said that to commence such a business prior to the conclusion of the winding up would involve a prima facie breach of the duty not to compete imposed by the Partnership Act 1890 s.30 (as seemingly applied by s.38) and, perhaps, a breach of the duty of good faith; see also s.29(2). However, this would be to ignore the prohibition on taking on new work to be found in s.38 …. It follows that the new business carried on by the former partner would, by definition, not be competing with the old 'run-off' business being carried on by the dissolved firm."

77. Where the goodwill has been sold, each former partner "is not precluded from carrying on a precisely similar business with all the advantages he may be able to acquire from his own industry and labour, and from the regard people may have for him; and that in a place next door, for example, to the very place where the former business was carried on" (*Churton v Douglas* (1859) Johns 174, at 187, per Page Wood V-C). A former partner will not be entitled to canvass customers of the old firm, but he "is under no obligation to retire from the field" and may trade "in the very same line of business" (*Trego v Hunt*, at 24, per Lord Macnaghten). Lord Macnaghten explained in *Trego v Hunt*, at 24-25:

> "He may do everything that a stranger to the business, in ordinary course, would be in a position to do. He may set up where he will. He may push his wares as much as he pleases. He may thus interfere with the custom of his neighbour as a stranger and an outsider might do; but he must not, I think, avail himself of his special knowledge of the old customers to regain, without consideration, that which he has parted with for value. He must not make his approaches from the vantage-ground of his former position, moving under cover of a connection which is no longer his. He may not sell the custom and steal away the customers in that fashion."

78. *Lindley & Banks on Partnership*, 21st ed., says this about the use of a "business connection" post-dissolution in paragraph 16-74:

> "a partner who exploits the firm's business connection in order to take on *new* business for his own benefit may be accountable for any profits realised, even though such business could not properly have been transacted by the firm without the agreement of all the other partners".

Footnote 219 adds:

> "Conceptually this must be correct, because the partner in the example has, in effect, appropriated part of the firm's goodwill (i.e. customer connection) for his own benefit."

79. However, it may not always be easy to say whether a former partner has derived a benefit from use of "business connexion" of the partnership. *Twomey on Partnership* (2nd. ed.) says this on the subject in paragraph 15.35:

> "This is because in many partnerships and particularly professional partnerships, the partners will be closely identified with their partnership and therefore the business connection of the partnership will be partly due to the personal connections of the partners. It follows that business may come to a former partner because of his personal attributes, rather than because of his role as a partner in the firm and therefore will not involve a use by him of the partnership connection or name under s 29(1). This is illustrated by the unsuccessful claim for damages in the [Irish] High Court case of *O'Connor v Woods* [22 January 1976]. There, the plaintiff, a former partner in the accountancy firm of John A Woods & Co had come to know certain clients of the firm while he was a partner. When the plaintiff left the firm, these clients continued to use his services and the continuing partners in the firm claimed that the fees received by the plaintiff from these clients should be paid to the continuing partners, on the basis that the plaintiff had only come to know the clients 'through his association with the partnership'. This was rejected by Kenny J who only countenanced granting damages if the plaintiff had enticed the clients away from the firm:
>
>> 'There was no enticement by him in connection with this work and there was no obligation on him to leave work with the partnership which he could do … This case illustrates the view of the first named defendant that the plaintiff is liable for enticement when a company, firm or individual who had been clients of the partnership took their business away when the plaintiff left. The plaintiff never entered into a covenant or agreement that he would not practise as an accountant after he terminated the partnership and if the parties to the [partnership agreement] wished to provide that a retiring partner should not practise, they should have inserted such a clause in the agreement … It does not follow that because a company or individual took any part of their business away from the partnership when the plaintiff left it, that the plaintiff is liable for the fees.'"

The present case

80. The Judge rejected as an "unjustified gloss" the submission mentioned in paragraph 44 above and instead said that whether something amounts to a "business connexion" is "a question of fact and degree to be considered in the light of all relevant circumstances". While, however, the submission from which the Judge differed sought

to put flesh on the bones of "business connexion", the Judge's approach fails to identify either the concept which the words "business connexion" are trying to capture or to provide any test by which it can be determined whether something is or is not a "business connexion". To say that a question is one of "fact and degree" is not, with respect, of much help unless you have in mind the sort of thing that you are looking for. As will be apparent from what I have said in paragraph 69 above, it is possible, I think, to say rather more than the Judge did about what "business connexion" means.

81. It does not necessarily follow, however, that the Judge was wrong to consider Acon a "business connexion". As I have mentioned, he concluded that it was on the basis that the Partnership's relationship with Acon:

> "consisted of the Partnership's ability to purchase a highly regarded LFT from Acon in circumstances where (i) most people who sought to compete with the Partnership could not because Acon were selective about who they supplied, (ii) the ability to purchase tests from Acon was the life-blood of the Partnership and (iii) Acon took steps to ensure that potential customers did not 'circumvent' the Partnership by its practice of referring back to the Partnership attempts at circumvention".

82. In my view, the Judge's findings of fact do justify the conclusion that Acon was a "business connexion" when the Partnership was dissolved. As the Judge recognised, Acon did not consider the Partnership to have any right to exclusivity, and it was evidently also willing to sell its LFTs to Newfoundland, MedCo and PDL. Further, there were indications in the letters from Allen & Overy that Acon's continued willingness to trade with the Partnership could depend on its accepting that it did not have exclusivity. However, it remained the case that Acon was "selective about who it supplied", had a business model which involved supplying "a relatively small number of distributors", attached value to its relationship with the Partnership and would refer back to the Partnership customers who had sought to "circumvent" it. Even the Allen & Overy correspondence referred to Acon's wish to continue its collaboration with the Partnership, to which "both parties have already devoted considerable time and resource". The Partnership's ability to buy LFTs from Acon was, moreover, fairly characterised as "the life-blood of the Partnership". It enabled the Partnership to sell a "highly regarded" and "market-leading" LFT which had received Porton Down validation and, from 14 May 2021, had a CE Mark. Acon was not a generally accessible supplier such as Nestlé or Times Newspapers might possibly be to a newsagent. The relationship with Acon was surely of real value to the Partnership and a contributor to the goodwill which the Judge held the Partnership to have.

83. Did the position change on dissolution? I do not think so. There is reason to doubt how far a purchaser of the Partnership's goodwill would have benefited from its relationship with Acon. The Judge recorded that Ms Shuai of Acon "enjoyed a warm relationship" with Mr Hughes but had a "frosty" one with Mr Manduca. That might have been expected to lead to Acon being willing to continue to trade with Mr Hughes and attaching no significance to the fact that a purchaser with which he was not involved now owned the Partnership's goodwill. However, the Judge found that there was at least "<u>some</u> goodwill in the Partnership's business" (see paragraph 237 of the Judgment), that Acon's CE Mark "had a beneficial effect on the value of the Partnership's goodwill" (paragraph 394(iv)) and that the Partnership's goodwill "was

not of negligible value at the time of the Partnership's dissolution" (paragraph 427(ii)). Subject, therefore, to the points discussed in paragraphs 84-99 below, this appears to me to be a case in which one partner may be said to have "exploit[ed] the firm's business connection in order to take on *new* business for his own benefit" and so "in effect" to have "appropriated part of the firm's goodwill … for his own benefit" (to adapt the words of *Lindley & Banks on Partnership*, 21st. ed., quoted in paragraph 78 above).

The scope of the Partnership's business

84. The extent of a partner's duty to account is affected by the scope of the partnership's business. In this connection, Lindley LJ said in *Aas v Benham*, at 256, "there is no principle or authority which entitles a firm to benefits derived by a partner from the use of information for purposes which are wholly without the scope of the firm's business".

85. Ms Hilliard invoked this principle in the present case on the basis that "the Partnership's business model was the sale of Hughes Healthcare branded LFTs". That being so, it was argued, the purchase and sale of LFTs bearing only Acon's branding was not within the scope of the business or, hence, section 29 of the 1890 Act.

86. I have not been persuaded. The Judge explained in paragraph 39(ii) of the Judgment that, when Mr Manduca and Mr Hughes agreed to establish the Partnership, its business "was to be focused on the sale of LFTs", not just "Hughes Healthcare" LFTs. When, moreover, the parties decided that they should enter into a shareholders' agreement, it was envisaged that a company would inherit from the Partnership a business "to distribute, develop distribution, buy and sell lateral flow devices", again without a restriction to "Hughes Healthcare" LFTs. Further, in March 2021 Newfoundland twice ordered via the Partnership 50,000 LFTs without "Hughes Healthcare" branding.

87. In the circumstances, the Partnership's business was not confined to LFTs bearing its branding but extended to LFTs more generally. The fact that the Partnership chose to sell mainly branded LFTs did not serve to limit the scope of its business.

The significance of Mr Manduca's breaches of duty

88. Without Mr Hughes' knowledge, Mr Manduca entered into an arrangement under which he was to share in Newfoundland's profits. That gave him an incentive to divert potential business to Newfoundland, and the Judge found that he did so to an extent. I regard these breaches of Mr Manduca's fiduciary duties as very serious.

89. Ms Hilliard argued that they disentitle Mr Manduca to relief against Mr Hughes, both on the basis that partners' obligations are reciprocal and because they mean that Mr Manduca does not have "clean hands". The authorities cited in support of this submission included these:

   i) In *Const v Harris* (1824) Turn & R 496, at 524, Lord Eldon said that "it is a principle of this Court with respect to partnership concerns, that a partner, who complains that the other partners do not do their duty towards him, must be ready at all times, and offer himself, to do his duty towards them";

ii) In *Reilly v Walsh* (1848) 11 Ir Eq 22, at 28, Richards B said that one partner's conduct having from "the very commencement" been "the very opposite of what it should have been if he intended to act as a partner fairly", his representative had "no equity to call on the court to prevent the operation of the rule of law";

iii) In *M'Lure v Ripley* (1850) Mac & G 274, at 279, Lord Cottenham held that one partner (Mr Ripley) was relieved of any obligation to share information relevant to the partnership's trade with the other (Mr M'Lure) after the latter had defaulted on making a payment to him. Mr Mr M'Lure "ceased any longer to have the rights of a partner" when he failed "to perform his part of the [partnership] contract";

iv) Citing *Const v Harris* by way of authority, the original, 1860 edition of Lindley, "*A Treatise on the Law of Partnership*", explained:

> "Notwithstanding the universal application to partners of the rule requiring the most perfect good faith, if one partner repudiates the contract of partnership and will not perform his duty towards his co-partners, he cannot justly complain if they in return decline to treat him on a footing of equality with themselves";

v) In *Purdon v Miller* [1961 (2)] SA 211, a South African case, Ogilvie Thompson JA said at 230:

> "Partnership is a contract *uberrima fidei* and, in my view, that connotes that a partner wishing to invoke against his co-partner the stringent provisions of a summary cancellation and forfeiture clause contained in the partnership agreement must at least be honouring the terms of that agreement. In my judgment the equitable principles of our law do not permit a partner, who is himself repudiating his partnership obligations towards his co-partner, to enforce against that co-partner a forfeiture clause like clause 10 of the contract under circumstances such as those of the present case";

vi) The Manitoba Court of Appeal followed *M'Lure v Ripley* in *Akman v Chipman* (1987) CanLII 5286;

vii) Citing *Reilly v Walsh* as authority, *Twomey on Partnership*, 2nd. ed, explains in paragraph 15.57:

> "The fiduciary duty owed by one partner to another is reciprocal. It follows that where one partner refuses to carry out his part of his duty towards his partners, he does not have a cause of action against the other partner if they fail to comply with their fiduciary duty to him";

viii) *Lindley & Banks on Partnership*, 21st. ed., observes in paragraph 16-12:

> "The duty is a reciprocal one: thus, if one partner chooses, in the words of Lord Lindley, to 'repudiate' the contract of partnership

and refuses to perform his duty towards his co-partners, he cannot complain if they adopt a similar attitude towards him."

90. Developing her case in her oral submissions, Ms Hilliard argued that Mr Hughes was released from any further obligation to account to Mr Manduca when he learned of Mr Manduca's breaches of duty and accepted that their relationship could no longer go on. Alternatively, Ms Hilliard said, Mr Manduca's serious breaches of duty meant that he had no standing to seek relief in equity and, even supposing that he had such standing, it would be an affront to conscience for the Court to insist that Mr Hughes owed a continuing duty of loyalty post-dissolution.

91. In my view, however, neither the authorities which I have mentioned nor any others cited by Ms Hilliard go anything like as far as she would need them to go to make good her submissions. The authorities indicate that there can be situations in which obligations of partners are so tied together that, if one partner fails or refuses to perform his duty, the other partner or partners need not carry out theirs. However, despite the extensive research which has clearly been undertaken on the appellants' behalf, Ms Hilliard was unable to take us to any case in which a partner has been denied relief such as Mr Manduca is claiming by reason of breaches such as he has committed. The discovery by a partner of misconduct by another partner may provide a basis for seeking dissolution under section 35 of the 1890 Act. With a partnership at will, a partner may anyway determine the partnership under section 26 of the 1890 Act. However dissolution comes about, there are provisions in the 1890 Act dealing with winding-up and the "twilight period" when winding-up has not yet been completed. Nowhere in the Act is there any indication that a partner learning of even serious misconduct by another partner is automatically released from obligations of his own on a wholesale basis or that he can choose to bring them to an end otherwise than in accordance with the 1890 Act's scheme. Nor do the cases on which Ms Hilliard relied show that a partner's liability to account can come to an end in such a way or that a partner guilty of misconduct loses standing to seek relief under section 29.

92. Nor again is there a persuasive example of the "clean hands" doctrine operating to disentitle a partner to relief such as Mr Manduca is asking for. In *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] EWCA Civ 328, [2013] 1 CLC 596, Aikens LJ, with whom Maurice Kay and Toulson LJJ agreed, noted in paragraph 159 that it was common ground that "the scope of the 'unclean hands' doctrine is limited" and that "the misconduct or impropriety of the claimant must have 'an immediate and necessary relation to the equity sued for'". The respondents disputed that the "clean hands" doctrine can apply at all in relation to the liability imposed by section 29 of the 1890 Act. Even assuming, however, that it can, I do not think there was such an "immediate and necessary" relationship between Mr Manduca's misconduct and Mr Hughes' alleged liability under section 29 as to preclude an order in the former's favour.

93. It may be worth mentioning in this context *Richardson v Blackmore* [2005] EWCA Civ 1356, [2006] BCC 276. There, a shareholder bringing an unfair prejudice petition under section 459 of the Companies Act 1985 had at one stage deployed a letter which he knew to have been forged. The Court of Appeal agreed with the first instance judge that this did not prevent him being granted relief. Lloyd LJ, with whom Morritt C and Longmore LJ agreed, "deplore[d]" the petitioner's conduct, but said in paragraph 56 that it "had no bearing on the matters directly in issue". "The forgery itself", Lloyd LJ

said in paragraph 56, "had no immediate or necessary relation to the circumstances upon which the petitioner's entitlement, or otherwise, to relief depended": "[a]t best it was an episode in the background history".

94. At points, Ms Hilliard spoke of the Partnership becoming a partnership "in name only". While, however, Mr Manduca committed serious breaches of duty, the Partnership was never merely nominal in the period up to its dissolution and, after that, its winding-up fell to be conducted in accordance with the 1890 Act. Mr Hughes is entitled to relief in respect of Mr Manduca's misconduct, but it has not served to release him from the obligations which Mr Manduca is seeking to enforce or to bar Mr Manduca from applying to the Court.

Mutual trading

95. To varying degrees, Mr Hughes and Mr Manduca both sold Acon LFTs after the Partnership had been dissolved. Further, Mr Manduca presumably continued to receive 30% of the profits which Newfoundland made from its sale of Acon LFTs.

96. I have considered whether the fact that Mr Hughes and Mr Manduca were alike trading and profiting from Acon LFTs serves to prevent Mr Manduca from laying claim to the profits which Mr Hughes achieved. I do not think it does, however. The position would have been different if it had been possible to infer that Mr Hughes and Mr Manduca had consented to each other's activities, but the Judge did not find such consent to have been given. In fact, Mr Hughes counterclaimed for profits made by Mr Manduca on the footing that he had not consented to the activities which generated them.

Conclusion

97. The appellants contend that the Judge should have held that Mr Hughes has no liability to account pursuant to section 29 of the 1890 Act. For the reasons I have given, I do not agree.

98. The Judge was, however, at pains to stress that the extent of Mr Hughes' liability was a matter for Trial 2 and that the Partnership's "business connexion" with Acon was by no means the only factor accounting for the benefits which Mr Hughes received from post-dissolution sales of LFTs: see paragraph 48 above. He accordingly said in paragraph 428 of the Judgment that such benefits "were, <u>at least to an extent</u>, 'derived from' a business connexion of the Partnership".

99. I would echo those comments. The Judge expressly recorded in paragraph 252 of the Judgment that he was expressing no view as to how the "derived from" test should be applied and, more generally, assessment of the extent of Mr Hughes' liability to account is a matter for Trial 2. However, it is very far from apparent that Mr Hughes should have to account to the Partnership for 100% of his post-dissolution profits. Amongst the matters that may be relevant in that context are not only the factors falling outside section 29 of the 1890 Act to which the Judge referred in paragraph 252 of the Judgment but the "warm relationship" which Ms Shuai of Acon had with Mr Hughes personally and the fact that there was only "<u>some</u> goodwill in the Partnership's business". There may also possibly be scope for the award of an equitable allowance (compare the discussion in *Recovery Partners GP Ltd v Rukhadze* [2023] EWCA Civ 305, [2023]

Bus LR 646). That, too, is a question which could appropriately be considered in Trial 2.

The conspiracy claim against Mr Hughes, Ms Blyth and MSDL

100. The appellants challenged the Judge's finding that Mr Hughes, Ms Blyth and MSDL were liable for unlawful means conspiracy. However, Ms Hilliard accepted that the attack was entirely parasitic on the appeal against liability under section 29 of the 1890 Act. As I have said, that appeal fails, in my view. It follows that this ground of appeal also fails.

The knowing receipt claim against Mr Hughes, Ms Blyth and MSDL

101. The position is similar here. The appellants argued that the Judge should have concluded that Mr Hughes, Ms Blyth and MSDL could not be liable for knowing receipt, but Ms Hilliard accepted that success on this ground of appeal depended on success in relation to section 29 of the 1890 Act. The point being parasitic, my conclusions in respect of section 29 are fatal to it.

Liability under section 42 of the 1890 Act

Introductory

102. In *Hopper v Hopper* [2008] EWCA Civ 1417, Etherton LJ, with whom Thomas and Moore-Bick LJJ agreed, said this in paragraph 48 about section 42 of the 1890 Act:

> "Section 42 governs what happens in relation to post-dissolution profits if (1) the business of the former partnership is continued by one or more of the former partners, not for the purposes of winding up the former partnership, but for the personal benefit of those continuing to run the business, and (2) those persons do not include all the former partners and the personal representatives of the deceased partner, but (3) there are retained within the continuing business all or part of the shares of the assets of the former partnership to which those non-participants in the continuing business were entitled (in their personal capacity or as personal representatives) on dissolution of the former partnership. In summary, this is a familiar situation, well covered by the cases and equitable principles which applied both before and after enactment of the 1890 Act, where one person's property is employed in the business of another, who may or may not be in breach of trust in retaining that property, and the question arises what rights the owner of that property has in respect of profits of the business: see Lindley on Partnership (15th ed) pp. 719-723."

103. While section 42 of the 1890 Act refers to "surviving or continuing partners" (in the plural), in *Pathirana v Pathirana* [1967] AC 233 the provision was held to apply where a single partner in a firm with just two partners had continued the business.

104. Courts have touched on the relationship between sections 29 and 42 of the 1890 Act in *Pathirana v Pathirana*, *Cameron v Murdoch* (1986) 63 ALR 575, *John Taylors* and *Duncan v The MFV Marigold PD145* [2006] SLT 975. In the last of these, Lord Reed said in paragraph 47:

> "Section 29(2) and s 42 may both apply in a situation where the partnership assets are used by surviving partners during the period between dissolution and the completion of winding up (*Pathirana v Pathirana*; *John Taylors v Masons*): s 29(2) is concerned with the obligation of the surviving partners to account for benefits which they have derived, and s 42 is concerned with the right of the representatives of the deceased partner to be compensated for the use of the deceased's capital."

The Judge's reasoning

105. The Judge noted in paragraph 421(ii) of the Judgment that it had been argued on behalf of the appellants that it could not be the case that both Mr Hughes and Mr Manduca were carrying on the business of the Partnership following its dissolution as two people cannot carry on the same business in competition with each other. In paragraph 423, the Judge rejected that contention, explaining that he saw "no logical difficulty with the proposition that [Mr Hughes] and [Mr Manduca] could both be carrying on the business of the Partnership for their own respective accounts following dissolution". On that basis, the Judge concluded in paragraph 429:

> "The precondition for the application of s42 is satisfied since [Mr Hughes] did, through HGL and MSDL, carry on the business of the Partnership in the twilight period …. It will now be a matter for Trial 2 to determine the extent of the obligation to account, if any, that arises in consequence."

The parties' positions

106. The respondents endorsed the Judge's view. There is no reason, Mr Béar submitted, why you have to regard the business of a partnership as an indivisible entity which can only be continued by one person. If two partners carry on different parts of the business, each is a "continuing partner" as regards the part he is carrying on and an "outgoing partner" as regards the part which the other partner is carrying on.

107. In contrast, Ms Rogers, who presented the appellants' case on this issue, contended that section 42 of the 1890 Act applies only where one or more partners have to a sufficient extent carried on "the business" of the firm and it is accordingly possible to identify those as the "continuing partners" and anyone else as an "outgoing partner". A person cannot be both a "continuing partner" and an "outgoing partner", Ms Rogers said. It is inherent in section 42 that "the" partnership business must have been continued to the *exclusion* of one or more partners. If each partner takes forward a different part of the business, no partner is carrying on "the business of the firm" and there is no "outgoing partner". It follows, so it was said, that the Judge approached section 42 on an erroneous basis and, since Mr Hughes and Mr Manduca both traded in LFTs post-dissolution, neither carried on "the business" of the firm and Mr Manduca was not an "outgoing

partner". Ms Rogers further submitted that Mr Manduca's pre-dissolution misconduct made it inequitable for him to be granted relief under section 42.

Analysis

108. I do not find this issue an easy one, but I have in the end concluded that Ms Rogers has the better of the argument. Neither side has identified a case in which a partner has previously been held to be simultaneously a "continuing" partner and an "outgoing" one for the purposes of section 42 of the 1890, and it appears to me that a partner cannot be both. Section 42 provides for a situation in which certain partners ("the surviving or continuing partners") carry on "the business" of the firm, a partner ("the outgoing partner") does not do so and there is yet to be a final settlement of accounts as between "the firm" and the outgoing partner. On its face, the provision envisages "the business" being carried on by "the surviving or continuing partners", not a situation in which "the business" has been fragmented and different partners are pursuing different parts of it. Further, it cannot, I think, be supposed that the draftsman had in mind multiple final settlements of accounts in which one or more partners are treated as "the firm" at one moment and "outgoing" partners the next. Nor does there appear to be a compelling policy reason for stretching the wording of section 42 to encompass a case in which the partnership business has been split between more than one partner. In an appropriate case, a partner could obtain relief under section 29 in such circumstances.

109. I therefore, with respect, part company from the Judge as to the correct construction of section 42 of the 1890 Act. In my view, the Judge approached the question whether Mr Hughes was liable under section 42 on an incorrect basis and so his order must in this respect be set aside. It is to be noted that the respondents have not sought to argue that the order can be sustained on any other footing.

Mr Hughes' unlawful means conspiracy claim

110. Mr Hughes' pleaded claims included one for unlawful means conspiracy against, among others, Mr Manduca, Titanium, Mrs Manduca, Mr Freddy Manduca, Newfoundland and Mr Hodnett. In their skeleton argument for the trial before the Judge, the appellants commented on the law relating to such a claim when addressing the conspiracy allegations made against them and, later in the document, explained that it was Mr Hughes' case that "Mr Manduca conspired with Titanium, Mrs Manduca, Freddy Manduca, Newfoundland, Mr Hodnett and NeuroCED (or one of them) to intentionally cause loss to Mr Hughes, using unlawful means". A finding of conspiracy was said to be "inevitable" since the documentary evidence "unquestionably demonstrates that the co-conspirators were working together, to operate outside of the Partnership, resulting in business being taken away from the Partnership to the inevitable detriment of Mr Hughes".

111. The parties also provided lengthy written closing submissions, which the Judge had indicated should supersede their initial skeleton arguments. The appellants once again included analysis of the legal principles applicable to unlawful means conspiracy claims and, after a paragraph in which it was asserted that WhatsApp messages passing between the Manduca family "demonstrate as clear as day that the family were all working together", said in paragraph 409:

> "The Ds will deal with the conspiracy, the dishonest assistance claims and the knowing receipt claims in oral submissions."

112. In her oral submissions, as the time allotted for them was running out, Ms Hilliard said this:

> "Then I think I need to just address you, very quickly, on what we say is the remainder of the claim and counterclaims.
>
> I am grateful to Mr Gourgey [i.e. counsel then appearing for the respondents] for bringing to our attention the *Racing Partnership* case, which I have to say escaped me, which puts to rest the controversy of whether knowledge is required by the defendant conspirators that the means are unlawful. We do say that there was an unlawful conspiracy here. We rely on, for example, things like, well, Philip Manduca sending leads that come into the partnership to Freddy Manduca to be used in the Newfoundland business. The receipt of a secret profit from Newfoundland and Newfoundland's involvement in that and Freddy Manduca's involvement in that. The setting up of overseas satellites. The diversion of business that was properly partnership business, for example, Radisson."

113. Following the conclusion of the trial, the Judge invited the parties to answer certain questions and, having received their responses, raised further queries. The questions he asked included these:

> "5. I have looked through the transcript and the Defendants' closing submissions. I can see nothing or very little addressing (i) the Claimants' knowing receipt claim against MSDL, JH [i.e. Mr Hughes] and LB [i.e. Ms Blyth], (ii) the Claimants' dishonest assistance claim against LB, (iii) the Claimants' breach of trust claim against HGL (that was scaled back in the Claimants' closing submissions). Please could the Defendants refer me to any parts of their written or oral closing submissions on these submissions that I may have overlooked. Please note that, in making this request, I am not inviting any further submissions in addition to those that were, or were not, made at trial. Whether or not the Defendants said much about them in closing, I still need to consider whether the Claimants have proved their case on these allegations.
>
> 6. I cannot see anything in the Defendants' written or oral submissions about their 'knowing receipt claim' specifically. When making submissions on the 'dishonest assistance' element of the Defendants' claims, Ms Hilliard KC occasionally used the phrase 'knowing assistance'. I propose, therefore, to treat oral submissions on 'dishonest assistance' as relating also to

'knowing receipt' unless the Defendants wish to point me to aspects of the oral or written closings that I have overlooked.

7. The parties' written closings suggest a divergence of view on whether a breach of contract or breach of fiduciary duty can be an 'unlawful means'. Paragraph 393 of the Defendants' closings suggests that the point is at large. Paragraph 436 of the Claimants' written closings suggest that there is unlikely to be an issue as to whether the acts complained of, if established, are 'unlawful acts'. I have formed the initial view that, at [15] of *JSC BTA Bank v Ablyazov (No 14)* the doubt expressed concerned the situation where Ds conspire to breach fiduciary or contractual obligations to a <u>third party</u> as a means of inflicting harm on a C. I am not, at least at this stage, convinced that their Lordships were suggesting doubt as to whether a conspiracy by Ds to breach fiduciary or contractual obligations owed to C is capable of being an unlawful act. I do not believe that anything was said on this topic in closing. Is there a disputed question of law here that I need to resolve, or are the parties content for me to proceed on the basis that if LB, JH and MSDL conspired with a view to JH breaching his fiduciary duties to PM [i.e. Mr Manduca] (or failing to account to the Partnership under s29), that is capable of being an 'unlawful act'?"

114. The Judge dismissed Mr Hughes' unlawful means conspiracy claim. He said this about it in the Judgment:

"476. In written closing submissions, the Defendants submitted that a review of WhatsApp messages passing between the Manduca family demonstrate 'as clear as day that the family were all working together'. Two particular instances of relatively peripheral behaviour were given.

477. In oral closings, further behaviour was relied upon, for example: [Mr Manduca's] alleged 'diversion' of leads into Newfoundland, Newfoundland's involvement in that and the setting up of 'overseas satellites'. However, beyond a reference to alleged behaviour, little more was said about the alleged conspiracy.

478. These submissions did not explain why the participants in the alleged conspiracy should be taken as having an intention to injure [Mr Hughes] (a necessary ingredient of the tort …). Of course, I understand that intentions can sometimes be inferred from the nature of actions.

> However, care is needed before making such an inference given the distinction between an outcome that is an 'end in itself', a 'means to an end' and a 'foreseeable consequence', at [42] and [43] of Lord Hoffmann's speech in *OBG Ltd v Allan*. Before drawing any inference as to the presence or absence of the requisite intention from what [Mrs Manduca], [Mr Freddy Manduca], Newfoundland and others actually did, I would have required fuller submissions as to precisely what inference I was invited to draw. I could then have heard, in Mr Gourgey KC's reply submissions, argument as to whether the requisite intention had been made out or whether only 'foreseeability' had been established.
>
> 479. [Mr Hughes'] unlawful means conspiracy claim has not been made good in closing submissions and accordingly fails."

115. In contrast, the Judge held that the unlawful means conspiracy claim against Mr Hughes, Ms Blyth, MSDL and HGL succeeded. He said in that connection in paragraph 455 of the Judgment:

> "There was an intention to cause harm to [Mr Manduca]. The plan to take over the business of the Partnership only made sense if [Mr Manduca] received no account of profits generated post dissolution. All parties to the combination knew that [Mr Manduca] would not receive compensation. Causing harm to [Mr Manduca] was, accordingly, the natural and inevitable consequence of the unlawful means that were employed. The requisite intention to cause loss by the unlawful means was present in light of the analysis of Lord Hoffmann as to the nature of that intention set out at [41] and [42] of his speech in *OBG Ltd v Allan* [2007] UKHL 21, [2008] 1 AC 1."

116. The Judge gave a further judgment on consequential matters on 18 June 2025. This addressed, among other things, an application by the appellants for permission to appeal the rejection of Mr Hughes' unlawful means conspiracy claim. As to that, the Judge said this:

> "15. In relation to the conspiracy claim, the Defendants point to paragraph 408 of their closing submissions. However, that says nothing as to how the case on the 'mental element' was advanced in closing. The Defendants refer to some comments in their opening skeleton argument. However, I had specifically directed the parties to ensure that their written closing submissions superseded the opening skeleton and dealt with all points that were being pursued in closing so that I would not need to resolve for myself potential differences between written and oral submissions.

> 16. It is not realistically arguable that the Defendants ran out of time to make the necessary submissions in oral closings. They submitted written closing submissions running to 163 pages. The necessary matters should have been addressed in those. Indeed the court sent the parties some questions after the trial pointing out what it saw as the paucity of submissions on the dishonest assistance issue. At that point, the Defendants could usefully have reflected on the submissions that they had made and applied for permission to advance further submissions if they wished to do so. They made no such application."

117. Ms Hilliard took issue with the Judge's rejection of Mr Hughes' unlawful means conspiracy claim. She recognised that little had been said about it on behalf of the appellants in either their written or oral closing submissions before the Judge, explaining that she and her team had simply run out of time. She argued that it had nonetheless been incumbent on the Judge to decide the claim on its merits.

118. In contrast, Mr Béar, supporting the Judge's decision, presented the matter as one of case management. He pointed out that litigants are not entitled to unlimited Court time and argued that first instance judges are encouraged to be robust and that it would have been open to Ms Hilliard to ask for permission to put in additional submissions.

119. In my view, the Judge ought to have determined the claim on its merits. The issue is not appropriately characterised as simply one of case management. The Judge had before him a pleaded claim which he knew that the appellants had not abandoned. The parties had deployed all their evidence in respect of the matter and the appellants had made submissions on the law. Of course, the Judge might reasonably have expected to hear more about the claim from the appellants in their closing submissions, but the time pressures provided a plausible explanation for the fact that he did not do so. Once the trial had concluded, moreover, the Judge asked the parties a variety of questions and, if minded to proceed on the basis that he had not heard enough in submissions to allow him to determine the merits of the claim, he could conveniently have indicated as much.

120. In the circumstances, I would allow the appeal against the dismissal of Mr Hughes' conspiracy claim. However, I do not think that we are in a position to decide it for ourselves. The appropriate course would appear to be to remit the matter to the Judge to be considered as part of Trial 2.

Mr Hughes' knowing receipt claim

121. Mr Hughes' pleaded claims also included claims for knowing receipt against, among others, Titanium. In that connection, it was alleged in the counterclaim that Titanium "knowingly received assets belonging to the Partnership … with knowledge of Mr Manduca's breach of fiduciary duty and breach of the duty of good faith owed to his partner, Mr Hughes". In their opening skeleton argument, having addressed the law relating to knowing receipt in the context of the claims against them, the appellants said under the heading "Knowing receipt":

> "126. Mr Hughes' case is that Newfoundland and/or Freddy Manduca and/or Mr Hodnett and/or NeuroCED and/or Mrs Manduca received Partnership assets as a result of Mr Manduca's breach of fiduciary duties.
>
> 127. In circumstances where Mr Manduca breached his fiduciary duties as Partner, and Newfoundland, Freddy Manduca, Mr Hodnett, NeuroCED, or Mrs Manduca, were the recipient of Partnership assets as a result, in the knowledge of Mr Manduca's breach, it is submitted that the test for knowing receipt is made out."

122. As I have already mentioned, the appellants stated in their written closing submissions that they would deal with their knowing receipt claims in oral submissions. In the event, Ms Hilliard said this at the close of those submissions:

> "We also say that there was knowing assistance by Newfoundland, Freddy Manduca and Mike Hodnett knowingly assisting Philip Manduca to breach his fiduciary duties, by being involved in carrying through the commitment to commence manufacturing and selling Hughes Veritas. Newfoundland then proceeding to sell Hughes Veritas tests. There is also evidence of [Mrs Manduca] being involved in an ostensible sale on behalf of Newfoundland, when, really, the sale should have been a partnership sale ….
>
> NeuroCED entering into agreements which should be partnership agreement, ie ZetaGene, NeuroCED making a trade mark application to register the Hughes Veritas tests on 6 June and Titanium receiving tranches of secret profit. We say that was all dishonestly assisting Philip Manduca to breach his duty to Jon Hughes and, obviously, to the extent that they received benefits as a consequence of the knowing assistance, we say we are entitled to trace those benefits into the hands of the recipients."

123. In the Judgment, the Judge said this under the heading "The 'knowing receipt' claim":

> "474. The Defendants' written closing submissions said nothing about this claim. Nothing express was said about the claim in oral closings. However, when making submissions on the 'dishonest assistance' aspects of the claim, Ms Hilliard KC occasionally used the expression 'knowing assistance' and so I have taken those submissions as intending to refer both to the 'dishonest assistance' and the 'knowing receipt' claims.
>
> 475. However, those submissions still said nothing about the state of knowledge of [Mrs Manduca], [Mr Freddy Manduca], Newfoundland, [Mr Hodnett] or NeuroCED against whom the knowing receipt claim was made.

> Accordingly, a central aspect of the knowing receipt claim has not been made good in closing submissions and that claim fails."

124. In his judgment on consequential matters, the Judge said this:

> "13. The parties should bring necessary points before the judge by way of submission. That duty is not discharged by pleading a case but saying nothing in oral or closing submissions about how aspects of the law should be applied to the facts of that case in the light of the evidence given. Part of that discipline is so that the other side has an opportunity to say something on the matter. If a judge just rummages around in the evidence and the pleaded case and reaches conclusions unguided by any submissions from the parties, a necessary procedural safeguard would be disturbed ….
>
> 14. The Defendants now say that it was 'obvious' that Titanium was liable in knowing receipt since it would be fixed with all of [Mr Manduca's] knowledge surrounding sums that it received arising out of [Mr Manduca's] breach of fiduciary obligation. However, whether the Defendants considered the point to be 'obvious' or not, it was for them to explain in written or oral closing submissions (i) why all of the ingredients of a knowing receipt claim set out in [431] were present so that Titanium could meet that allegation if it wished to and (ii) the specific receipts of Titanium that were affected."

125. It is fair to say, I think, that the appellants provided the Judge with even less assistance with this claim than with Mr Hughes' unlawful means conspiracy claim. Even so, I again consider that the Judge ought to have determined the claim on its merits. It was a pleaded claim; the Judge knew that it had not been abandoned; the relevant evidence was in; the appellants had made submissions on the law; and the Judge invited the parties to comment on a range of points post-trial.

126. Here, it seems to me, there is no need for remittal. In *El Ajou v Dollar Land Holdings* [1994] 2 All ER 685, at 700, Hoffmann LJ summarised the requirements of a knowing receipt claim in these terms:

> "first, a disposal of his assets in breach of fiduciary duty; secondly, the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and thirdly, knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty".

127. The last of these ingredients was the subject of consideration by the Court of Appeal in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437. It was there held that "[t]he recipient's state of knowledge must be such as to make

it unconscionable for him to retain the benefit of the receipt" (per Nourse LJ, with whom Ward and Sedley LJJ agreed, at 455). Nourse LJ pointed out at 448 that, "[w]hile a knowing recipient will often be found to have acted dishonestly, it has never been a prerequisite of the liability that he should".

128. In the present case, it is apparent from the Judge's findings that Titanium received beneficially fruits of breach of fiduciary duty by Mr Manduca which are traceable as representing assets of the Partnership. Given, moreover, that Mr Manduca was the sole director and shareholder of Titanium at the time, the company must be considered to have been aware of the circumstances in which it received the money at issue and that state of knowledge will have made it unconscionable for it to retain the money. I therefore consider that the knowing receipt claim against Titanium succeeds.

Overall conclusions

129. I would allow the appeal as regards liability under section 42 of the 1890 Act and the dismissal of the appellants' unlawful means conspiracy claim and their claim against Titanium for knowing receipt. In my view, the knowing receipt claim succeeds. I would remit the conspiracy claim to the Judge to be considered as part of Trial 2.

130. I would otherwise dismiss the appeal.

Lord Justice Snowden and Lady Justice Falk:

131. We are very grateful to Newey LJ for so clearly setting out the facts and issues, and for his careful analysis of the relevant case law and commentaries. We have nothing to add to his decision to allow the appeal in relation to the application of section 42 of the 1890 Act and the dismissal of the appellants' claims in unlawful means conspiracy and knowing receipt. We also agree with what he says at paragraphs 84 to 94 about the scope of the Partnership's business and the significance of Mr Manduca's breaches of duty.

132. However, in relation to other aspects of the analysis under section 29 we do not consider that a straightforward dismissal of the appeal with the guidance given at paragraph 99 above in relation to Trial 2 would be the correct approach. In our judgment, leaving the Judge's decision undisturbed would not properly reflect the nuanced approach that is required to determine a) the existence of a "partnership … business connexion", b) the proper scope of any such connexion, and c) the effect of dissolution of the Partnership. We deal with these points in further detail below, but in short, our view is that the appeal on the issue of business connexion should be allowed, and that issue should be remitted to be decided in accordance with the following principles.

133. We are conscious that the Judge's conclusions at paragraph 424 of the Judgment (see paragraph 47 above), which are reflected in the Judge's order, leave it to Trial 2 to determine the benefits derived from, among other things, the business connexion which the Judge found existed with Acon. It might be said that at least some of what we say below trespasses on matters properly within the scope of Trial 2 rather than this appeal.

134. There are a number of responses to that. First and most importantly, it might reasonably have been hoped that Trial 2 could be limited to issues of quantum rather than issues of

principle. But paragraph 424 of the Judgment is open to criticism as restating the question rather than advancing matters in the way that Trial 1 might have been anticipated to achieve. Secondly and relatedly, the Judge's order, if undisturbed, appears to make an element of overlap between Trial 1 and Trial 2 inevitable.

135. Thirdly, leaving the Judge's decision undisturbed risks some important nuances and qualifications being overlooked, including that if Acon was a business connexion at all, its significance may well have been very limited indeed. Put another way, the respondents at least appear to understand the Judge's order as meaning that, because the Judge found that Acon was a business connexion of the Partnership, the starting point should be that *all* profits of the Danish deal (in particular) should be accounted for to the Partnership on the basis that LFTs were sourced from Acon. We do not consider that this is the correct conclusion to draw, but left undisturbed the Judge's order could arguably be regarded as having that effect.

Approach to interpretation of section 29

136. We agree with Newey LJ that, for the reasons he gives at paragraphs 54 to 57, while the ordinary meaning of the words may be a starting point, it is right to look beyond the bare wording of section 29 of the 1890 Act in construing the expression "partnership … business connexion". In particular, it is necessary to look at the case law as it stood before and at the time that the 1890 Act was introduced and the background of the "no conflict" and "no profit" rules of equity considered in *Chan v Zacharia* and other cases.

137. We consider that the Judge erred in not doing so (see in particular paragraphs 245, 261 and 280 of the Judgment). As Newey LJ says, the Judge confined himself to a construction of the statutory language which paid insufficient attention to the fact that the words used are not unambiguous, that when enacted section 29 was seen as being reflective of pre-existing authorities, and that the circumstances in which partners are liable to account under section 29 might be expected to be comparable to those of other fiduciaries.

138. On this last point, it is worthy of note that *Don King Productions* was decided entirely on equitable fiduciary principles, without reference to section 29. Moreover, in *John Taylors* both Peter Gibson LJ and Morland J also reached their decisions without any reference to section 29. Arden LJ did refer to section 29, but primarily founded her decision on fiduciary principles. These authorities should not lightly be ignored in favour of an approach based solely on reading the words of the 1890 Act, without reference to the broader context.

139. We also agree with Newey LJ's observation in paragraph 80, that it is not sufficient to say that the question of "business connexion" is one of "fact and degree". Such a statement is of little assistance without a clear identification of the concept that the court is looking for under section 29.

140. In our judgment, the correct approach to the meaning of "partnership … business connexion" in section 29 requires the court to address whether there is a business relationship which is properly to be regarded as an asset belonging to the partnership. We consider that this requirement arises naturally from the statutory language ("the partnership … business connexion"). This language should be interpreted in the context

in which it appears and consistently with the other items included in the same phrase in the statute ("the partnership property name or business connexion"). Such matters have a natural connotation of some tangible or intangible asset which the partnership has a right to use or exploit and to which it can control access, either to the exclusion of others generally, or at least as between the partnership and the partner.

141. In that regard, we consider that the concept of an asset belonging to the partnership should not be given a narrow legal or technical meaning but should be interpreted in accordance with the equitable principles relating to partnerships that are preserved by section 46 of the 1890 Act.

142. So, to take a simple example, the concept of "partnership property" clearly extends beyond assets legally owned by the partnership to include assets held on trust for the partnership (whether by a partner or a third party), such that they are regarded as belonging to the partnership in equity.

143. Further, following long-established equitable principles, "partnership property" for the purposes of section 29 must be capable of extending to confidential or at least non-public information (including in relation to business opportunities) the use of which by a partner for purposes other than the partnership's business would be the subject of legitimate complaint, because the information should properly be regarded as belonging to the partnership rather than being available for those other purposes. Although not property in the normal sense of that word, if such information comes to the attention of a partner by reason of that partner's fiduciary position, it is regarded in equity as an asset belonging to the partnership which the partner cannot, without informed consent, use for his private benefit without infringing the "no profit" and "no conflict" rules referred to above.

144. We consider that there is a useful analogy between such information and "partnership … business connexion", and therefore that the position in relation to information is worth considering in some detail.

Information as an "asset" or "property"

145. The treatment of information as an asset or property of the partnership in the sense that we have described was evident in the analysis of the members of the Court of Appeal in *Dean v MacDowell* referred to in paragraph 59 above: see e.g. the judgment of Cotton LJ at page 354,

> "… if [a partner] makes any profit by the use of any property of the partnership, including, I may say, information which the partnership is entitled to, there the profit is made out of the partnership property, and therefore, of course, it must be brought into the partnership account."

146. This approach was also endorsed and applied by the Court of Appeal in *Aas v Benham* referred to in paragraph 60 above. Specifically, Bowen LJ explained at p.258 that Cotton LJ had been,

> "… speaking of information which a partnership is entitled to in such a sense that it is information which is the property, or is to

> be included in the property of the partnership – that is to say, information the use of which is valuable to them as a partnership, and to the use of which they have a vested interest."

147. Two limitations must be noted, however. The first relates to the nature of the information. To qualify as "partnership property" within the meaning of section 29, the information must be information to which the partnership has an exclusive right of access or exploitation. The notion of "excludability" has been described as fundamental to the concept of property: see e.g. *The Law Commission: Consultation Paper on Digital Assets (No.256)* at paragraphs 2.70 – 2.72; *R.C. Nolan, "Equitable Property"* (2006) 122 LQR 232. Given the nature of information, this may not necessarily require that the partnership be entitled to the information to the exclusion of all other persons. It may be sufficient that the partnership has the exclusive right as between it and a partner (or ex-partner): see the discussion in Lord Leggatt's judgment in *Recovery Partners GP v Rukhadze* [2026] AC 209 at paragraphs 98-109 in the context of fiduciaries generally. However, it is obvious that the more publicly available the information, the less legitimate will be a claim by the partnership to prevent partners (or ex-partners) from using it and thereby to claim it as partnership property. In this respect the scope of section 29 is narrower than the "no conflict" rule which may in some circumstances prevent exploitation by a fiduciary of information that cannot be said to "belong" to the principal: see for example *Bhullar v Bhullar* [2003] EWCA Civ 424, [2003] 2 BCLC 241 at paragraph 27.

148. For similar reasons, personal skills and general know-how, even if developed while a partner, would not fall within section 29, because they cannot (as between the partnership and the partner) properly be treated as property belonging to the partnership. So, for example, express contractual restraints aside, a solicitor cannot, after leaving a firm, be prevented from setting up their own business using their own knowledge and expertise in a particular area of law acquired while working for the firm.

149. The second limitation is that the partner is only prohibited from using information that is of some value, or potential value, to the partnership, in the sense that the partnership has at least a potential interest in exploiting it for the purposes of its business. Alternatively (although the limits of this are somewhat unclear), even if it cannot be so exploited, the information must have an intrinsic value and a sufficient connection to the partnership's business or assets to justify the imposition of a duty to account.

150. The second limitation reflects the principle that the "no conflict" and "no profit" rules as applied to partnerships are at least to some extent confined by reference to the agreed scope of the partnership business. The precise limits of that principle are unclear, and since it is not relevant to the facts of this case we will not consider it in any detail (see further the discussion in *Lindley & Banks on Partnership*, 21st ed., at paragraphs 16-75 to 16-79).

151. What is clear is that the "no conflict" and "no profit" rules would prohibit the use by a partner for a private purpose of information obtained in the course of the fiduciary relationship which could be exploited for the purposes of the partnership business. In accordance with the principles derived from *Keech v Sandford* (1726) 25 ER 223, they would at least in some circumstances also preclude the exploitation for a private purpose of such information, even if the partnership was not itself in a position to use

the information for the purposes of its business for reasons such as a lack of funds (compare, for example, *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134).

152. In this regard, we consider that the reference by Bowen LJ in *Aas v Benham* (cited above) to information "the use of which is valuable to them *as a partnership*" (our emphasis) was not intended to signify that the liability to account is limited by reference to a monetary test of value, but rather to indicate that what is prohibited is the use of information that would be of value to a partnership in the sense just described.

153. So, for example, in *Dean v MacDowell* a partner was held not liable to account for profits of a business which he had engaged in contrary to an express term of the partnership, in circumstances where the other business was not within the agreed scope of the partnership business: see the fuller citation from Cotton LJ's judgment set out at paragraph 59 above. The facts of that case concerned a partnership of salt merchants, where one of the partners engaged in another business of salt manufacture. That partner may well have used his knowledge of the salt business that he gained as a partner, but, as Cotton LJ went on to say at page 354, the manufacturing business "was in no way within the scope of the partnership". There is also no indication that the defaulting partner otherwise derived a profit from information which could properly be said to be of value to the partnership.

154. Similarly in *Aas v Benham*, a partner in a shipbroking firm was held not liable to account for the profits derived from a shipbuilding company despite having used information obtained as a member of the shipbroking firm. Shipbuilding was beyond the scope of the shipbroking firm's business. The partner was, however, restrained from using the partnership name. As Lindley LJ said at page 256,

> "To hold that a partner can never derive any personal benefit from information which he obtains as a partner would be manifestly absurd."

155. In our view, these principles developed in relation to information and business opportunities can and should be applied by analogy to liability for the use of a "partnership … business connexion" in section 29.

<u>The focus on the partnership's relationship</u>

156. A further point that is important to emphasise is this. In the context of "partnership … business connexion", the thing that must be capable of being regarded as belonging to the partnership is the *<u>partnership's relationship</u>* with the person(s) in question. There are two elements to this.

157. First, the relevant relationship is that between the *partnership* and another person. It is not a relationship with that person that is held by anyone else. It is also not a relationship that a partner may hold in a different capacity, most obviously a personal capacity.

158. This is one reason why, on the facts of this case, the "warm personal relationship" Mr Hughes had with Ms Shuai of Acon needs to be distinguished from any "partnership … business connexion" (see further below). Similarly, in relation to information, a partnership would have no cause for complaint if another business with which a partner was connected had access to the same information independently.

159. Secondly, and critically, the focus is on a *relationship* with another person. The focus is not on that other person themselves. Just because a partnership has conducted some business with a customer or supplier does not mean that the partnership can somehow treat that customer or supplier as belonging to the partnership, to which it can lay an exclusive claim as a "partnership … business connexion".

160. As we say above, the concept of "the partnership … business connexion" requires the court to address whether there is a business relationship of the partnership which is properly to be regarded as an asset belonging to it. By analogy with information and business opportunities, this requires that the partnership has a right to exploit *that relationship* to the exclusion of a partner (or ex-partner). The mere fact that a customer or supplier has dealt with a partnership will not enable the partnership to prevent partners or ex-partners from themselves having such dealings independently.

161. In this respect, there is an obvious analogy with goodwill, which is discussed further below. Goodwill is essentially the attractive force that brings customers to a business and is often treated as an asset of the business. The important point for present purposes is that it is the attractive force that draws customers to *that business* rather than elsewhere. It connotes a relationship between a business and its customers. The fact that customers may also do business with other, rival, businesses may affect the value of a firm's goodwill but would not by itself engender any legitimate cause for complaint by the firm.

Dissolution

162. It is convenient to deal next with the effect of dissolution. As Newey LJ has explained in paragraph 74 above, section 29 continues to apply in the period between dissolution and completion of the winding-up of a partnership's affairs. However, there are important differences in the scope of the partnership business and of the partners' rights and obligations during that period. These must be taken into account in the application of section 29 in the period following dissolution.

163. During the lifetime of the partnership, the partnership will be actively seeking new business. The "no profit" and "no conflict" rules of equity referred to above mean that during this period, the partners cannot, without consent, use the partnership's property for their own benefit, or carry on business of the same nature in competition with the firm. Dissolution fundamentally affects the scope of the partnership's business and the application of these duties. After dissolution, the partnership ceases to be entitled or able to conduct any new business and the duties of the partners are modified so that they continue only so far as may be necessary to complete unfinished transactions and wind up the affairs of the partnership, "but not otherwise": see section 38 of the 1890 Act.

164. These important changes explain why, post-dissolution, there is no general prohibition on a partner setting up in the same line of business as the partnership and competing with his former partners. The dissolved partnership can no longer take on any new business, and in the absence of any specific contractual restraint, each partner will generally be free to compete with the others for any new business which might previously have been done by the partnership. See, in this regard, the views of Lord Lindley cited in *Lindley & Banks*, 21st ed.at paragraph 10-461, referred to by Newey LJ in paragraph 75 above.

165. The qualifications to this general principle as to post-dissolution conduct are that a partner cannot use for his own benefit, property belonging to the partnership which should be realised in the winding up for the benefit of all former partners; nor can a partner place himself in a position where his personal interests conflict or might conflict with his continuing obligation to wind up the affairs of the partnership and complete unfinished transactions for the benefit of all of the former partners.

166. These principles were evident in *Don King Productions* in relation to the renewal of existing management or promotion agreements with boxers following dissolution of the partnership. Morritt LJ's reasoning at paragraph 37 onwards proceeded from the starting point that the existing management and promotion agreements were held on trust for the partnership and were to be regarded as (beneficially) owned by the partnership. After referring the principles in *Keech v Sandford* and *Chan v Zacharia* at 198-199, Morritt LJ then held, at paragraph 42, that such agreements should be renewed in the winding up of the partnership for the benefit of all partners and were not available to be taken by one partner for himself,

> "42. The first question is, therefore, whether 'the renewal agreement' was obtained or received in circumstances where a conflict or significant possibility of conflict existed between the partner's duty of good faith and his personal interest in the pursuit or possible receipt of the renewal agreement. In my view the answer to that question is obviously in the affirmative. The duty of a partner to renew a management or promotion agreement for the benefit of the partnership so as to facilitate the beneficial winding up of its affairs, c.f. section 38 of the Partnership Act 1890, obviously conflicts with the interest of the partner seeking to set up in business in the same field to obtain such contracts for himself …"

The unstated assumption was that the renewal of the management or promotion agreement would create an asset of the partnership which could be realised with the remainder of its assets in the winding up of its affairs for the benefit of all partners.

167. Similarly in *John Taylors*, having referred with approval to paragraphs 42-43 of Morritt LJ's judgment in *Don King Productions*, Arden LJ held at paragraphs 27-28 that the opportunity to obtain a renewed licence from the local council to operate an auction business was, like the existing licence, to be regarded as an asset of the partnership which was required to be pursued for the benefit of all partners in the course of winding up the affairs of the partnership. That was also the approach of Morland J at paragraphs 43-44 and of Peter Gibson LJ at paragraph 47.

Goodwill

168. As indicated above, the concept of "goodwill" is conventionally understood to be the attractive force that brings customers to a business. The obvious potential overlap between goodwill and the concept of the "partnership … business connexion" in section 29 of the 1890 Act, and the further overlap with the reference in the same provision to the partnership name, makes it instructive to consider the authorities on dealings by partners concerning the goodwill of a partnership. We consider that they provide useful

guidance which indicates the proper scope of "partnership … business connexion", including its application following a dissolution.

169. Although plainly not "property" in the normal sense of the word, goodwill can be treated as property for many purposes, doubtless including section 29 of the 1890 Act. So, for example, in *IRC v Muller & Co.'s Margarine Ltd* [1901] AC 217 the House of Lords had to consider whether the goodwill of a business was "property locally situate out of the United Kingdom". At pages 223-224, Lord Macnaghten stated,

> "… It is very difficult, as it seems to me, to say that goodwill is not property. Goodwill is bought and sold every day. It may be acquired, I think, in any of the different ways in which property is usually acquired. When a man has got it he may keep it as his own. He may vindicate his exclusive right to it if necessary by process of law. He may dispose of it if he will – of course under the conditions attaching to property of that nature.
>
> … What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start …"

170. It is also clear that, like other assets owned by a partnership, the goodwill that attracts customers to the business of a partnership is an asset which, during the life of the partnership, partners are prevented by their fiduciary duties from seeking to exploit for their own benefit without the informed consent of the other partners.

171. It is equally clear that, after dissolution, and prior to completion of the winding up of the affairs of the partnership, if the goodwill of the partnership with its customers has any saleable value, attempts should be made to sell it, and while those attempts are continuing, a partner will normally be prevented from attempting to exploit the goodwill for himself: see *Lindley & Banks* 21st ed. at para 10-424. It also follows that if the goodwill has been sold by or on behalf of the partnership, a former partner cannot solicit the partnership's customers that he acquired while a partner so as to depreciate the value of the goodwill in the hands of the purchaser.

172. These principles are illustrated by the decision in *Trego v Hunt* referred to above. In that case, the plaintiffs and the defendant entered into an agreement to carry on an existing business in partnership for a defined period. The partnership agreement provided that on termination of the partnership, the goodwill of the business would belong to one of the plaintiffs. A couple of years before the expiry of the term of the partnership, the defendant paid a clerk employed by the firm secretly to make a copy of the names, addresses and businesses of all of the firm's customers. When discovered, he admitted that his purpose in doing so was to enable him to solicit the business of those customers for himself after the partnership had come to an end.

173. The House of Lords held that the plaintiffs were entitled to an injunction to restrain the defendant from using any of the information in the books of the partnership other than for the benefit of the partnership's business.

174. Lord Herschell based his decision squarely on the proposition that the defendant could not seek to use the special knowledge of the partnership's customers that he had acquired while a partner to diminish the goodwill that he had agreed should belong to one of the other partners on dissolution, in the same way as if the goodwill had been sold: see pages 20-21. That was also the view of Lord Macnaghten who stated, at page 24, that a former partner who had sold his interest in the goodwill of the partnership might,

> "interfere with the custom of [the purchaser] as a stranger and an outsider might do; but he must not, I think, avail himself of his special knowledge of the old customers to regain, without consideration, that which he has parted with for value."

175. Lord Davey agreed with Lord Herschell, stating, at pages 29-30,

> "I think that the principle on which the injunction asked for may be supported is that the defendant is availing himself of the knowledge of the connection formed by his old firm, which knowledge he acquired only as a member of that firm, to take away or depreciate the value of the goodwill or connection which he has contracted shall belong to the plaintiff."

176. It is important to appreciate, however, that in contrast to the defendant in *Trego v Hunt*, who sought to misuse the confidential customer lists of the partnership, a partner who only acts, post-dissolution, in a way that he could have done if he had not been a member of the firm, is not liable. This was clearly stated by Lord Herschell at page 20,

> "If a person who has previously been a partner in a firm sets up in business on his own account and appeals generally for custom, he only does that which any member of the public may do, and which those carrying on the same trade are already doing. It is true that those who were former customers of the firm to which he belonged may of their own accord transfer their custom to him; but this incidental advantage is unavoidable, and does not result from any act of his. He only conducts his business in precisely the same way as he would if he had never been a member of the firm to which he previously belonged."

177. These principles also explain why there is a focus, post-dissolution, on whether there is any saleable value in a partnership's customer goodwill and name: see the extracts from *Lindley & Banks* set out in paragraphs 76 to 78 above. If the partnership's goodwill does not amount to an asset that can be realised in the winding up, then it will not generally give rise to any restriction on the activities of the former partners post-dissolution. Moreover, as *Lindley & Banks* also indicates in the footnote to paragraph 10-430 cited in paragraph 76 above, since section 38 of the 1890 Act prohibits a partnership taking on new business post-dissolution, after dissolution, a former partner who is seeking to conduct new business will not be competing with the completion of the "run-off" transactions of the dissolved firm.

178. *Trego v Hunt* is also consistent with the points made above about information that should and should not be treated as "belonging" to a partnership. In that case the customer details clearly did comprise "special knowledge" to which the partnership had a legitimate claim. But once the partnership was dissolved it no longer had an interest in exploiting that information for the purposes of its business. Rather, its interest was confined to any intrinsic value that could be realised by a sale of the business or (in that case) was to be vested in another partner.

Relationships with suppliers

179. The authorities to which we have referred concern relationships between a partnership business and its customers, and the goodwill to which those relationships give rise. With the possible exception of *John Taylors* (which concerned the very different circumstance of a licence to operate), we were not shown any case in which a relationship with a supplier has been held to form part of the goodwill of a partnership, or where a partner has been held liable to account in equity or under section 29 for dealing, post-dissolution, with a supplier which the partnership had dealt with before dissolution.

180. It was suggested by Mr Béar that *In re Jarvis* [1958] 1 WLR 815 provided a close analogy in this respect. We do not agree. The facts are set out by Newey LJ in paragraph 63 above, and Upjohn J's short treatment of the claim for an account of profits is set out in paragraph 64 above. It is important to note that *Jarvis* was not a partnership case at all, and the main basis for Upjohn J's decision was that the defendant had exploited the customer goodwill attaching to the newsagent premises in question. There was only a passing reference to suppliers and there is no explanation in the report of what Upjohn J meant when he referred to the defendant having been able to get some supplies of cigarettes and newspapers "*by reason of* the testator's earlier connexion with the suppliers" (our emphasis).

181. We do not consider that Upjohn J decided that the mere fact that the defendant had obtained supplies for her new business from the same suppliers as the testator had done before his death was sufficient to give rise to a liability to account. In any event, it was not a partnership, still less a dissolved partnership, case, and the fiduciary duties of the executor/trustee clearly continued in relation to the revived business.

182. In argument before us, Ms Hilliard accepted that a partnership's relationship with a supplier rather than with a customer could in theory be a "partnership … business connexion" for the purposes of section 29. However, in keeping with the principles that we have outlined above, unless there is something about the relationship with a supplier which is specific or exclusive to the partnership and which would be able to be realised in its winding up post-dissolution, we do not think that a former partner's post-dissolution dealings with a supplier would be caught by section 29. There is certainly no good reason for there to be a greater restriction as regards dealing with suppliers than there would be in respect of customers (as to which, see the discussion of goodwill, above).

183. In that respect we agree with Newey LJ's conclusion in paragraph 69 above to the effect that a relationship with a supplier that was available to retailers generally would not be a "partnership … business connexion" for the purposes of section 29. A relationship with a supplier would more naturally fall within the meaning of "partnership …

business connexion" if there was an exclusive arrangement which the partnership could enforce. Considerable caution would be required with anything short of that.

184. To illustrate the point, take the example given by Newey LJ in paragraph 69 above of a partnership carrying on business as a newsagent selling KitKats purchased from Nestlé. Assume that one of the partners opens a café across town in which he also sells KitKats bought from Nestlé. It might well be said that there was a business relationship between the newsagent and Nestlé, but even during the life of the partnership we cannot see that section 29 would, without more, apply to make the partner liable to account for the profits derived from selling KitKats in the café. A relationship with Nestlé on standard business terms could not be said to be "partnership property" within section 29, and we cannot see why it should be regarded as a "partnership … business connexion" either. For liability under section 29, we consider that there would, at very least, have to be something special about the terms upon which Nestlé supplied the partnership which the partner had in some way taken advantage of in obtaining KitKats for his café. That would be all the more so if the newsagent partnership had been dissolved and it had ceased to sell KitKats.

185. As we have said, the concept of "the partnership … business connexion" requires the court to address whether there is a business relationship of the partnership which is properly to be regarded as an asset belonging to it, such that the partnership has a right to exploit *that relationship* to the exclusion of a partner (or ex-partner). In the example above, special terms in the agreement with Nestlé might provide a basis of legitimate complaint if exploited for private purposes. On the very different facts of *John Taylors*, the defendants clearly exploited the existing, exclusive, relationship that the partnership had with the council for their own ends. In contrast, if a supplier is prepared to supply another business independently of a relationship it has with a partnership then, at least following dissolution and absent interference with completion of the "run-off" business of the dissolved firm, it is difficult to see a proper basis for complaint. In any event, if a customer of the old firm could deal with such a business without giving rise to any requirement to account, then the same must be true of a supplier.

186. It follows that we consider that the Judge wrongly rejected the appellants' submission recorded at paragraph 279 of the Judgment: see paragraph 44 above. In our view, the exploitation or use by a partner of some exclusivity, or at least some special treatment that was available to the partnership, such as a preferential price or access to supplies that would not have been available to the partner had he not been a member of the firm, would be required in order that post-dissolution dealings with a supplier could give rise to liability under section 29 as "use of … [a] partnership … business connexion".

187. Finally, the point made in paragraph 148 above, and in the extract from *Twomey on Partnership* (2nd ed.) at 15.35 set out at paragraph 79 above, is also important. There is a real, albeit not straightforward, distinction between a partnership business connexion and the personal attributes of partners that may allow them to conduct business following a dissolution.

<u>*Recovery Partners*</u>

188. We consider that the approach outlined above is consistent with the approach of the majority of the Supreme Court in *Recovery Partners GP v Rukhadze* [2026] AC 209, a

decision handed down the day before the Judgment in the instant case was handed down.

189. In the course of a general discussion of a fiduciary's obligation to account for profits, Lord Briggs JSC (with whom Lord Reed PSC, Lord Hodge DPSC and Lord Richards JSC agreed), said, at paragraph 25,

> "Important though it is to understand that a fiduciary's obligation to account for profits (other than those which he has been authorised to retain for his personal benefit) is a duty arising on the receipt of the profits, rather than just a remedy for breach of fiduciary duty, it does not of itself answer the sometimes difficult question whether a particular profit made, before or after termination of the fiduciary relationship, falls within the duty to account. Undertaking the role of a fiduciary does not, of itself, prohibit the fiduciary from carrying on other profitable activities which have nothing to do with the subject matter of the fiduciary relationship. The director of a company making cars may perfectly legitimately carry on an activity of betting on horse races out of working hours, and keep any profits he makes for himself. But the opposite would be true of an executive director of a company operating a horse racing stable, if his betting was informed by what he learned while at work, unless the company gives its consent. Similarly (subject of course to any contractual restraint) the director of a company may, after resignation, set up and make profit from carrying on a similar business to that of the company, provided that he does not use information, or pursue opportunities that came to him, from his fiduciary position in the company. The duty, which may well extend beyond the end of the fiduciary relationship, is to account for profits made from, out of, or otherwise sufficiently connected with, the fiduciary relationship."

190. Lord Briggs clearly explained why the duty upon a fiduciary to account for profits made after termination of the relationship depends upon the profits being made from, out of, or otherwise being sufficiently connected with the fiduciary relationship. So, if, after resignation or dissolution of a partnership, a director or partner buys stock from a supplier without relying on any confidential information of the company or partnership, and on the same terms as are available generally and would have been available to him if he had never been a director or partner, then it is difficult to see why there should be a sufficient connection with the director's or partner's role as a fiduciary so that he should be liable to account.

Application to the facts of this case

191. These points have particular importance in the instant case as regards the dealings with Acon. Even prior to dissolution, the nature of the relationship between the Partnership and Acon was a matter of considerable controversy. There was no formal relationship, and Acon took the view that the relationship was not exclusive and dealt with other parties accordingly. Moreover, the effect of dissolution of the Partnership was marked: the Partnership could not itself have sought to exploit the relationship with Acon

following dissolution because it was not able to conduct new business. And neither was there any unfinished business with Acon to be completed for the benefit of winding up the affairs of the Partnership, because each supply contract with Acon was discrete.

192. We have already indicated that we consider that the Judge erred in adopting an overly literal approach to the interpretation of section 29. Having done so, the Judge further concluded that Acon was a "partnership … business connexion", and accepted that benefits derived by Mr Hughes from the sale of LFTs acquired from Acon should be accounted for.

193. In our judgment that was an error. In particular, we do not think that the Judge really interrogated whether, or the extent to which, there could be said to have been anything about the basis upon which the Partnership dealt with Acon that could have been said to be unique or special so as to be regarded as an asset belonging to the Partnership. Nor did the Judge investigate whether, after dissolution, there was any possibility of realising any such asset in the winding up of the Partnership's affairs. The Judge also did not address the question of whether Mr Hughes' ability to do business with Acon following dissolution was in reality attributable to anything about the Partnership's prior relationship with Acon, rather than, say, the "warm relationship" Mr Hughes had with Ms Shuai of Acon.

194. Newey LJ has formed the view that the factors listed at paragraph 281 of the Judgment (see paragraph 46 above) were sufficient to justify a conclusion that the Partnership's relationship with Acon was a "partnership … business connexion" within section 29. We are not persuaded that this is correct.

195. The three points relied on by the Judge at paragraph 281 were i) selectivity on the part of Acon about whom it supplied with LFTs, ii) the Partnership's ability to purchase LFTs from Acon being its "life-blood" and iii) Acon's steps to ensure that customers did not circumvent the Partnership.

196. As to point i), selectivity clearly did not mean exclusivity. Not only was Acon willing to sell LFTs to MedCo and PDL (including to fulfil contracts with the UK Government, on which there had been so much focus), but the reality was that it sold them – apparently in very substantial amounts, and dwarfing the Partnership's own business at the point of dissolution – to Newfoundland, an entity in which Mr Manduca had a 30% interest and the Partnership had no interest. Indeed, the Judge's comment at paragraph 123 about the value Acon attached to its relationship with the Partnership was related to the volume of sales made via Newfoundland (see paragraph 10 above); and shortly before dissolution, the partners agreed that Newfoundland would in future buy LFTs directly from Acon.

197. As we have said, when considering whether a relationship with a supplier constitutes a partnership business connexion within section 29, considerable caution should be exercised in relation to supply arrangements that are not exclusive. This is reinforced here by the fact that at the point of dissolution, supplies to the Partnership for its own account appear to have been very limited as compared to supplies to serve the business of Newfoundland (and presumably MedCo and/or PDL).

198. Further and importantly, following dissolution there was no unfinished business of the Partnership and Mr Hughes and Mr Manduca were in principle free to compete with

each other for new business buying and selling LFTs. In these circumstances, the correct approach would have been to determine whether, or the extent to which, any of Mr Hughes' business with Acon following dissolution was attributable to the Partnership's previous relationship with Acon rather than factors that would have been available to Mr Hughes had he never been a partner at all, or to the individual relationship Mr Hughes had with Ms Shuai of Acon: see above. In the absence of any suggestion that the Partnership had anything relating to Acon that could be realised in the winding up of its affairs, most obviously by a sale of the business, we find it difficult to see that there was anything upon which section 29 could bite in respect of the relationship with Acon.

199. We also do not consider that points ii) or iii) add materially to point i). Obviously LFTs supplied by Acon can be described as the "life-blood" of the Partnership, but that either expresses point i) in another way or can be said of any business reliant on supplies of goods or services to it. Point iii) also expresses point i) in another way – and in reality the main beneficiary of any "non-circumvention" appears to have been Newfoundland.

Summary

200. In summary, therefore, we would order as follows:

i) In agreement with Newey LJ, we would allow the appeal in relation to the application of section 42 of the 1890 Act and the dismissal of the appellants' claims in unlawful means conspiracy and knowing receipt.

ii) We would also allow the appeal in relation to the application of section 29 of the 1890 Act insofar as the Judge's decision related to the concept of "business connexion".

iii) This will also have an implication for the conspiracy and knowing receipt claims against Mr Hughes, Ms Blyth and MSDL, because they are parasitic on the position under section 29 (see paragraphs 100 and 101 above).

iv) We would invite submissions from the parties as to the final disposal of the appeal in relation to Mr Hughes' conspiracy claim and the issue of the existence and extent of the Partnership's business connexion (together with claims that are parasitic on that), in particular as to the form of the remittal that will be required.