

At Kuala Lumpur Regional Centre for Arbitration

MEMORIAL

FOR

CLAIMANT

Claimant

**Asamura International Development
Co., Ltd.**

Respondent

Shwe Pwint Thone Co., Ltd.

I. Table of Contents

I. TABLE OF CONTENTS 2
..... 2

II. ABBREVIATIONS 5

III. INDEX OF AUTHORITIES 6

IV. STATEMENTS OF JURISDICTION 11

V. QUESTIONS PRESENTED 12

VI. STATEMENT OF FACTS 13

VII. SUMMARY OF PLEADINGS 18

VIII. PLEADINGS OF CLAIMANT 21

ISSUE 1: RESPONDENT DID NOT VALIDLY TERMINATE THE AGREEMENT 21

I. Respondent Could Not Terminate the Agreement “at Will” 21

A. The Agreement Does Not Form a Partnership at Will 21

B. Even If the Agreement Establishes a “Partnership at Will” Between the Parties, Respondent Did Not Legally Terminate It 22

II. The Agreement Was Not Terminated by Reason of Material Breach 22

A. The Provisions on Which Respondent Seems to Base its Termination Are Void for Uncertainty
23

B. Even If Sec. 11 of the Agreement Is Not Void, the Statement by Dr. Lum Does Not Violate Sec. 11
24

1. Dr. Lum did the interview not as a partner of the Agreement but as the President of Second Life 25

2. The statement is not “harmful” since it does not imply the Myanmar government was involved in ethnic cleansing against the Rohingyas 26

3. The content of the statement is not “harmful” to the national interest and solidarity of Myanmar 26

4. The statement is not defamation since it was of public concern and its falsity has not been proven 28

5.	The statement is not defamation since Dr. Lum expressed it in good faith	29
C.	Even If Sec. 5 of the Agreement Is Not Void for Uncertainty, the Statement by Dr. Lum Does Not Violate Sec. 5	30
1.	Dr. Lum’s statement is consistent with the purpose of Sec. 5.....	30
D.	Even If the Statement by Dr. Lum Breached the Agreement, Respondent Has No Basis to Terminate the Agreement	31
E.	In Any Event, Dr. Asamura Did Not Make Any Statement and Was Not Acting as an Agent of Claimant When He Gave the Interview in His Private Capacity.....	31
F.	Respondent’s Alleged Basis for Terminating the Agreement Is Undermined by the Circumstances of the Termination	32
III.	<i>Conclusion</i>	33
ISSUE 2: CLAIMANT OWNS THE JADE-MINING MACHINERY AND EQUIPMENT		
.....		34
I.	<i>The Ownership of the Jade-Mining Machinery and Equipment Belongs to Claimant After the Partnership Is Concluded Considering the Main Purpose of the Partnership</i>	34
A.	The Main Purpose of the Jadeite Venture Was Profit and Not Charity	34
B.	The Parties Agreed that the Ownership of the Jade-Mining Machinery and Equipment Was Transferred to the Property of the Firm for the Jade-Mining Business in the Agreement	35
C.	Claimant Is Entitled to Withdraw the Jade-Mining Machinery Outside of the Alleged Termination	37
II.	<i>Myanmar Law Supports Claimant’s Right to Ownership of the Jade-Mining Machinery and Equipment</i>	38
A.	The Parties Agreed that Claimant Would Transfer the Ownership of the Jade-Mining Machinery and Equipment to the Property of the Firm Under the Agreement	38
III.	<i>The main purpose of the partnership was making profits</i>	39
IV.	<i>Under Sec. 4 of the Agreement, the parties agreed that Claimant would transfer the ownership to the property of the firm for the jade-mining business consistent with the purpose of the partnership</i>	40
A.	The Ownership of the Jade-Mining Machinery and Equipment Was Transferred to the Property of the Firm from Claimant.....	41
1.	The parties intended for the ownership of the jade-mining machinery and equipment to pass to the property of the firm	42
2.	The jade-mining machinery and equipment was delivered to Hpakant jade mines.....	42
B.	Claimant Has Right to Withdraw the Jade-mining Machinery and Equipment When the Parties Terminate the Partnership	43
V.	<i>Respondent Does Not Own the Jade-Mining Machinery and Equipment</i>	44
A.	The Identification of Respondent on the Transportation and Permission Documents Does Not	

Have the Effect of Transferring Ownership of All the Jade-Mining Machinery and Equipment to Respondent	44
1. The identification of Respondent as consignee on Bill of Landing has no legal impact on ownership	44
2. The identification of Respondent on operation permits was done for practical convenience ..	45
B. Respondent Does not Have Right to Withdraw the Jade-mining Machinery and Equipment When the Parties Terminate the Partnership	46
VI. <i>Conclusion</i>	47
ISSUE3: THE JADEYE SOFTWARE IS PROTECTED BY COPYRIGHT, AND CLAIMANT OWNS THE COPYRIGHT	47
I. <i>The JADEYE Software Is Protected by the Burma Copyright Act</i>	47
A. The JADEYE Software Is a “Literary Work”	48
B. The Work Was First Published in Myanmar	49
C. The Software Was Made in Myanmar	50
II. <i>Claimant Holds the First Right to the Copyright in JADEYE</i>	50
A. Joe Yamashita Was Employed by Claimant at the Time He Made and Published JADEYE	51
B. JADEYE Was Made in the Course of Joe Yamashita’s Employment	52
C. The Source Code of the JADEYE Software Is Currently Owned by Claimant	52
III. <i>Even If Joe Yamashita Held the First Right, He Transferred the Right to Claimant</i>	53
A. Joe Yamashita Assigned the Right to Claimant	53
B. Joe Yamashita Waived His Rights	53
IV. <i>Respondent Has No Legal Right to “Reverse Engineer” the JADEYE Software</i>	55
A. Respondent Cannot Reverse Engineer Because Respondent Is Not a Lawful User	55
B. In Any Case, Respondent Cannot Reverse Engineer	56
V. <i>Conclusion</i>	56
IX. PLEADINGS OF CLAIMANT	58

II. Abbreviations

	Official name / Formal name
ACQ.	Additional Clarifications' Question
Claimant /or/ AID	Asamura International Development Co., Ltd.
CQ.	Clarifications' Question
Dr. Asamura	Dr. Yugi Asamura
Dr. Lum	Dr. Fiona Lum Ka Ching
ed.	Edition
esp.	especially
HCL	Hashimoto Co., Ltd
KLRC	Kuala Lumpur Regional Center for Arbitration
p.	Page
para(s).	Paragraph(s)
Respondent /or/ SPT	Shwe Pwint Thone Co., Ltd.
Sec(s).	Section(s)
The Agreement	Partnership Agreement (Annexure 1)
The Parties	Claimant and Respondent
USD	United States Dollar

III. Index of Authorities

Articles and Works of Publicists

Abbreviation	Books / Articles	Page No.
Garner	Bryan A. Garner (ed.) <i>Black's Law Dictionary</i> (9 th ed., West, Thomson Reuters business 2009)	24, 30, 31, 53, 54, 55, 58
Briggs & Burrows	Adrian Briggs & Andrew Burrows <i>The Law of Contract in Myanmar</i> 1 st ed. Oxford University Press (2017) https://www.law.ox.ac.uk/sites/files/oxlaw/briggsburrowsbook - thelawofcontractinmyanmar.pdf	27, 34, 41
Cambridge	Cambridge University Dictionary Cambridge University Press (2017) http://dictionary.cambridge.org/us/dictionary/english/ethnic-cleansing	29
	BBC News	31

	<p><i>Myanmar's Rohingya Muslims: Glimmer of hope at last?</i></p> <p>(24 August 2016)</p> <p>http://www.bbc.com/news/world-asia-37172014</p>	
	<p>BBC News</p> <p><i>Myanmar wants ethnic cleansing of Rohingya - UN official</i></p> <p>(24 November 2016)</p> <p>http://www.bbc.com/news/world-asia-38091816</p>	32
The Irrawaddy	<p>The Irrawaddy</p> <p><i>UN Urges Burma to Give Citizenship to Rohingya Muslims</i></p> <p>(30 December 2014)</p> <p>https://www.irrawaddy.com/news/burma/un-urges-burma-give-citizenship-rohingya-muslims.html</p>	32
Oxford	Oxford English Dictionary	44

	https://en.oxforddictionaries.com/definition/provide	
Goldstein & Hugenholtz	Paul Goldstein and P. Bernt Hugenholtz <i>International Copyright: Principles, Law, and Practice</i> 3 rd ed. (2012)	51
Bhala	The Dictionary for International Trade Law 2 nd ed. LexisNexis (2012)	52
Aung	Than Aung (Compiled by) <i>Copyright in the Digital Age</i> Yangon University Library and Information Studies Magazine/1999-2003/p.94	52
Dundas Lawyers	Dundas Lawyers <i>Reverse engineering of software – what are the legal boundaries?</i> (19 April 2015) https://www.dundaslawyers.com.au/reverse-engineering-of-software-what-are-the-legal-boundaries/	58

Reuters	Reuters, <i>Obama announces lifting of U.S. sanctions on Myanmar</i> (8 October 2016) http://www.reuters.com/article/us-usa-myanmar-sanctions-idUSKCN127262	30
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Statutes

Abbreviation	Citation	Page. No.
Partnership Act	The Partnership Act [India Act IX, 1932.] (1 October 1932) From the Burma Code vol. XI	24, 25, 35, 41, 45, 46, 49
Contract Act	The Contract Act [India Act IX. 1872] (1 September 1872) From the Burma Code vol. XI	26, 34
Transfer of Property Act	The Transfer of Property Act (1882)	45
Burma Copyright Act	The Burma Copyright Act	50, 51, 53,

	[India Act III, 1914.] (24 February 1914)	54, 56, 58, 59
Japanese civil code	Japanese civil code (Act No. 89 of April 27, 1896)	57
British Copyright Act	Copyright, Designs and Patents Act 1988	51, 56, 57, 58, 59,
The Computer Science Development Law	The Computer Science Development Law The State Law and Order Restoration Council Law No. 10/96 The 8 th Waxing of Tawthalin, 1358 M.E. (20 th September, 1996)	51

IV. Statements of Jurisdiction

This Tribunal has jurisdiction over this matter because Claimant and Respondent agree to have the arbitration held in Tokyo using the KLRCA i-Arbitration Rules.

V. Questions Presented

The Parties agreed that the issues to be decided in the arbitration are as follows:

1. The validity of the termination of the agreement by Respondent;
2. The ownership of the jade-mining machinery and equipment; and
3. Subsistence and ownership of rights in the JADEYE software.

VI. Statement of Facts

The Parties to this arbitration are Asamura International Development Co., Ltd. (hereinafter “**Claimant**”) and Shwe Pwint Thone Co., Ltd. (hereinafter “**Respondent**”; jointly referred to as the “**Parties**”).

Claimant is a private international development company specializing in crisis relief and development. Its current leader is Dr. Yugi Asamura (hereinafter “**Dr. Asamura**”), a professor at the University of Tokyo. Claimant has a registered, fully-owned subsidiary in Myanmar.

Respondent is a local Myanmar company running teashops, jade carving and polishing studios, and training centres in Mandalay and Yangon. Its owner is U Thein Kyaw, who left the monastic order and started Respondent.

1958	Atsuko Asamura founded Claimant in Tokyo, Japan.
1990s	Claimant was involved in work in Somalia and Rwanda during the 1990s conflicts.
2000	Dr. Asamura married Dr. Fiona Lum Ka Ching [hereinafter “ Dr. Lum ”], the youngest daughter of the Hong Kong tycoon, Lum Ho Wai. She became the President of Second Life, a regional organization that promotes human rights.

2004	Claimant was involved in relief work in Sumatra after the 2004 Indian Ocean tsunami.
2005	Atsuko Asamura died. The leadership of Claimant was passed to her only son, Dr. Asamura.
2007	The Myanmar junta gifted U Thein Kyaw 80 acres of land in Hpakant, located in the Kachin State in northern Myanmar.
May 2008	Cyclone Nargis hit Myanmar, destroying thousands of buildings and causing over a million casualties. By recommendation of the Japan International Cooperation Agency, Claimant participated in rebuilding the town of Labutta in Ayeyarwady, funded by the Japanese government.
9 September 2008	U Thein Kyaw and Dr. Asamura decided to enter into a joint venture for jade mining. They concluded a contract on this basis the afternoon.
January 2009	Respondent imported second-hand machinery and equipment into Myanmar from Japan. The jade extraction and production business officially began.
	25 of Claimant's employees were placed in Respondent's base

	and at the jade fields in Hpkant on secondment from Japan.
February 2009	Claimant had spent almost USD 1 million on the jadeite venture.
March 2009	The Parties injected capital contributions of USD 1.5 million and USD 2.5 million respectively.
	Respondent handled all the visas and accommodation requirements for Claimant's employees. Respondent obtained the necessary jade mining and equipment permits from the Myanmar government. 50 students of monastic schools were assigned to work at the Hpakant base, and 250 new workers of Respondent were hired.
11 April 2012	One of Claimant's finance executives, Joe Yamashita, informed Dr. Asamura that he has been working on the development of a process optimization and operations management software named JADEYE, and was now confident that the software was ready to be used.
	U Thein Kyaw presented Joe Yamashita with USD 18,000 in cash. Joe Yamashita declined the cash.
4 January 2013	Joe Yamashita resigned from Claimant.

	<p>The source code of JADEYE was saved on a hard disk drive together with other documents and handed to Head of Finance of Claimant in Tokyo by Joe Yamashita</p>
September 2016	<p>An interview with Dr. Asamura and Dr. Lum in <i>Asian Influencers Magazine</i> for its 2016 edition “Asia’s Top 20 Power Couples” was published and came to the attention of Respondent.</p>
	<p>102 of Respondent's workers went on strike for seven days, requesting Dr. Lum and Dr. Asamura to issue an apology and to retract the statement.</p>
August 2016	<p>The Myanmar government made an announcement that it would not issue any new permits or renew any existing permits for jade mining.</p>
October 2016	<p>The United States lifted its trade sanctions against Myanmar. The lifting of sanctions has opened up new opportunities for the Myanmar jade trade.</p>
Mid October 2016	<p>Dr. Asamura was invited to speak at a conference held by the Japanese Association of Mineralogical Sciences.</p>
1 November 2016	<p>Claimant and Hashimoto Co., Ltd (hereinafter “HCL”) entered</p>

	<p>into a USD 1.2 million contract wherein</p> <p>Claimant would supply jade from the Hpakant mines to HCL for the one year.</p>
21 November 2016	<p>Patrick Green, a very successful American businessman, expressed interest in forming a new partnership with Respondent in regard to the jade business and approached U Thein Kyaw on this basis.</p>
10 January 2017	<p>U Thein Kyaw determined to end the venture between the Parties. U Thein Kyaw and Dr. Asamura met that evening, where Dr. Asamura was informed of U Thein Kyaw's decision to end the partnership.</p>
18-21 September 2017	<p>The arbitration hearing will take place in Tokyo.</p>
31 March 2019	<p>The jade-mining permit is set to expire.</p>

VII. Summary of Pleadings

ISSUE 1: RESPONDENT DID NOT VALIDLY TERMINATE THE AGREEMENT

Respondent did not validly terminate the Agreement. Firstly, Respondent's alleged termination was not effective because the alleged causes of were not sufficient, and the provision of the article that Respondent indicated Claimant breached was void because of uncertainty. Secondly, even if the termination were possible under those provisions, Respondent had no basis to terminate the Agreement. Dr. Lum is not an obligor under the Agreement, and her statement was not against the national interest and solidarity of Myanmar. The interview was not in the course of Dr. Asamura's business. Finally, even if the Agreement is a partnership at will, Respondent did not fulfil the legal procedures necessary for to termination.

ISSUE 2: CLAIMANT OWNS THE JADE-MINING MACHINERY AND EQUIPMENT

The jade-mining machinery and equipment belong to Claimant because the Parties agreed that Claimant would transfer ownership of the jade-mining machinery and equipment to the property of the firm under Sec. 4 of the Agreement. The Parties do not agree on the interpretation of Sec. 4 of the Agreement.

However, in the present case, it is reasonable to understand that Claimant transferred ownership of the jade-mining machinery and equipment to the property of the firm for the

jade-mining business under Secs. 4 and 14 of the Partnership Act [India Act IX, 1932] (1 October 1932) from the Burma Code vol. XI [hereinafter “**the Partnership Act**”]. This is because the main purpose of the partnership was making profit. Claimant thus has the right to withdraw the jade-mining machinery and equipment when the Parties terminate the partnership under Sec. 46 of the Partnership Act. Therefore, Claimant owns the jade-mining machinery and equipment.

ISSUE 3: THE JADEYE SOFTWARE IS PROTECTED BY COPYRIGHT, AND

CLAIMANT OWNS THE COPYRIGHT

Respondent cannot reverse engineer or create their own version of JADEYE because the JADEYE software is protected by copyright, and Claimant owns the copyright. Under Sec. 1 of the Burma Copyright Act [India Act III, 1914] (24 February 1914) [hereinafter “**Burma Copyright Act**”], every original literary, dramatic and artistic work is the object of copyright protection. Computer software is included as literary work. The copyright belongs to Claimant because JADEYE was created in the course of Joe Yamashita's employment under Sec. 5 of Burma Copyright Act. He is an employee of Claimant, and he creates the JADEYE software in his work. Even if JADEYE was created out of the course of his work, Claimant owns the right because Joe Yamashita handed a hard disk drive containing the source code of JADEYE to the Head of Finance of Claimant. Currently, Claimant has the source code of the JADEYE

software and the sole rights in the software. It can accordingly refuse Respondent's claim.

VIII. Pleadings of Claimant

ISSUE 1: RESPONDENT DID NOT VALIDLY TERMINATE THE AGREEMENT

I. Respondent Could Not Terminate the Agreement “at Will”

A. The Agreement Does Not Form a Partnership at Will

1. According to Sec. 7 of the Partnership Act, the partnership is the partnership at will “where no provision is made by contract between the partners for the duration of their partnership, or for the termination of their partnership.” In contrast, Sec. 8 of the Agreement provides that the “partnership and brotherhood will be for the long term.” The Parties have therefore expressly included a duration term in the Agreement, which has the effect of removing the presumption that the Agreement is a partnership at will.
2. Moreover, “a partnership at will” is generally defined as “a partnership that any partner may dissolve at any time without thereby incurring liability.”¹ In this case, the Parties further agreed that “[t]he party causing the partnership to end must pay compensation” in Sec. 8. Accordingly, neither Claimant or Respondent can dissolve the partnership between them without incurring liability. The Agreement thus does not establish “a partnership at will” between the Parties.
3. Therefore, Respondent could not terminate the Agreement at will.

¹ Garner, 1231.

B. Even If the Agreement Establishes a “Partnership at Will” Between the Parties,

Respondent Did Not Legally Terminate It

4. According to Sec. 43 of the Partnership Act, “where the partnership is at will the partnership may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the partnership.” The requirement that termination of a partnership at will be in writing recognizes the importance of the decision and the disruptive effect of disagreements about attempted terminations.
5. In the present case, Respondent did not make any attempt to notify Claimant in writing about the termination that it now alleged. U Thein Kyaw claimed to terminate the Agreement in an informal meeting with Dr. Asamura in a bar, but Claimant contested the right to terminate.² Respondent made no effort to terminate the Agreement in writing as required by Myanmar law before this arbitration started.
6. Therefore, the Agreement was not legally terminated by Respondent by its verbal communication at a bar.

II. The Agreement Was Not Terminated by Reason of Material Breach

7. Respondent argues that Respondent has the right to terminate the Agreement³ since Respondent’s students and workers were unable to look past the interview with the *Asian*

² Problem, paras. 40-42.

³ Problem, para. 41.

Influencers Magazine.⁴ Namely, Respondent seems to argue that the statements by Dr. Lum to the journalist⁵ constitute a breach of Secs. 5 and 11 of the Agreement, which respectively provide that “[b]oth AID and SPT will always prioritize the employees and students” and that “AID cannot do or say anything harmful to the national interest and solidarity of Myanmar.” However, Claimant submits that those statements did not amount to a breach of the Agreement.

A. The Provisions on Which Respondent Seems to Base its Termination Are Void for Uncertainty

8. When a party claims breach of a specific provision of a contract, as a premise, the provision should be clear enough for the other party to fulfill the obligation.
9. According to Sec. 29 of the Contract Act [India Act IX. 1872] (1 September 1872) from the Burma Code vol. XI [hereinafter “**the Contract Act**”], “agreements the meaning of which is not certain, or capable of being made certain, are void.”
10. As noted, Respondent seems to base its termination on Secs. 5 and 11 of the Agreement.

Sec. 5 provides as follows:

“It is the strong will of SPT that this partnership is to help the local Myanmar people, to improve their livelihoods, to help them to be competitive and

⁴ Problem, para. 41.

⁵ Problem, para. 28.

compatible with the evolving world and economy. Both AID and SPT will always prioritize the employees and students.”

11. Sec. 11, in turn, provides that Claimant is obliged not to “do or say anything harmful to the national interest and solidarity of Myanmar” in order to “show respect towards the Golden Land.”
12. These provisions are uncertain in meaning and in the nature of the obligations that they seek to place on the Parties. In particular, “prioritizing” employees and not saying or doing anything harmful to the “national interest and solidarity” of Myanmar are uncertain both in meaning and in the responsibilities that they place on the Parties. As such, they are void under Myanmar law.
13. The Agreement is a partnership at will as the Parties have agreed on cooperation in the Jade business. In that case, since the main point of the Agreement is the jade business, Secs. 5 and 11 are second-priority articles. If a second priority article terminates the whole Agreement, it does not make profit by the business for both Parties⁶. Thus, Respondent was not able to terminate the Agreement on the ground that Claimant allegedly breached Secs. 5 and 11 of the Agreement.

B. Even If Sec. 11 of the Agreement Is Not Void, the Statement by Dr. Lum Does Not Violate Sec. 11

⁶ Briggs & Burrows, 173.

14. According to Sec. 11 of the Agreement, “AID cannot do or say anything harmful to the national interest and solidarity of Myanmar.” Respondent argues that Claimant made a defamatory statement that injures the Myanmar government.⁷ However, Dr. Lum’s statement does not violate Sec. 11 and does not give Respondent right to terminate the Agreement.

1. *Dr. Lum did the interview not as a partner of the Agreement but as the President of Second Life*

15. The Agreement established a partnership between AID and SPT.⁸ Indeed Dr. Lum is a non-executive director of Claimant⁹ and a wife of Dr. Asamura,¹⁰ but she does not hold a managerial position in Claimant¹¹ and is not an existing shareholder of Claimant.¹² Dr. Lum is not a partner under the Agreement.

16. Instead, Dr. Lum is the President of Second Life, a regional organization that champions human rights.¹³ During the interview, Dr. Lum was asked about her view on the Rohingya minority in the Rakhine state, given her position in Second Life.¹⁴ Dr. Lum

⁷ Problem, para. 29.

⁸ Agreement, preamble.

⁹ ACQ. 3; ACQ. 19.

¹⁰ Problem, para. 5.

¹¹ ACQ. 3.

¹² ACQ. 19; CQ. 1.

¹³ Problem, para. 5.

¹⁴ Problem, para. 27.

stated, “[t]hey (the Rohingyas) should not be deprived of their basic human rights. We will continue to champion for their rights.”¹⁵ Her statement follows from her role as President of a human rights organization.

17. Dr. Lum thus made the statement just as the President of a human right organization, not a partner of the Agreement.

2. *The statement is not “harmful” since it does not imply the Myanmar government was involved in ethnic cleansing against the Rohingyas*

18. Dr. Lum’s statement does not imply that the Myanmar government is involved in ethnic cleansing. Ethnic cleansing is “the organized, often violent attempt by a particular cultural or racial group to completely remove from a country or area all members of a different group.”¹⁶ Ethnic cleansing is not limited to governmental acts.

19. Dr. Lum stated, “the new Myanmar government under the leadership of Daw Su must end the problem (the persecution of the Rohingyas) immediately. Especially the ethnic cleansing.”¹⁷ She did not say that the Myanmar government conducted ethnic cleansing against the Rohingyas. She merely called on the government to work to end it.

3. *The content of the statement is not “harmful” to the national interest and solidarity of Myanmar*

¹⁵ Problem, para. 28.

¹⁶ Cambridge.

¹⁷ Problem, para. 28.

20. Respondent may argue that the statement by Dr. Lum is defamation since it injures the reputation of the Myanmar government. If a government violates human rights, people may judge the government more severely than before and reconsider economical, political or other relationship with the government. Thus, Respondent may argue that the statement that implies the Myanmar government conducts ethnic cleansing, namely violates human rights, is harmful to the national interest of Myanmar. In contrast, Claimant submits that the statement is not defamation.

21. Defamatory statement is “the statement tend to injure the reputation is a person referred to in it. The statement is likely to lower that person estimation of reasonable people and on particular to cause that person to be regarded with feeling of hatred, contempt, ridicule fear or dislike.”¹⁸

22. Certainly, after the interview was published in September 2016, the United States lifted its trade sanctions against Myanmar.¹⁹ Respondent may argue that the statement by Dr. Lum leaded the sanctions since the government of the United States mentioned to improved human rights when the sanctions were lifted.²⁰ However, there is no proof that the statement truly affected the sanctions. Therefore, this is not significant enough to conclude that Dr. Lum’s statement is likely to harm national interests.

¹⁸ Garner, 480.

¹⁹ Problem, para. 31.

²⁰ Reuters.

23. Moreover, when Dr. Lum was interviewed, it was widely reported around the world that the Muslim Rohingya face ethnic cleansing and their human rights are being violated.²¹

Respondent accordingly cannot argue that the Myanmar government was harmed by Dr. Lum's statement itself.

24. Therefore, the statement did not harm the Myanmar government.

4. *The statement is not defamation since it was of public concern and its falsity has not been proven*

25. Furthermore, Dr. Lum's statement is not defamation since its content is true. If an alleged defamation involves a matter of public concern, a plaintiff must prove both the statement's falsity and the speaker's fault.²² Sec. 499 of the Penal Code from the Burma Code vol. VIII [hereinafter "the Penal Code"] likewise provides that "it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

26. Indeed the Penal Code is generally not relevant to this civil case. However, judging whether a statement injure Myanmar government or not, regard should be paid to whether statement is generally considered "harmful" in Myanmar, since "[e]verything

²¹ BBC News, *Myanmar's Rohingya Muslims: Glimmer of hope at last?* (24 August 2016), <http://www.bbc.com/news/world-asia-37172014>.

²² Garner, 479.

will be in accordance with and interpreted under the law of the Golden Land of Myanmar.”²³ Moreover, there is no provision regarding civil defamation made in such interview in Myanmar. Therefore, in order to what “the law of the Golden Land of Myanmar” stipulates, regard should be paid to what the Penal Code stipulates, even though this is a civil case.

27. In the present case, Dr. Lum’s statement involves the treatment of ethnic minority in Myanmar, which is of public concern. The violation of the Rohingyas’ human rights that Dr. Lum mentioned in the interview is supported as true by the United Nations.²⁴ It is also reported as “ethnic cleansing” against Rohingya Muslims.²⁵ Therefore, since Dr. Lum’s statement is not false, the statement cannot be regarded as “harmful” to the Myanmar government and is not defamation.

5. The statement is not defamation since Dr. Lum expressed it in good faith

28. Sec. 499 of the Penal Code further provides that “[i]t is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further.”

29. In the present case, Dr. Lum did not seek to insult the national interest and solidarity of

²³ Agreement, Sec. 10

²⁴ The Irrawaddy

²⁵ BBC News, *Myanmar wants ethnic cleansing of Rohingya - UN official* (24 November 2016), <http://www.bbc.com/news/world-asia-38091816>

Myanmar. To the contrary, her statement was made in good faith to encourage respect for human rights in Myanmar. Therefore, her statement cannot be defamatory.

C. Even If Sec. 5 of the Agreement Is Not Void for Uncertainty, the Statement by Dr.

Lum Does Not Violate Sec. 5

30. Sec. 5 of the Agreement stipulates, “[i]t is the strong will of SPT that this partnership is to help the local Myanmar people, to improve their livelihoods, to help them to be competitive and compatible with the evolving world and economy. Both AID and SPT will always prioritize the employees and students.”

31. Respondent argues that the statement by Dr. Lum violates Sec. 5 and concludes that it is in the best interests of Respondent and the local Myanmar people to terminate the Agreement and work with a new partner.²⁶ However, Dr. Lum’s statement does not violate Sec. 5, and does not give Respondent right to terminate the Agreement.

1. *Dr. Lum’s statement is consistent with the purpose of Sec. 5*

32. During the interview,²⁷ Dr. Lum stated that the human rights of the Rohingya should be respected and that their persecution including “ethnic cleansing” should be ended by the new Myanmar government. Protecting Myanmar people is in the interest of the State, and eliminating persecution will promote the interests and solidarity of Myanmar. Thus, Dr. Lum’s statement was entirely consistent with Sec. 5 and does not violate the Agreement.

²⁶ Problem, para. 41

²⁷ Problem, paras. 27-28

D. Even If the Statement by Dr. Lum Breached the Agreement, Respondent Has No Basis to Terminate the Agreement

33. Sec. 39 of the Contract Act stipulates, “when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.” This section concerns a promisor refusing to perform its promise in its entirety.
34. As a matter of law, “it must be a requirement of the law that the failure of performance by the promisor be serious. If it is not serious enough, there will still be a right under Sec. 73 to claim compensation for loss caused by the breach, but there will be no right to rescind the contract.”²⁸
35. The main aim of the Agreement is the jade business. The claimed breaches are tangential to this purpose, and thus Respondent was not able to terminate the Agreement.

E. In Any Event, Dr. Asamura Did Not Make Any Statement and Was Not Acting as an Agent of Claimant When He Gave the Interview in His Private Capacity

36. Dr. Asamura made no statement during the interview about the Rohingya minority.²⁹ He accordingly cannot be the source of the claimed breach of the Agreement.
37. Moreover, Dr. Asamura was not acting in his capacity as a partner under the Agreement

²⁸ Briggs & Burrows p. 173-174

²⁹ Problem, paras. 27-28

during the interview. According to Sec. 19(1) of the Partnership Act, a partner has authority to bind a partnership for acts “done to carry on, in the usual way, business of the kind carried on by the firm.” This authority may be implied for certain activities expressed in the Act.³⁰

38. Dr. Asamura was interviewed in his private capacity by the magazine as one of the Asia’s “Top 20 Power Couples.”³¹ *Asian Influencers Magazine* is not a business publication about the jade industry, and he was not interviewed as a partner of the Parties’ jadeite venture. The interview was thus plainly not an activity carried out in the normally business activity of the partnership.

F. Respondent’s Alleged Basis for Terminating the Agreement Is Undermined by the Circumstances of the Termination

39. According to Sec. 9 of the Partnership Act, “partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.”

40. On 1 November 2016, Claimant and HCL, a seller of jade, entered into a USD 1.2 million contract whereby Claimant would supply jades from the Hpakant mines to HCL

³⁰ Partnership Act, Sec. 19(2)

³¹ Problem, para. 27

for the one year.³² Claimant and Respondent would share the profits earned,³³ and U

Thein Kyaw told Dr. Asamura not let go of such a good business opportunity.³⁴

41. If Respondent's employees and students were really unable to look past the interview, Respondent would have had no reason to commit to the new venture after the interview.

In these circumstances, facing a large new commission for jade, Respondent would naturally have raised concerns about the morale of the employees and students.

42. Less than two months later, on 10 January 2017, Respondent purported to terminate the Agreement on account of the interview.³⁵

43. The reason for this abrupt change is no mystery. On 21 November 2016, a successful American businessman seeking to form a new jadeite partnership with SPT approached U Thein Kyaw.³⁶ The proposed profit to accrue to Respondent would be 85%, representing a much higher share than the 65% profit under the Agreement.³⁷

Respondent's claim of low employee and student morale was a convenient ruse to terminate the Agreement and begin a more profitable venture with a new American partner.

III. Conclusion

³² Problem, para. 33

³³ Agreement, Sec. 7

³⁴ Problem, para. 35

³⁵ Problem, paras. 40-41

³⁶ Problem, para. 36

³⁷ Problem, para. 37

44. Respondent has no legal validity to terminate the Agreement, and there are no valid grounds of termination of the Agreement. Therefore, the termination of the Agreement by Respondent was not valid.

ISSUE 2: CLAIMANT OWNS THE JADE-MINING MACHINERY AND

EQUIPMENT

I. The Ownership of the Jade-Mining Machinery and Equipment Belongs to Claimant After the Partnership Is Concluded Considering the Main Purpose of the Partnership

A. The Main Purpose of the Jadeite Venture Was Profit and Not Charity

45. Sec. 2 of the Agreement expressly states the Parties decided to “become business partners for the jade business in Hpakant.” The main purpose of the partnership was thus not charity for the local Myanmar people but profit-driven business. Claimant’s object for the partnership was to expand the influence and impact of Claimant’s work to the Kachin state.³⁸ Respondent advised Claimant not to miss a business opportunity with HCL, and the profit of USD 1.2 million was shared between Claimant and Respondent.³⁹ The Parties thus placed emphasis on making profit. In fact, the jade-mining business made an average net profit of USD 7.5

³⁸ Problem, para. 13

³⁹ ACQ. 5

million a year.⁴⁰

46. Moreover, the Parties sold the majority of the commercial-quality jades to major jade production companies in Myanmar after they were mined from Hpakant⁴¹ without processing and production of jade at the SPT studios. If the main purpose of the jadeite venture had been charity, almost all of the jades would have been delivered to Respondent's studios and used to develop the Myanmar students' jade carving and polishing skills.⁴²

B. The Parties Agreed that the Ownership of the Jade-Mining Machinery and Equipment Was Transferred to the Property of the Firm for the Jade-Mining Business in the Agreement

47. Sec. 4 of the Agreement stipulates that Claimant would "buy and provide all equipment required, and provide technical expertise for the term of the agreement." Claimant's obligations were thus directed to the business of jade-mining. Providing jade-mining machinery and equipment and teaching skills are for intended to realize a successful business enterprise.

48. There was no locally-manufactured machinery and equipment for the jadeite

⁴⁰ Problem, para. 26

⁴¹ Problem, para. 20

⁴² Problem, para. 8

venture in Myanmar.⁴³ The Parties accordingly needed to import the jade-mining machinery and equipment from other countries for extracting and cutting the jade. Claimant's employees trained Respondent's employees and students on how to operate and maintain the jade-mining equipment and machinery⁴. Claimant had an obligation to train Respondent's employees and students to learn new skills and be independent according to Sec. 4 of the Agreement. This obligation was not only for charity but also for business. Since Respondent had no experience in jade exploration and production, training Respondent's employees enabled the Parties to make profits in it business.

49. Furthermore, if Respondent's employees and students are able to operate the machinery and equipment without assistance from Claimant, Claimant can conduct jade exploration and production more efficiently at a lower cost than conducting it with its own employees. Since the Parties paid their employees respectively, working with Respondent's employees and students does not place a labor-cost burden on Claimant. In this way, the parties agreed that Claimant would provide the jade-mining machinery and equipment and teach skills to Respondent's employees for the jade-mining business in the Agreement.

⁴³ ACQ. 6

C. Claimant Is Entitled to Withdraw the Jade-Mining Machinery Outside of the Alleged Termination

50. Sec. 5 states that “[i]t is the strong will of SPT that this partnership is to help the local Myanmar people...” and “[b]oth AID and SPT will always prioritize [Respondent’s] employees and students.” In accordance with Sec. 5 of the Agreement, Claimant imparted technical knowledge to Respondent’s employees and students and trained them to operate the jade-mining machinery and equipment by themselves. Claimant also developed and implemented a set of health, safety and environment standards.⁴⁴ However, the purpose of Claimant’s obligation under Sec. 4 of the Agreement is different from that of the obligation under Sec. 5 of the Agreement. It follows that Respondent’s employees and students are prioritized sufficiently because Respondent’s employees and students have already mastered these new skills.

51. The jade-mining business was divided into four parts under Sec. 6 of the Agreement. These consisted of exploration and extraction, breaking and cutting, processing and production, and distribution and sales. Claimant was responsible for first two parts, and Respondent was responsible for the second two. All the jade-mining machinery

⁴⁴ Problem, para. 16

and equipment were purchased by Claimant⁴⁵ and used for extracting that Claimant takes charge.⁴⁶ Therefore, Claimant should be entitled to withdraw the jade-mining machinery and equipment after the partnership ends.

II. Myanmar Law Supports Claimant’s Right to Ownership of the Jade-Mining Machinery and Equipment

A. The Parties Agreed that Claimant Would Transfer the Ownership of the Jade-Mining Machinery and Equipment to the Property of the Firm Under the Agreement

52. Sec. 5 of the Partnership Act state that “[t]he relation of partnership arises from contract and not from status.” According to Sec. 6 of the Partnership Act, whether a group of persons is a partnership is decided by all relevant facts. In this way, the law in Myanmar “allows considerable freedom for the partners to specify for themselves the manner in which the partnership is structured.”⁴⁷ In this case, under the Agreement, Claimant had obligations to provide the equipment and technical assistance for the jade-mining business.⁴⁸ For its part, Respondent had obligation to obtain all the permits and requirement to realize the jade-mining business from the

⁴⁵ Problem, para. 16

⁴⁶ Problem, para. 16; Agreement, Sec. 6

⁴⁷ Briggs & Burrows p. 250

⁴⁸ Agreement, Sec. 4

government of Myanmar.

53. Under the Agreement, it is reasonable that the Parties agreed that Claimant transferred the ownership of the jade-mining machinery and equipment to the property of the firm for the jade-mining business considering the following facts and circumstances.

III. The main purpose of the partnership was making profits

54. Sec. 2 of the Agreement states that the Parties decided to “become business partners for the jade business in Hpakant.” It is written in the Agreement expressly that the partnership is for the jade-mining business rather than charity.

55. Claimant decided to enter into the partnership in order to expand the influence and impact of AID’s work to the Kachin state⁴⁹ and suggested that Claimant’s Japanese lawyers would draw up an “investment agreement” in the beginning.⁵⁰ Thus, Claimant regards the jadeite venture as a business making huge profits. Respondent also tried to make profits as much as possible. Respondent encouraged Claimant to conclude contract with HCL and the profit of USD 1.2 million was shared between the parties.⁵¹

⁴⁹ Problem, para. 13

⁵⁰ Problem, para. 14

⁵¹ Problem, para. 35

56. Moreover, the majority of the commercial quality jades were not delivered to studios of SPT but sold to major jade production companies in Myanmar⁵² and Respondent was aware of this fact.⁵³ If the main purpose of the jadeite venture had been charity, most of the jades would have been delivered to Respondent's studios and used for developing Myanmar students' skills.

IV. Under Sec. 4 of the Agreement, the parties agreed that Claimant would transfer the ownership to the property of the firm for the jade-mining business consistent with the purpose of the partnership

57. Sec. 4 of the Agreement states that "AID will buy and provide all equipment required, and provide technical expertise for the term of the agreement" and "train the local people of Myanmar so that they can learn new skill sets and be independent."

58. The Parties agreed that Claimant would transfer the ownership of the jade-mining machinery and equipment to the property of the firm, taking account of the main purpose of the partnership to make profit.

59. Firstly, Claimant's obligations were for the benefit of each Party. Claimant had to provide the jade-mining machinery and equipment in order to carry out the parts of

⁵² Problem, para. 20

⁵³ ACQ. 35

the jade-mining business which Claimant took charge of⁵⁴ since there was no locally-manufactured jade-mining machinery and equipment in Myanmar.⁵⁵ If Respondent's employees and students could operate the machinery and equipment without assistance of Claimant, Claimant could spend less expenses on personnel. This is because the Parties paid its employees' salaries respectively.⁵⁶ Thus, both Claimant's obligations under Sec. 4 of the Agreement were for the jade-mining business.

60. Secondly, the common meaning of "provide" is "[m]ake available for use; supply."⁵⁷ If the parties had intended for the ownership of the machinery and equipment to change to Respondent, they would have made this intention clear in the Agreement. Such a change in ownership, which has significant cost implication on the Agreement, cannot be presumed or inferred as Respondent suggests.

61. Accordingly, "provide" means to transfer the ownership of the jade-mining machinery and equipment to the property of the firm for the jade-mining business.

A. The Ownership of the Jade-Mining Machinery and Equipment Was

Transferred to the Property of the Firm from Claimant

⁵⁴ Agreement, Sec. 4

⁵⁵ ACQ. 7

⁵⁶ ACQ. 14

⁵⁷ Oxford English Dictionary

62. Sec. 5 of the Transfer of Property Act states that property is transferred when a living person conveys property to one or more other living people and that “to transfer property” is to perform such an act. According to Sec. 9 of the Transfer of Property Act, a transfer of property may be made without writing in any case in which a writing is not expressly required by law. According to Secs. 4 and 14 of the Partnership Act, property passes to a firm, namely parties who have entered into partnership, where the parties intend for the property to pass to the firm in the contract between the partners. In other words, the requirements of transfer of property are the parties’ intention to transfer property and the performance of an act which is intended to transfer property.

1. *The parties intended for the ownership of the jade-mining machinery and equipment to pass to the property of the firm*

63. Sec. 4 of the Agreement stipulates that “AID will buy and provide all equipment required.” “Provide” means to transfer ownership of the jade-mining machinery and equipment to the property of the firm. Hence, the Parties agreed that the ownership the jade-mining machinery and equipment would pass to the property of the firm.

2. *The jade-mining machinery and equipment was delivered to Hpakant jade mines*

64. The jade-mining machinery and equipment was shipped to the Hpakant jade mines.

The ownership of the jade-mining machinery and equipment was thereby passed to the property of the firm.

B. Claimant Has Right to Withdraw the Jade-mining Machinery and Equipment

When the Parties Terminate the Partnership

65. Sec. 46 of the Partnership Act stipulates that “[o]n the dissolution of a firm every partner...entitled...to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners...according to their rights.”

66. In this case, the jade-mining business was largely successful, and the business made average profits of USD 7.5 million a year.⁵⁸ This means there was no liabilities to the partnership.

67. The jade-mining machinery and equipment was purchased exclusively by Claimant and provided for the jade-mining business.⁵⁹ The Parties used them for the parts of the jade-mining business for which Claimant was responsible. Claimant did not intend for the ownership of the jade-mining machinery and equipment to pass to Respondent.

⁵⁸ Problem, para. 26

⁵⁹ Problem, para. 16; Agreement, Sec. 4

68. Therefore, Claimant has the right to withdraw the jade-mining machinery and equipment and can retrieve this property of the firm.

V. Respondent Does Not Own the Jade-Mining Machinery and Equipment

A. The Identification of Respondent on the Transportation and Permission

Documents Does Not Have the Effect of Transferring Ownership of All the Jade-Mining Machinery and Equipment to Respondent

1. *The identification of Respondent as consignee on Bill of Lading has no legal impact on ownership*

69. A bill of Lading is an important document for receiving imported goods issued by a shipping company and given to an importer. The importer who received the Bill of Lading can receive the cargo at the import port in exchange for the document. An importer cannot receive cargo without a Bill of Lading.

70. In this case, Respondent had a right to receive machinery and equipment provided by Claimant because Respondent was identified as consignee on the Bill of Lading.⁶⁰ However, the ownership of the jade-mining machinery and equipment has not been transferred to Respondent. Claimant did not intend to transfer the ownership to Respondent, and Respondent did not purchase the jade-mining

⁶⁰ ACQ. 25

machinery and equipment from Claimant.⁶¹ Respondent received them from the shipping company because the Parties needed to import the jade-mining machinery and equipment from other country.⁶²

2. *The identification of Respondent on operation permits was done for practical convenience*

71. Respondent was recorded as the owner and operator of the jade-mining machinery and equipment on permits required to operate the equipment in Myanmar.⁶³ This was consistent with the division of responsibilities under the Agreement whereby Respondent had an obligation to obtain and settle the government permits under Sec. 3 of the Agreement.

72. Respondent had more experience with the general business climate in Myanmar and knowledge of Myanmar law to obtain the permits than Claimant.

73. In these circumstances, Respondent likely adopted this approach to expedite the issuance of the permits and avoid any confusion that could arise if permission were sought by a local company to operate machinery and equipment owned by a foreign company. Claimant was confident that Respondent knew how best to proceed in its

⁶¹ ACQ. 9

⁶² ACQ. 6

⁶³ Problem, para. 43

home jurisdiction. In any event, there was no agreement by the parties to transfer the ownership of the jade-mining machinery and equipment to Respondent,⁶⁴ and the decision of Respondent to identify itself as owner on application forms⁶⁵ cannot deprive Claimant of its ownership rights.

B. Respondent Does not Have Right to Withdraw the Jade-mining Machinery and Equipment When the Parties Terminate the Partnership

74. According to Sec. 46 of the Partnership Act, each of the parties is entitled to property according to their rights after the partnership ends.

75. Sec. 5 of the Agreement states that “[i]t is the strong will of SPT that this partnership is to help the local Myanmar people...” and “[b]oth AID and SPT will always prioritize [Respondent’s] employees and students.”

76. Claimant provided the jade-mining machinery and equipment, and taught skills for the jade-mining business. Thus, Claimant’s obligations under the Sec. 4 of the Agreement are not relevant to Claimant’s obligation under Sec. 5 of the Agreement.⁶⁶ Claimant trained the local people to learn new skills and developed

⁶⁴ C Mem. para. 61

⁶⁵ Problem, para. 43

⁶⁶ C Mem. para. 49

and implemented a set of health, safety and environment standards.⁶⁷ Respondent's employees and students were thus prioritized, and Respondent is not entitled to obtain the jade-mining machinery and equipment.

VI. Conclusion

77. Claimant owns the jade-mining machinery and equipment. This is because the Parties had intention that Claimant transferred the ownership of them to the property of the firm, and Claimant has the right to withdraw them when the partnership is end.

ISSUE3: THE JADEYE SOFTWARE IS PROTECTED BY COPYRIGHT, AND

CLAIMANT OWNS THE COPYRIGHT

I. The JADEYE Software Is Protected by the Burma Copyright Act

78. Under Sec. 1 of Burma Copyright Act [India Act III, 1914.] (24 February 1914) [hereinafter "**Burma Copyright Act**"], "every original literary, dramatic and artistic work" is the object of copyright protection. To benefit from protection, published work must first be published in Myanmar, and unpublished work must be

⁶⁷ Problem, para. 16

made in Myanmar. The JADEYE software benefits from copyright protection because it is a “literary work” that was made and published in Myanmar.

A. The JADEYE Software Is a “Literary Work”

79. The JADEYE software is a “literary work” under Burma Copyright Act because it is a computer program whose source code is an enumeration of letters. “Computer software” means a computer program written to give directions to a computer.⁶⁸
80. Burma Copyright Act does not expressly refer to computer software because it has not been revised in the more than 100 years since it was enacted. Sec. I (2) of Burma Copyright Act stipulates that “unless there is anything repugnant in the subject or context,” its terms have the same meaning as the Copyright Act of Britain (1911) [hereinafter “**British Copyright Act**”] on which it is based. Under Sec. 3 of British Copyright Act, “literary work” means “any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes a computer program.”
81. Outside of Myanmar law, the general protection of computer software by copyright is confirmed by leading authorities. Globally, “[c]omputer programs were initially thought to be better suited for protection as industrial property than for literary property, and 1977 the World Intellectual Property Organization promulgated a set of sui generis ‘Model Provisions for the Protection of Computer Software.’”⁶⁹

⁶⁸ The Computer Science Development Law

⁶⁹ Goldstein & Hugenholtz, 106

Other authority also recognizes that “computer software and databases also are protected” as copyrights.⁷⁰

82. The protection extends to both published and unpublished software. It has been observed that “[c]opyright is a protection that covers published and unpublished literary, scientific and artistic works, whatever in a tangible or materials form. This means that if we can see it, hear it, and touch it — it may be protected. If it is an essay, if it is a play, if it is a song, if it is an original dance move, if it is a photograph or a computer graphic that can be set on paper, recorded on tape or saved to a hard drive, it may be protected.”⁷¹ “Unpublished works can include diaries, letters, survey responses, manuscripts, photograph art or software — any type of work that has not been distributed to the public.”⁷² The JADEYE software is published work because it was saved to a hard drive as developed below. However, even if the JADEYE software had not been published, it is protected because unpublished works include computer software.

B. The Work Was First Published in Myanmar

⁷⁰ Bhara p. 177

⁷¹ Aung p. 94

⁷² Aung p. 94

83. The word “publish” means “[t]o distribute copies (of a work) to the public,”⁷³ and “public” means “[t]he people of a nation or community as a whole.”⁷⁴ In this case, the JADEYE software was published because it was distributed to people working for Claimant and Respondent in Myanmar.

84. Dr. Yugi Asamura ordered the JADEYE software be installed on all the computers and equipment used on site.

85. Therefore, the JADEYE software is protected by copyright because it was a published work in Myanmar.

C. The Software Was Made in Myanmar

86. Even if the JADEYE software is not a published work, it is protected by copyright because it was created in Myanmar.⁷⁵ Thus, it is subject of copyright protection under Burma Copyright Act.

87. For these reasons, the JADEYE software is protected by copyright because it is object of copyright protection, and it was published and made in Myanmar.

II. Claimant Holds the First Right to the Copyright in JADEYE

⁷³ Garner p. 1352

⁷⁴ Garner p. 1348

⁷⁵ ACQ. 15

88. According to Sec. 5(1)(b) of Burma Copyright Act, “where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright.” In the present case, Claimant has the ownership rights because Claimant was the employer of Joe Yamashita, the sole author of the JADEYE software, and he created it in the course of his employment.

A. Joe Yamashita Was Employed by Claimant at the Time He Made and Published JADEYE

89. The word “employment” means “the relationship between master and servant. Work for which one has been hired and is being paid an employer.”⁷⁶ In present case, Joe Yamashita was a finance executive for Claimant, and thus Claimant’s employee, at time he created the JADEYE software. He had no employment contract with the partnership, and no payment was made to him in the name of the partnership or Respondent.⁷⁷ Furthermore, under the partnership agreement, it was Claimant that paid the salary of workers in Myanmar including Joe Yamashita.⁷⁸

⁷⁶ Garner, 604

⁷⁷ Problem, para. 24

⁷⁸ ACQ. 14

B. JADEYE Was Made in the Course of Joe Yamashita's Employment

90. The word “course of employment” means “[e]vents that occur or circumstances that exist as a part of one's employment; esp., the time during which an employee furthers an employer's goals through employer-mandated directives.”⁷⁹ The software was created in the course of Joe Yamashita's employment because he was financial executive, and the idea of the JADEYE software came to him as he considered how to improve the efficiency of operations to maximize financial efficacy. “Finance” comprises “[t]hat aspect of business concerned with the management of money, credit, banking, investments.”⁸⁰ Measures to improve a company's financial situation plainly fall within the scope of work of a financial executive. Moreover, the software was directly relevant to Claimant's responsibility under the partnership as lending technical expertise to the exploration and exploitation works. The JADEYE software assisted workers to more accurately locate jade and measure its quality.

C. The Source Code of the JADEYE Software Is Currently Owned by Claimant

91. Claimant's right to the copyright is supported by the facts of the termination of Joe Yamashita's end of employment. On his last day, he gave the source code of the

⁷⁹ Garner, 405

⁸⁰ Garner, 706

JADEYE software on hard disk drive together with other documents to Head of Finance of AID. There would have been no reason to surrender these materials if Joe Yamashita held the rights to the software.

III. Even If Joe Yamashita Held the First Right, He Transferred the Right to Claimant

A. Joe Yamashita Assigned the Right to Claimant

92. There is no provision in Burma Copyright Act concerning copyright transfer. Therefore, reference is made to British Copyright Act. According to Sec. 90(1), “copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.” Under Sec. 90(3), an assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor. In present case, the source code of the JADEYE software was saved in a hard disk drive together with other documents and handed to Head of Finance of Claimant in Tokyo by Joe Yamashita on his last day of employment. While there is no evidence of a “writing signed,” there was clear consensus between Joe Yamashita and Claimant to transfer the source code. Ownership rights in the JADEYE software thereby passed from Joe Yamashita to Claimant.

B. Joe Yamashita Waived His Rights

93. Even if his act is not regarded as assignment, his act should be regarded waiver of right. According to Sec. 87 of British Copyright Act, “[a]ny of those rights may be waived by instrument in writing signed by the person giving up the right.”
94. In present case, there is no instrument in writing signed by the person. However, Joe Yamashita waived his right in the JADEYE software. On his last day, he gave the source code of the JADEYE software to Claimant. Therefore, he waived his right in the JADEYE software and Claimant should get the right.
95. As a factual matter, Claimant has ownership of the hard disk drive where the source code of the JADEYE software is saved. Under Secs. 176, 206 and 87(2) of Japanese Civil Code (Act No. 89 of April 27, 1896) [hereinafter “Japanese Civil Code”], “[t]he creation and transfer of real rights shall take effect solely by the manifestations of intention of the relevant parties,” “[a]n owner has the rights to freely use, obtain profit from and dispose of the Thing owned, subject to the restrictions prescribed by laws and regulations” and “[a]ppurtenance shall be subject to the disposition of the principal.” Japanese Civil Code applies because the transfer was done in Japan between a Japanese company and a Japanese employee. The ownership of the disc has thus been transferred to Claimant.

96. Accordingly, Claimant owns the right of the JADEYE software by assignment or his waiver, and can refuse to provide Respondent with the hard disc drive and the source code to the JADEYE software.

IV. Respondent Has No Legal Right to “Reverse Engineer” the JADEYE Software

A. Respondent Cannot Reverse Engineer Because Respondent Is Not a Lawful User

97. “Reverse-engineering” refers to “[t]he process of discovering how an invention works by inspecting and studying it, esp. by taking it apart in order to learn how it works and how to copy it and improve it.”⁸¹ Reverse engineering of software is defined as “to copy the function of a program, without having access to the original source code.”⁸²

98. As there is no provision for reverse engineering in Burma Copyright Act, guidance can be sought from British Copyright Act. According to Sec. 50A, “[i]t is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use.”

⁸¹ Garner, 1434

⁸² Dundas Lawyers

99. Respondent is not a lawful user because Respondent does not have a copyright or license to the JADEYE software. By extension, Respondent is prohibited from reverse engineering under Sec. 50A of British Copyright Act.

B. In Any Case, Respondent Cannot Reverse Engineer

100. Even if Respondent has the license of the JADEYE software, Respondent cannot reverse engineer or create Respondent's own Version of JADEYE software.

101. According to Sec. 50BA(1) of British Copyright Act, “[i]t is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.”

102. In present case the purpose of Respondent's reverse engineering is to create Respondent's own version of the JADEYE software. However, reverse engineering of Respondent is not included in act stipulated in this article. Therefore, Respondent cannot reverse engineer or create Respondent's own version of JADEYE.

V. Conclusion

103. The JADEYE software is protected by copyright under Burma Copyright Act

because the software is a subject of copyright protection. Claimant is the owner of this right because the JADEYE software was created in the course of Joe Yamashita's employment by Claimant. Therefore, Claimant has sole rights in the JADEYE software and can refuse Respondent's claim to reverse engineer or create their own version of the JADEYE software.

IX. Pleadings of Claimant

- (1) The termination by Respondent is not valid.
- (2) Claimant owns the jade-mining machinery and equipment.
- (3) Claimant can refuse Respondent's claim to rights to the JADEYE software because

Claimant has the sole right to the software.