
HIGHER RIGHTS OF AUDIENCE ASSESSMENT

IN RESPECT OF CIVIL PROCEEDINGS

THE PRACTICAL ASSESSMENT

TRIAL BUNDLE FOR MINI-TRIAL

The evidential material to be used in the mini-trial consists of the following report/witness statements:

1. Report of Joint Expert Dr Samantha Chadha
2. The Witness Statement of Peter Nimbus
3. The Witness Statement of Hayley Wan
4. The Witness Statement of Cyrus Ying
5. The Witness Statement of Celia Yeung

HCA 1231/2021

Peter NIMBUS v Cyrus YING

Report of Joint Expert Dr Samantha Chadha

[Qualifications and declarations - e.g. regarding the Code of Conduct for Expert Witnesses - are omitted]

The Ancient Languages Group

1. There are 31 members in the Ancient Languages Group (“**ALG**”), which is a group on the social media platform Jitter.
2. Jitter is a widely used commercial social media platform. Its cybersecurity practices are sound. There is nothing to suggest that anyone other than the 31 members of the ALG will be able to read the posts on ALG.
3. Posts on the ALG are by default visible to all members of the ALG. However, there is also an option for users to limit the visibility of posts to particular members.
4. In this case, the ‘Ying Only Post’ was only visible to P and D, not other members of ALG.
5. Jitter in general supports the copying and pasting function. Any member of the ALG can in principle copy messages there and paste them elsewhere. As a rule, Jitter does not detect/record whether a user has copied texts from the ALG.

P's digital devices

6. According to P, he used two digital devices at the material time, his laptop and mobile phone. He has used both to access his Jitter account.
7. This is consistent with information on P's Jitter account, which shows that it has been accessed by one laptop and one mobile device.
8. At the material time, his laptop was protected by fingerprint identification, and also under surveillance by a camera installed in P's office. There is no evidence that at the material time, anyone other than P had used P's laptop.
9. P's mobile phone was designed to be protected either by password or by fingerprint identification. However, the fingerprint identification feature was broken on P's mobile phone, seemingly due to water damage in May 2021.
10. Between May 2021 and May 2022 (when the phone was given to me for examination), it was neither protected by fingerprint identification nor password.
11. In my opinion, the fact that P's mobile phone was not secured at all falls below the average standard of cyber security expected even of non-technical users (such as P).
12. This is especially the case since P has linked his credit card and university access card to his mobile phone, and because his digital set-up is such that anyone with physical access to his phone could look at his email, WhatsApp and Jitter account without need of any further authorisation or password. In principle anyone who took possession of P's mobile phone between May 2021 and May 2022 could access all the data stored on the mobile phone, including posts on ALG.

-
13. It is impossible to determine whether such unauthorised access took place between May 2021 and May 2022. Such unauthorised access might not leave any trace on the mobile phone itself.
 14. For example, someone could in theory (a) take physical possession of the mobile phone, (b) navigate to the Ying Only Post and (c) take a photo of the screen / manually copy down the Ying Only Post.
 15. I must however emphasize that nothing on the mobile phone itself shows that unauthorised access has taken place (e.g. by way of P forwarding the text of the Ying Only Post by WhatsApp or email to anyone else). There is also no indication that other kinds of unauthorised access took place.
 16. I should also emphasize that while P's cyber security awareness seems below average, this is certainly not unheard of even amongst professional and highly educated users. So long as P has exclusive physical possession of his phone, the risks of P's information being subject to unauthorised access is low.

D's digital devices

17. According to D, he used two personal digital devices at the material time, his laptop and mobile phone. He also says he used university computers at the Clear Water Bay University on a regular basis. He has used his laptop, mobile phone and university computers to access his Jitter account.
18. This is consistent with information on D's Jitter account, which shows that it has been accessed by one mobile device and a number of computers from the Clear Water Bay University area.

-
19. D has provided me with his mobile phone, which is a type of Apple i-Phone that was first retailed in 2020. He could access the Jitter account on the phone. Fingerprint identification was enabled.
20. There is nothing to suggest that D circulated the Ying Only Post to third parties on his mobile phone (e.g. by way of email or WhatsApp message). In theory D could have done so without leaving a record on his mobile phone (e.g. taking a photo on the screen by separate device), but there is no evidence to suggest this in fact took place.
21. D has also provided me with his laptop, which is a model that was first produced in 2005. I could not start it up and found that it has suffered water damage. D explained that he had spilled tea on the keyboard in April 2021, which affected the laptop's performance, and that the laptop finally "*died*" in August 2021. He showed me a receipt from a computer repair shop in August 2021, where a handwritten message reads,

"Preliminary examination was conducted on D's laptop. Conclude that no possibility of repairing it due to water damage"

22. It is impossible using the latest technologies to independently verify D's account. That being said, I have also not found any evidence to contradict D's account on how his laptop came to be damaged.
23. I asked D if any backups had been made of the data stored in the laptop. D says the answer is "*no*", given that he only used his laptop for drafting, and his drafts would always be saved by emails to himself.
24. D has provided me with his email address: I have examined it and found nothing to suggest that D had circulated the Ying Only Post to others by email.

-
25. D says he did not obtain a new laptop afterwards, opting instead to use the university's computers in the library, which he had all along used heavily.
 26. I have requested (with D's authority) to examine D's personal account at Clear Water Bay University's computers.
 27. However, the University's IT service refused to let me do so, citing a policy requiring approval from the President's office for this kind of examination. I have written to request approval, but my application was refused.
 28. This being the case, I am unable to independently assess D's laptop or university computer account. I am also not in a position to give any comments on D's claimed computer usage, as it is really a matter of personal preference how (and what) computer a person uses.

HCA 1231/2021

Peter NIMBUS v Cyrus YING

Witness Statement of Peter Nimbus

I, Peter NIMBUS, of Scholars' Lodge, Quine University, New York, USA, do say as follows:-

1. I am the Plaintiff in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I have read the witness statement of Hayley Wan in draft. In so far as it contains matters within my knowledge, I believe they are true.
3. **[The background at the “Factual Background” section of the Candidate Instructions for the Interim Application are set out by Nimbus here.]**
4. I believe the incontestable facts speak for themselves. The Ying Only Post was posted in July 2021. It contains opinions that I have not expressed before (and are not in fact my true opinions). No one other than the Defendant would be able to read it. It was in fact read by the Defendant, and the closely similar July Article was published in the same month. The reason can only be that the Defendant had supplied the Ying Only Post to the Press.
5. I understand from my lawyers that Ying's argument in essence is that my phone could have been hacked and someone else might have been able to see the Ying Only Post.

-
6. That speculation is without basis. While I am not an expert in cybersecurity, I do take steps to keep my digital devices secure. There is no dispute that my laptop was all along secure.
 7. While my mobile phone was without adequate protection at the material time due to water damage, in general I had kept it close to me, not least because my credit card and university access card are tied to my mobile phone. If a stranger had taken my phone, I would have noticed it immediately.
 8. I accept that I sometimes pass my mobile phone to graduate students/my two teenage children to let them read the notes I have written in my notetaking App.
 9. But this would be at most for 5-15 minutes, when I am in close physical proximity to them. They are not aware of my Jitter account and there is no reason to think that they would look at my Jitter account without my knowledge, let alone going on to leak it to someone else.
 10. I have previously engaged in scholarly debate with the Defendant before, but prior to this incident I did not consider this to be a source of any personal animosity between us.
 11. I am disappointed that this matter has to be raised and resolved in Court, but I believe that there is an important principle involved here, and the Defendant's conduct leaves me with no choice but to vindicate it.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

HCA 1231/2021

Peter NIMBUS v Cyrus YING

Witness Statement of Hayley Wan

I, Hayley WAN, of Scholars' Lodge, Quine University, New York, USA, do say as follows:-

1. I am a personal friend of the Plaintiff in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I have read the Plaintiff's witness statement in draft. In so far as it contains matters within my knowledge, I believe they are true.
3. While I am also a member of the ALG, I do not know the Defendant personally. I have, however, read and admired his work.
4. In respect of this case, my knowledge of the facts stems entirely from what I have been told by the Plaintiff.
5. While of course I cannot know the facts for sure, it seems very clear to me that the Defendant has a lot of questions to answer. The story about his laptop being damaged at just the relevant time seems too convenient to be true.
6. I understand from the Plaintiff that in earlier lawyers' argument, it was said that the leaks could well have come from the Plaintiff's friends and close colleagues. The Plaintiff accordingly invited me to give evidence in this case.

-
7. I am privileged to be considered the Plaintiff's close friend and colleague, and I am honoured to give evidence on his behalf.
 8. One of the most endearing aspects of the Plaintiff's personality is that he has not let his stunning public and professional success "*go to his head*" (so to speak). In person, he is a warm and engaging friend and professor, a ray of sunshine in all of our lives.
 9. It is well known that out of caution the Plaintiff never comments on public and social affairs on camera or in print (or in any other way in public).
 10. But these topics do come up in conversation and the Plaintiff would of course share his views on them. But in my own 20-year friendship with him, I have seen how the Plaintiff is a master at being discreet about them.
 11. He picks his confidants carefully and in the roughly 10 years since he has become generally famous, none of his colleagues or friends would dream of "*leaking*" his views to the public for some cheap attention.
 12. Take for example, how he makes friends with students. Before their graduation, he always keeps a meaningful distance, just so that students do not feel they need to ingratiate him for favours.
 13. Yet for students who voluntarily keep in touch after getting established in their careers, the Plaintiff would often be very welcoming and would intently listen to their new lives and experience with great interest.
 14. The Plaintiff listens much more than he speaks, and this is why he is able to have such wide and deep friendships.

-
15. I cannot claim to know all of them, but, like me, I am sure they all appreciate the precious relationship they share and would not abuse (and have not abused) it by way of leaking the Plaintiff's views to the general public.
16. I therefore find it personally disgusting that the Defendant is trying to shift the blame to the Plaintiff's close friends and colleagues, when obviously he is the person behind all the leaks.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

HCA 1231/2021

Peter NIMBUS v Cyrus YING

Witness Statement of Cyrus Ying

I, Cyrus YING, of Poet's Quarters, Clear Water Bay University, Hong Kong, do say as follows:-

1. I am the Defendant in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I have read the witness statement of Celia Yeung in draft. In so far as it contains matters within my knowledge, I believe they are true.
3. The Plaintiff's case against me is entirely based on speculation. I have been forthright that I have read the Ying Only Post, but I must stress again that I did not supply any information on ALG to third parties.
4. I have never met the Plaintiff in person before, and my knowledge of him is limited to having read (and admired) his work and watching some of his (justly well received) YouTube lectures.
5. While I have debated matters of ancient languages education with the Plaintiff in scholarly journals, this is a purely abstract discussion and I do not believe any personal animosity arose from that.
6. Having kept abreast of academic (and general) news, I was already aware that in June 2021 the Plaintiff was the victim of some unauthorised leaks of his social and political views. On this the Plaintiff had (and still has) my full sympathy.

-
7. However, the Plaintiff seemed to have immediately jumped to the conclusion that someone in the ALG must have been responsible for the leak. By now it is clear that this may well *not* be the case.
 8. The articles that formed the basis of the June Articles were not only posted to ALG, but also circulated to no less than 20-30 people (who the Plaintiff describes as “*his close colleagues and friends*”). It is not clear at all to what extent (if at all) the Plaintiff asked these recipients to keep the matter confidential.
 9. In fact, given the Plaintiff’s high profile, it seems entirely unsurprising that these articles would find their way to the Press from these colleagues and friends. The Plaintiff must know there is strong Press interest in the matter, having had to refuse time and again to comment on social and political matters in public.
 10. The ALG is of course a safe space, being limited to a small group of Chair Professors all of whom understand the importance of not attributing social and political opinions expressed there to anyone. But the Plaintiff is naive to assume his other friends and colleagues have the same understanding.
 11. Rather than reflecting on the possible sources of the leak and improving his own processes with regard to keeping social and political opinions confidential, the Plaintiff seemed to have instead decided to pick a scapegoat. And for reasons that still boggle me, I was the chosen victim.
 12. Much has been made of the Ying Only Post. But what took place as far as I remember was entirely unexceptional.

-
13. A notification popped up on my phone, notifying me on a new post by the Plaintiff. I read it, commented “*bravo*” below it, clicked the “*like*” button, and thought no more of it.
 14. Little did I know that (what is now called) the Ying Only Post was in fact a trap for me and intended to show a smoking gun in my hand.
 15. I repeat I did not and would not have done anything to leak the Ying Only Post to others. There is simply no reason for me to do so. I have my own work to do and my own life to live, and it does not benefit me one jot to be passing around the Plaintiff’s posts to other people.
 16. In lawyer’s arguments in earlier stages of the case, there seems to be a theme that somehow the water damage to my laptop is significant and shows I have something to hide.
 17. This is simply detached from reality. The fact of the matter is that I was drinking coffee in a café while working on an article, and accidentally spilled some of it on the keyboard.
 18. I cleaned most of the liquid immediately and the laptop seemed to function well for a while, but slowly it began shutting down unexpectedly, until eventually it just could not stay on for more than a few seconds.
 19. As an old-fashioned classicist, most of my research processes are still paper based, and I keep an extensive **physical** index card system to record my research. That is why I keep minimal information on my (quite old) laptop and did not have a backup of the data to be restored to a new computer.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

HCA 1231/2021

Peter NIMBUS v Cyrus YING

Witness Statement of Celia Yeung

I, Celia YEUNG, of Scholars' Lodge, Quine University, New York, USA, do say as follows:-

1. I am a personal friend of the Plaintiff and the Defendant in this action. The facts stated herein are within my personal knowledge unless otherwise stated.
2. I have read the Defendant's witness statement in draft. In so far as it contains matters within my knowledge, I believe they are true.
3. I have known the Defendant since we were PhD students together at Carnap University, Melbourne, in the 1980s. Since then, we have kept in touch, having continued to pursue a career in classics ever since we got our PhDs.
4. I got to know the Plaintiff over the last few years as fellow residents at Scholars' Lodge, Quine University. The Plaintiff is popular and well-liked by students and faculty there. He is particularly popular amongst resident academics at Scholar's Lodge, especially since he and his wife Mary would often host fantastic house parties for us.
5. I have also been a member of Ancient Languages Group since 2012.

ALG

6. The Plaintiff seems to be portraying everyone in the ALG (other than the Defendant) as part of a very close-knit group, so that the Defendant is somehow a unique and natural suspect for any leaks that may come from ALG.
7. I am not sure if that is an accurate description of the situation. After all, the distinguished members of the ALG come from all over the world.
8. While I do not doubt that the Plaintiff is right in saying that he knows them, for at least some members this must be more a matter of formally meeting them in conferences, as opposed to deep personal knowledge. For example, the Chair of Ancient Chinese at the University of Moscow is famously taciturn and solitary, and I doubt even the Plaintiff would know him very well.
9. Thus, I do find it slightly surprising that the Plaintiff would somehow suspect the Defendant (of all people) to be the source of the leaks leading to the June Articles.
10. After all, in this day and age of Large Language Models and ChatGPT, how difficult can it be for anyone to make up some text and attribute it to someone else? For myself, as a rule I ask ChatGPT to generate answers in the style of George Chapman's translation in Homer, and very credible answers have been generated.
11. The entire incident of so-called leaks may be simply a matter of a prankster using artificial intelligence to generate text similar to the Plaintiff's style (using the Plaintiff's copious body of written and spoken text). This seems a far more likely explanation to anyone leaking any information to the press.

The Plaintiff and the Defendant

12. In fact, I could not help but suspect that at least part of the reason why the Plaintiff singled out the Defendant as a suspect was because the Defendant had criticised him for “*dumbing down*” the study of ancient languages.
13. While the Plaintiff is no doubt more famous than the Defendant generally and in academic circles, the Defendant is more senior in age and commands wide respect amongst ancient languages scholars.
14. Even though I do not agree with all of the Defendant’s points, they were very well argued and caused a lot of scholarly attention to be focused on the Plaintiff’s style of teaching. This is not something that has happened before.
15. I remember speaking with Plaintiff in the cafeteria around the time, and he seemed quite visibly upset that his hitherto unparalleled success in popularising Sanskrit was subject to such well written criticism from the Defendant.
16. While I would not suggest that the Plaintiff is necessarily holding a grudge or just blinded by a personal dislike of the Defendant, this may well be the explanation as to why he decided to lay a trap for the Defendant to fall into.

The Plaintiff

17. I should also say that the general consensus among the campus at Quine University (especially Scholar’s Lodge) is that the Plaintiff is a very open and trusting person.

-
18. While he (famously) avoids sharing his political and social views in public, in private and amongst friends he would not refrain from doing so, whether orally or in writing private texts. Of course, the vast majority of his friends and colleagues are mature and discreet.
 19. But it only takes one or two persons (e.g. the Plaintiff's teenage boy and girl) to innocently or even mistakenly forward these messages for them to eventually find their way to the Press.

The Defendant's use of computers

20. I would finally like to say a few words about my own personal knowledge of the Defendant's use of computers, as it has seemingly become the subject of wild speculation on the Plaintiff's part.
21. When we were studying together in the 1980s, the Defendant was already known as a bit of a "*young fogie*", i.e. someone who is consciously old fashioned. He had by then started to develop his own extensive (physical) index card boxes, which he has continued to develop over the years.
22. While I would not say the Defendant is particularly computer illiterate nowadays, I can attest that he mainly uses his mobile phone as opposed to laptop, at least in communications with me. His emails would usually be marked by "*sent from my i-Phone*" (or words to like effect).
23. And despite my complaint that I could not see him properly when he Skypes or Zooms me from his mobile phone, he would continue to do so rather than using his laptop.
24. It therefore does not surprise me that he did not especially bother about keeping a backup of his laptop computer, or that his reaction to water damage to his laptop seems mild compared to most of us.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.