CA on appeal from Chancery Division (Mr. Justice Ferris) before Nourse LJ; Judge LJ; Waller LJ. 12th December 1996.

JUDGMENT : LORD JUSTICE NOURSE:

1. On 21st December 1994, in a judgment reserved after a five day trial in November of that year, Mr Justice Ferris ordered the defendant to pay to the plaintiff US $1,430,200 plus interest of US $679,717, making an aggregate sum of US $2,109,917. The US $1,430,200 represented US $1.5m awarded to the plaintiff by way of quantum meruit less two sums of US $65,000 and US $4,800 counterclaimed by the defendant. The plaintiff does not seek to disturb the judgment on the counterclaim. The defendant has appealed to this court, contending that the judge was wrong to have made an award by way of quantum meruit, further or alternatively that the award was made on a wrong principle and was far too large.

2. The facts are fully stated in the judge's judgment. I will repeat those which are still material mainly in the judge's own words. The plaintiff is a Jordanian national who was born in Saudi Arabia in February 1961. She moved to Jordan in 1978. In 1986 she entered into partnership with two others, under the name Group 3, in the business of broking in relation to foreign exchange or investment transactions. The business was carried on from Amman, but it involved entering into transactions on behalf of clients abroad as well as in Jordan.

3. The defendant has business interests in Jordan and London. In 1989 those interests included the ownership of shares in three companies:
   (1) Arab Finance Corporation ("AFC"), incorporated in Jordan, in which the defendant and other members of his family held at least 1,666,667 shares, representing about 25 per cent of the issued share capital;
   (2) Salfiti Securities and Trading NV ("SST") incorporated in the Netherlands Antilles, in which the defendant owned all the shares beneficially; and
   (3) Salfiti Forex (UK) Ltd. ("SFU") incorporated in England, in which the defendant again owned all the shares beneficially.

4. The plaintiff first became acquainted with the defendant in Jordan in 1978. Upon their becoming better acquainted, they entered into an arrangement under which, in cases where clients of Group 3 wanted transactions to be entered into abroad, the plaintiff referred them to SST or SFU on more favourable commission sharing terms than were available from the brokers previously used by Group 3. At about the same time the plaintiff bought out the interests of her partners in Group 3. The defendant claims that he lent the plaintiff money in order to finance that purchase.

5. Mr Justice Ferris described the plaintiff as being clearly a woman of considerable ambition, business ability and determination. In March 1988 she attended the annual meeting for that year of the Arab Women's Organisation, of which she is a member. The meeting was held in Tripoli, where she made contact with a number of prominent Libyans. They included Naima Al Sgair, who between 1987 and November 1990 was a minister in the Libyan government with responsibility for women's rights. Through her the plaintiff was introduced to representatives of a Libyan company called Libyan Arab Foreign Investment Co. SAL ("Lafico"), which is responsible for Libyan government investments outside Libya. They included Mr Al Huweij, the chairman and general manager. The plaintiff was also introduced to the President of Libya, Colonel Ghadaffi, and the Prime Minister, Mr Al Montassir. The judge thought that the introductions were at that stage largely formal or social in nature.

6. The plaintiff paid further visits to Libya in July (when she said that she had exploratory business discussions with representatives of Lafico) and September 1988 and again in March 1989. On the last occasion she again met Mrs Al Sgair and Mr Al Huweij in Tripoli, with the latter of whom and other Lafico representatives she had a meeting. During this visit she mentioned the defendant and some of his companies to Lafico. She said in evidence that she tried to get Lafico to place investment business with Group 3 or within Mr Salfiti's companies, but that they were non-committal at that stage. The judge found that it was during this visit that the plaintiff was told by Mr Al Huweij of a new policy of Lafico that it would not place investment business with foreign companies unless they were involved in a partnership or joint venture with it.

7. After that visit to Tripoli the plaintiff came to London and spoke about Lafico to the defendant. Before the judge the plaintiff claimed that in May 1989, i.e. before her next visit to Tripoli in June, she made an oral agreement with the defendant which, as pleaded in the amended statement of claim, was that in consideration of her introducing him to representatives of Lafico and also undertaking on his behalf negotiations with Lafico, he would transfer to her five per cent of the ordinary shares to be issued by a new joint venture company to be formed by SST and Lafico.

8. The plaintiff claimed that she returned to Libya in June 1989 on the footing that, having reached the agreement with the defendant in May, she knew what she would get by way of reward if she persuaded Lafico to take an interest in one or more of his companies. She said that she had meetings with Lafico, reporting progress daily to the defendant, who himself came to Tripoli at the end of June accompanied by a close associate of his, Mr Basil Shiblaq. On 1st July there was a meeting between Mr Al Huweij and the defendant, at which Mr Shiblaq and the plaintiff were also present. A proposal for the purchase by Lafico of 21 to 25 per cent of SST's share capital was discussed.

9. At some time before June 1989 Mr Shiblaq had placed at least US $7.5m, perhaps as much as US $9m, with the defendant or one of his companies which could not at that stage be repaid in full. In June 1989 the defendant and Mr Shiblaq were working closely together, perhaps because, as the judge thought, both of them saw a prospect that a deal with Lafico might enable Mr Shiblaq to recover what was due to him.

10. The defendant, Mr Shiblaq and the plaintiff were again in Tripoli in mid October 1989, when there were two meetings between the defendant and the Prime Minister. On 24th October there was a further meeting between Mr Al Huweij and another, on behalf of Lafico, and the defendant and two others on his side, who may or may not have included the plaintiff. That meeting led to formal written minutes of agreement signed by Mr Al Huweij and the defendant, which provided for the re-organisation of SST with 50 per cent of its increased capital (US $35m) being held by Lafico and 50 per cent by the defendant and his partners. Lafico was to lend the defendant US $7.5m to assist him in subscribing for his US $17.5m share of the capital. He still had to raise a further US $10m. But after returning to London in October the defendant told the plaintiff, so she claimed, that he was unable to raise that amount of cash. Instead, after making one proposal which proved unacceptable, he proposed to Lafico that he should bring into the arrangement the 1,666,667 shares in AFC held by himself and his family. According to the plaintiff, the defendant orally agreed to pay her $500,000 if she was able to persuade Lafico to agree to that variation in the agreement. The judge thought that, if there was such an agreement, it must have been made in November or December 1989.

11. The plaintiff said that after making that second agreement with the defendant she returned to Tripoli and set to work in persuading the Libyans to agree the variation, which involved very hard work on her part and was not achieved until she had seen both the President and the Prime Minister about it. It was only after they had agreed that Lafico would accept the proposal that she arranged for the defendant to come to Libya in about the middle of January 1990, when he was again accompanied by Mr Shiblaq.

12. The visit culminated in a meeting between Mr Al Huweij, the defendant and Mr Shiblaq at the office of the Prime Minister on 26th January 1990. The main variation agreed was that the shares in AFC were to be accepted as part of the capital of a new joint venture company at a value of US $10m in place of the cash subscription previously agreed. The plaintiff was not present at that meeting, although she said that she had previously seen both the President and the Prime Minister and arranged for the AFC shares to be accepted at a value of US $10m. She said her visit to the Prime Minister had taken place on the same day, about two hours before the meeting attended by the defendant.

13. After the meeting on 26th January 1990 the preparation of a formal joint venture agreement was referred to English lawyers. In the result a long and detailed agreement was executed on 10th April 1990. Shortly stated and so far as material, it provided for the incorporation of a new Netherlands Antilles company, in which 50 per cent of the issued shares would be held by Lafico and 50 per cent by the defendant. The AFC shares were to be acquired by the joint venture company, which was also

to acquire the assets of SST at a price ascertained by valuation, after which the defendant was to close down the business of SST and procure its liquidation. Lafico was to lend US $7.5m to the defendant on terms as to interest, repayment and so forth embodied in a deed which was duly executed. Lafico and the defendant were each given the right to nominate three directors of the joint venture company, the first directors nominated by the defendant being himself, Mr Shiblaq and the plaintiff. There were mutual rights of pre-emption as between Lafico and the defendant, but there was a provision that transfers made by the defendant within the first six months to any of a number of named persons, who included Mr Shiblaq and the plaintiff, would be exempt from those rights.

14. Shortly after the joint venture agreement the defendant came to terms with Mr Shiblaq, under which the latter agreed to accept a transfer of 5,500,000 shares in the joint venture company at a price of US $1.11 per share in part satisfaction of the former's admitted debt to him of $7.5m plus interest. The judge found that the 11 cents payable over and above the nominal value of each share was attributable *"to at least the anticipation that 1.75m shares would be transferred free of charge to Mrs Sharab".*

15. At about the same time, according to the evidence of the plaintiff and Mr Shiblaq, the plaintiff began to press the defendant to give her 1.75m shares in the joint venture company pursuant to the alleged agreement in May 1989. No shares were ever transferred to her. On 31st August 1990 she caused the writ in this action to be issued. The judge thought that by October 1990 relations between the defendant and Lafico had become strained. It seems to have been accepted on all sides that the joint venture never really got going. On 14th December 1990 the defendant's connection with Lafico and the joint venture company was severed by the sale of his shares to Lafico and the unwinding of his involvement in the joint venture company.

16. At the trial Mr Justice Ferris had to determine four different claims: first, the plaintiff's contractual claim to 1.75m shares in the joint venture company pursuant to the alleged agreement in May 1989; second, the plaintiff's contractual claim to an additional payment of US $500,000 pursuant to the alleged agreement in November or December 1989; third, the plaintiff's alternative claim for a quantum meruit; and, fourth, the defendant's counterclaim. He rejected both of the plaintiff's contractual claims, but acceded to her claim for a quantum meruit. He acceded to the defendant's counterclaim to the extent already indicated. As has been said, the defendant appeals against the award by way of quantum meruit. The plaintiff has accepted the judge's decision in every respect.

17. It is agreed that any right of the plaintiff to be remunerated for the services she performed is governed by English law, albeit that those services were to be performed in Libya. The trial proceeded throughout on the footing that no question of Libyan law was in play and no evidence of that law was adduced. However, on 11th January 1995, after judgment had been entered against him, the defendant's English lawyers attended a meeting with his Jordanian lawyer in order to consider the steps by which the plaintiff might seek to enforce the judgment in Jordan. As a result of views expressed by the Jordanian lawyer, advice was sought on the defendant's behalf as to Libyan law, which was to the effect that any express or implied agreement between the plaintiff and the defendant of the nature alleged was illegal under that law. In consequence, the defendant applied to this court for leave to adduce evidence as to Libyan law on the appeal. That application was made on the morning of the first day of the hearing, when it was dismissed. I now state my reasons for dismissing it.

18. On the face of it, the application ran contrary to the first of the three conditions in **Ladd v. Marshall** [1954] 1 WLR 1489, inasmuch as it seemed clear that such evidence could, with reasonable diligence, have been obtained for use at the trial. However, Mr Sutcliffe, who has appeared for the defendant in this court but did not appear below, submitted that the judge's award by way of quantum meruit raised points of public policy and international comity of which the court was obliged to take notice, irrespective of whether the **Ladd v. Marshall** conditions were satisfied or not. I thought it very unlikely that that submission could be correct. But since Mr Sutcliffe accepted that his application could not on any view succeed unless the evidence established that the agreement between the plaintiff and the defendant was arguably invalid in Libyan law, we invited him to start by addressing that point, which is equally material to the second of the **Ladd v. Marshall** conditions.

19. The expert evidence before the court consists of an opinion and supplemental opinion dated 4th March and 26th June 1995 respectively of Dr Chibli Mellat, on behalf of the defendant, an opinion in answer dated 22nd October 1996 of Mr Sami D. El-Falahi, on behalf of the plaintiff, and a second opinion in reply dated 28th October 1996 of Dr Mellat.

20. The view expressed by Dr Mellat is that the plaintiff acted in breach of two different provisions of Libyan law. The first is said to have been a breach of Law 87 of 1975, which is expressed to be a law *"In respect of certain provisions relating to commercial agencies"*. Article 1 provides that six acts shall be deemed commercial agency acts in the context of the law, including (6) "go-between" and brokerage. Article 5 provides: *"A foreign Person whether natural or legal, shall be prohibited from any commercial agency act, even in a casual manner, in the Libyan Arab Republic."*

21. Dr Mellat is of the opinion that the plaintiff was a foreign person who, in acting as a go-between or broker between the defendant on the one hand and Lafico and government ministers and officials on the other, acted contrary to article 5. By article 8 any process, contract or agreement concluded contrary to (inter alia) article 5 is deemed absolutely null and void. By article 9 it is provided that such acts shall result in a term of imprisonment of not more than five years and a fine.

22. Mr El-Falahi raises several objections to the application of article 5 of Law 87 to the plaintiff, including the fact that, being an Arab and a Jordanian national, she was not a foreign person for that purpose. This view appears to have some force, but since it is in dispute and it is unnecessary to express a concluded view on it, I consider that point no further. Mr El-Falahi also says that the plaintiff was not a go-between or a broker. He relies on the definition of a broker in article 45 of the Commercial Code of 1953, sc.: *"A broker is a person who, puts two or more parties on contract with one another for purposes of their accomplishment a transaction, without his being associated with any one of them as a collaborator, as an employee, or as a representative."*

23. Dr Mellat replies by relying on article 56 of the Commercial Code, which provides that the provisions of special laws shall remain unimpaired by the Code, Law 87 of 1975 being a special law for that purpose. In his second opinion of 28th October Dr Mellat, having stated that article 1 of Law 87 overrides the Commercial Code, states: *"As such, Mrs Sharab is clearly an agent for the purpose of Libyan law. It appears that the Judge considered Mrs Sharab to be an agent."*

24. Law 87 of 1975 does not contain a definition of a go-between or broker. Even giving its overriding effect on the Commercial Code, Dr Mellat does not explain why it should not be permissible, in cases of doubt, to resort to the Code for assistance in construing Law 87. However, I proceed on the footing that the Code must be completely disregarded. Dr Mellat makes it clear that, in interpreting Law 87, resort may be had to the accompanying memorandum which, having described the acts which the Law was intended to prevent, contains this passage: *"Many persons have exploited the ambitious development programmes to make a speedy fortune and obtain a parasitic income. They opened agencies, bought portfolios and started hunting representatives of foreign, Arab and local Companies who tried to get tenders inside or outside the Libyan Arab Republic. They even started frequenting hotels and company representatives' places of abode and formed friendships within the administration with a view to obtaining information on forthcoming projects and to sell this information afterwards, spreading immorality and trying to subvert the administration."*

25. In my judgment the expert evidence before the court does not establish that it is arguable that the plaintiff acted in breach of article 5 of Law 87. Manifestly, she was not one of those persons described in the accompanying memorandum. Nor, in ordinary parlance, was she a go-between, a broker or an agent. Nor, with respect to Dr Mellat, can I read Mr Justice Ferris's judgment as demonstrating that he considered that she was an agent of the defendant. The plaintiff had a clear personal interest in securing Lafico's participation in a joint venture with the defendant. She was to become a director of the joint venture company and she had the prospect of acquiring shares in it. There is nothing in Dr Mellat's opinions which supports the view that Law 87 was intended to apply to the acts performed by the plaintiff.

26. Secondly, Dr Mellat has said that the plaintiff acted in breach of the first paragraph of article 257 of the Libyan Penal Code. That article, which is headed "***Pretending to Have Influence***", provides: *"Whoever pretends to have influence with a public official and takes from another for himself or another, or induces another to give him or another, money or other advantage or obtains a promise thereof as the reward for his mediation with the said public official shall be punished by a penalty of imprisonment for a period not exceeding four years and by a fine of between £30 and £100.*

27. Whoever takes for himself or for another money or other advantage or obtains the promise thereof under the pretence that the said money or other advantage must be used to obtain the favour of the public official and to reward him therefor shall be punished by imprisonment for a period of from one to six years and by a fine of between £50 and £100."

28. In paragraph 4 of his supplemental opinion of 26th June 1995 Dr Mellat, having referred to the criminal dimension under article 9 of Law 87, continues: *"In addition, the Criminal Code of Libya establishes as a crime any influence or even **pretence** to have influence with officials for any reward."*

29. He then quotes the first paragraph of article 257 and says: *"Considering the governmental authorities dealt with in the Libyan State, there is little doubt that Mrs Sharab's actions are contrary to Art. 257."*

30. It was argued by Mr Sutcliffe that the opening words of article 257 "Whoever pretends to have influence" refer to someone who holds himself out as having influence which he in fact has. However, if regard is had to the heading of the article and the terms of its second paragraph, the more natural reading is that those words refer to someone who pretends to have influence which he does not in fact have; in other words, that the targeted offence is obtaining a pecuniary advantage by deception. But even if that is wrong, it is still a necessary ingredient of the offence that there should have been "mediation with the said public official". For the reasons given in relation to Law 87 the plaintiff cannot be described as a "mediator" any more than a go-between, broker or agent. I therefore conclude that no arguable breach of article 257 has been established.

31. The evidence having failed to establish that the agreement between the plaintiff and the defendant was arguably invalid in Libyan law, Mr Sutcliffe was unable to surmount the first hurdle which confronted his application to adduce evidence of that law. That made it unnecessary to consider the first of the **Ladd v. Marshall** conditions, about which I will only say that the case made in the evidence appeared to be exceedingly weak.

32. I am glad to have been able to reject the application on the anterior ground, because it means that the plaintiff is not left with the possibility of having breached Libyan law in either or both of two respects hanging over her head. In this connection, I think it right to read from an affidavit of the minister concerned in the matter, Mrs Al Sgair, sworn on 11th August 1994: *"I knew that the joint venture company was to have a share capital of US$35m, half of which was to be owned by Lafico and the other half by Mr Salfiti, Mr Shiblaq and Mrs Sharab. My understanding was that Mrs Sharab was receiving an interest in the joint venture company as commission for introducing Mr Salfiti to representatives of Lafico and Mr Al Muntasser."*

33. Although Mr Sutcliffe may well be correct in saying that Mrs Al Sgair's knowledge and apparent approval of the plaintiff's participation in the joint venture and the way in which she was to be remunerated for it cannot affect the question whether the plaintiff acted in breach of Libyan law, it is nevertheless strongly persuasive of the view that no such offence was committed.

34. Although the application to adduce evidence of Libyan law failed on the ground stated, it became clear in argument that it was likely to have been confronted also with the serious objections stated in the judgment to be delivered by Lord Justice Waller, with which I wholly agree.

35. Mr Sutcliffe accepted that he could not, without evidence on Libyan law, mount an independent case based on public policy in English law. The application to adduce evidence of Libyan law having been dismissed, he proceeded to pursue the defendant's appeal on other grounds.

36. When turning to the plaintiff's claim to be rewarded by way of quantum meruit, Mr Justice Ferris said that it had three main aspects: first, an evaluation of the principle which governs such a claim; second,

consideration whether the circumstances of the case fell within the relevant principle; third, if they did, ascertaining the amount of the quantum meruit.

37. In dealing with the relevant principle, the judge referred to the decisions of the House of Lords in **Way v. Latilla** [1937] 3 All ER 759 and of Barry J in **William Lacey (Hounslow) v. Davis [**1957] 1 WLR 932, where reference was made to the judgment of Greer LJ in **Craven-Ellis v. Canons Ltd.** [1936] 2 KB 403. He said: *"From these statements I conclude that where one party provides services to another in circumstances where that other has requested or is to be taken to have requested the provision of those services and it cannot be supposed that the services were to be provided gratuitously, the law will impose an obligation to pay a reasonable sum for those services."*

In my view the judge's statement of the relevant principle was correct.

38. In regard to the second aspect, the judge found that in her discussions with the Libyan government and representatives of Lafico on behalf of the defendant and his companies the plaintiff must have been acting at the express or implied request of the defendant, even though there was no contract between them for the provision of services by her. He said: *"I unhesitatingly take the view that it cannot have been supposed by either Mr Salfiti or Mrs Sharab that her services would be provided gratuitously."*

39. Having rejected an argument that the plaintiff was already to be rewarded under her existing commission sharing arrangements, an argument to which I will return in due course, the judge concluded that the circumstances of this case fell within the principle under which the law would import an obligation to pay a reasonable sum for the services provided by the plaintiff.

40. The judge dealt with the third aspect in a manner to which reference will again be made in due course. He concluded by expressing the view that the plaintiff should be awarded the sum of $1.5m by way of quantum meruit.

41. In this court Mr Sutcliffe has advanced four grounds for saying that the judge's decision should be reversed or varied. As they were argued, however, it became clear that there were in substance only two: first, that it was inappropriate to award a quantum meruit at all, because the plaintiff's services were to be rewarded either under the existing commission sharing arrangements or by the interest taken by her under the joint venture agreement; further or alternatively, that the amount awarded by way of quantum meruit was awarded on a wrong principle and was far too large.

42. The first of these arguments can be briefly disposed of. In rejecting the argument that the plaintiff was already to be rewarded under her existing commission sharing arrangements, the judge said: *"While commission sharing may have been regarded as appropriate at a stage when Lafico was envisaged as a mere client of Mr Salfiti's companies, this ceased to be in the minds of the parties in or soon after March 1989 and certainly by 1st July 1989. Thereafter Mrs Sharab's task was very different from that involved in the attraction or introduction of a client and it is not to be supposed, in my view, that what was done was within the commission sharing arrangements. Apart from other considerations once a joint venture between Mr Salfiti and Lafico was proposed the parties cannot have thought that Lafico would accept an arrangement under which the joint venture would share commissions earned from Lafico with a third party associated with Mr Salfiti. This is even more evident from the time when the plan to use SST as the joint venture vehicle was abandoned in favour of the new Joint Venture Company, because the Joint Venture Company would not have been bound by any existing commission sharing arrangements which affected SST and would surely not have been prepared to enter into a new arrangement with Mrs Sharab."*

43. Mr Sutcliffe has failed to persuade me that the judge's reasoning on this point can be faulted in any material respect.

44. As to the suggestion that the plaintiff's services were to be rewarded by the interest taken by her under the joint venture agreement, it is important to emphasise that her only interest, apart from the prospect of acquiring shares in it, was her directorship. The judge recorded the plaintiff's evidence that she received remuneration of US $4,000 or more per month for her services as a director, although she could not say for how long she received that remuneration or precisely what its amount was. In any event, the judge found that the plaintiff expected to be handsomely rewarded for making her connections available to the defendant; that the defendant must have appreciated that that was so; and

that he expected to have to pay such a reward if he successfully negotiated a deal with Lafico. It could not have been said that the prospect of receiving remuneration of the order to which the plaintiff later deposed was anything approaching the handsome reward that both sides had in mind. Indeed, it does not appear to have been suggested before the judge that it was.

45. The question whether the amount awarded by way of quantum meruit was awarded on a wrong principle is the only arguable question on the appeal. On a superficial view, there seems to be some substance in Mr Sutcliffe's complaint that there must have been something wrong in the judge's having rejected the plaintiff's contractual claim to 1.75m shares in the joint venture company pursuant to the alleged oral agreement in May 1989 and then awarding her a cash sum equivalent to the value of the shares by way of quantum meruit. On deeper consideration, I am in no doubt that the complaint cannot be sustained.

46. Having accepted that there had been some exaggeration on the plaintiff's part as to the services she had performed and that the defendant and Mr Shiblaq had undertaken the detailed financial negotiations and had had many meetings or other contacts with Lafico in which the plaintiff had played no part, the judge said: *"Nevertheless I think that Mrs Sharab played a vital part in the negotiation of the Joint Venture Company agreement. Without her introduction Mr Salfiti would not have been in contact with Lafico. It was, to my mind, essential for the ground to be prepared before Mr Salfiti went to Tripoli for the first time at the end of June 1989 and I accept that it was Mrs Sharab who prepared the ground. I think it is also probable that she rendered vital assistance at the delicate stage of the transaction at which Mr Salfiti wanted to substitute the AFC shares for US $10m in cash. I doubt whether the transaction would have gone through without political contact and I am satisfied that it was Mrs Sharab who made it possible for Mr Salfiti to meet Colonel Ghadaffi and the Prime Minister. I think that Mr Shiblaq aptly described Mrs Sharab's role as that of a 'facilitator'. That was precisely the role which she offered to perform and which, in my judgment, Mr Salfiti asked her to perform."*

47. Having made those findings, the judge proceeded, shortly stated, as follows. He referred to passages in the speeches of Lords Atkin and Wright in **Way v. Latilla** [1937] 3 All ER 759, 764, 766, which support the view that where, as here, there is no trade usage or other evidence which assists as to the amount of the remuneration, the court may take into account "the bargainings between the parties" (per Lord Atkin) or "the communings of the parties while the business was going on" (per Lord Wright), "not with a view to completing the bargain for them, but as evidence of the value which each of them puts upon the services" (per Lord Atkin). The judge said that, although the plaintiff and the defendant reached no contractual bargain, they discussed a reward on the basis of the plaintiff's receiving shares in the joint venture; that there was certainly such a discussion in May 1990 and that the overwhelming probability was that it took place before the joint venture agreement was signed when it had become likely that the negotiations with Lafico would reach a successful conclusion; that they both appeared to have had in mind the same number of shares (1.75m), a figure confirmed by the evidence of a Mr Demouni and a Mr Ansari; and that that seemed to be an appropriate, and indeed the best, basis for fixing a quantum meruit.

48. If, therefore, the joint venture had still been in existence, the judge would have ordered the defendant to transfer 1.75m shares to the plaintiff. Since it was not, he thought that the right approach was to assume that the plaintiff received 1.75m shares in April or May 1990 and was, like the defendant, bought out by Lafico at the end of 1990. The judge calculated that the gross amount received by the defendant was about 86 cents per share which, when applied to 1.75m shares, produced a total sum of about US $1.5m (the exact figure being US $1.505m). Having rejected an argument that an addition should be made because of the discussions which took place concerning an additional payment of US $500,000, the judge said: *"In my judgment an award of US $1.5m is fully adequate to remunerate Mrs Sharab for the services which she did in fact perform."*

49. With regard to the calculation made by the judge, Mr Craig, for the plaintiff, has told us that he submitted at the trial that the shares in the joint venture company ought to be valued at the US $1.11 at which Mr Shiblaq agreed to accept the transfer of 5,500,000 shares from the defendant shortly after the joint venture agreement had been entered into or, failing that, at US $1. The judge rejected that

submission, evidently because he thought that the plaintiff would not have sold the shares before the joint venture came to an end in December 1990.

50. As Mr Sutcliffe's argument developed, his attack on the judge's award of US $1.5m came to be centred on the following passage in the speech of Lord Wright in **Way v. Latilla ,** where, having excluded the idea of the appellant's services being remunerated by a fee, he said, at p.766A: *"it follows that the question of the amount to which the appellant is entitled is left at large, and the court must do the best it can to arrive at a figure which seems to it fair and reasonable to both parties, on all the facts of the case."*

51. Mr Sutcliffe interpreted those observations as meaning that the court can look not only at events up to the time that the services have been completed, but also at those which occur thereafter. On that footing he said that the fairest method of valuing the plaintiff's services was to award her ten per cent of what the defendant gained from the joint venture between 10th April 1990 when it was entered into and 14th December 1990 when it was brought to an end. Mr Sutcliffe put in a calculation which valued the plaintiff's services on that basis at US $418,373.

52. Even if, which must as a general proposition be doubtful, Mr Sutcliffe's interpretation of Lord Wright's observations is correct, his method of valuation cannot be substituted for that adopted by the judge. He, having taken into account the quantity and quality of the plaintiff's services and the bargainings and communings between the parties, came to the conclusion that the appropriate method of remunerating the plaintiff would have been to order the transfer to her of 1.75m shares in the joint venture company. In doing so he applied a correct principle under **Way v. Latilla** to findings which were without doubt open to him on the evidence. Since the defendant no longer owned any shares in the joint venture company, the judge had no alternative but to order him to pay a cash sum in lieu. The only basis on which that sum could be assessed was by taking the notional value of the shares to the plaintiff at the date at which she could have been expected to dispose of them. A cash sum assessed by reference to what the defendant gained from the joint venture would have been one assessed on an inconsistent basis and without regard to the principle of **Way v. Latilla .**

53. For these reasons, I am of the opinion that the judge's decision as to the amount to be awarded by way of quantum meruit must be affirmed. I would therefore dismiss this appeal.

LORD JUSTICE JUDGE:

54. I have read Nourse LJ's judgment and agree with it.

55. On appeal, the defendant alleged that the plaintiff was guilty of criminal behaviour by the laws of Libya. If convicted she would have been liable to imprisonment. It was an extremely serious allegation. Quite apart from the distress which it will have caused to the plaintiff herself, and her family, the very fact that it was made might have adverse consequences for her.

56. The appellant relied on conduct in breach of the Criminal Code itself and breaches of Law 87 of 1975, contravention of which renders the perpetrator liable to imprisonment or a fine. For the reasons given by Nourse LJ the available evidence does not establish that the plaintiff had acted contrary to the provisions of Law 87 and rendered herself liable to any penalties.

57. The provision of the Criminal Code which the plaintiff was alleged to have contravened was Article 257 which prohibits, *"Pretending to have any influence: Whoever pretends to have influence with a public official and takes from another for himself or another, or induces another to give him or another, money or other advantage or obtains a promise thereof as the reward for his mediation with the said public official shall be punished...."*

58. On its face this provision appears to create an offence connected not with corruption but with deception. There was no evidence of conduct which would be regarded in the United Kingdom as amounting to corruption and none of deception or pretence within any realistic construction of Article 257. The authorities with whom the plaintiff was dealing knew exactly what she was doing and hoping to achieve, and she made no attempt to deceive them or the defendant.

59. In my judgment the defendant should have been prepared to sustain the allegation that the plaintiff's conduct amounted to criminal conduct in Libya with a much more rigorous analysis of the relevant

Criminal Code and Law 87 of 1975. The basis for the allegations against her was utterly flimsy and they should never have been made.

60. Mr Sutcliffe's argument that in principle the amount of the quantum meruit in this case should have proceeded on the basis of what was fair and reasonable to both parties was in a general sense correct; but the court is not exercising its judgment of what is fair and reasonable in a vacuum. The court is evaluating the reasonable reward for what was identified in **Way v Latilla [**1937] 3 AER 759 as "the consideration given by the claimant" (per Lord Atkin) or *"what the services were worth"* (per Lord Wright). In cases such as this, which is concerned with remuneration for services rendered, and not unjust enrichment, where different considerations might arise, I am quite unpersuaded that the valuation of the services rendered should be affected by the use to which the recipient subsequently puts them, and in particular whether that use results in a business triumph or financial disaster.

LORD JUSTICE WALLER:

61. I have read the judgments of Nourse L.J. and Judge L.J. and I agree with them.

62. I would like to add a word on the application to introduce evidence on Libyan Law touching on what seems to me would have been my likely attitude even if the Appellant had surmounted the hurdle of showing that he had an arguable case that a criminal offence had been committed in Libya. I appreciate that Mr Sutcliffe did not fully develop this aspect of his submissions, and thus my view can only be a tentative one, but I cannot help feeling that in relation to the types of illegality under Libyan Law on which he was seeking to rely, it could never have been right either to allow fresh evidence to be given or to allow amendments to the pleading or to allow whatever retrial might have had to follow.

63. It was Mr Sutcliffe's submission that the Appellant should now be allowed to rely on illegality under Libyan Law even if the conduct of the Respondent relied on would not fall under any head of public policy under English Law, and he relied on **Ralli v Compania Naviera Sota y Aznar** [1920] 2 K.B. 287 and **Libyan Arab Foreign Bank v Bankers Trust [**1989] Q.B. 728. His alternative submission was that the Appellant should be entitled to rely now on illegality under Libyan Law or the public policy of Libya, if the English court would recognise the conduct complained of, as falling foul of English public policy as per **Lemenda Ltd v Africa Middle East** (1988) 1 Q.B. 448.

64. I have emphasised now because it seems to me important to stand back a moment and see precisely what it is that the Appellant was trying to do and what effect that might have had on the fairness of the proceedings so far as the Respondent is concerned. The Appellant's application was not in truth simply an application to introduce fresh evidence. It was an application to amend the Defence to add a Defence which involved making serious allegations against the Respondent to which there had been no reference in any way at the trial. Mr Sutcliffe suggested that he for the Appellant would be perfectly content for the findings of the Judge to remain as they were, and to argue any aspect of Libyan Law by reference to those findings. But that overlooks the fact that the Respondent had no notice of the allegations being made, and no opportunity to suggest that (if it made a difference as to whether a crime was being committed) her role was not precisely as the Judge found it. When that fact was pointed out in argument, Mr Sutcliffe's response was to accept that if the Respondent wished to do so, she could give further evidence. That itself overlooked the fact that presumably the Respondent could then be cross-examined by reference to what she had said at the first trial. I am not, I should stress, suggesting that in fact there would be any great difference between what the Respondent would say now and what she did say previously, but I am seeking to emphasise that to charge someone with being guilty of a serious criminal offence in a foreign country is not a matter to be taken lightly, and indeed somewhat like a late allegation of fraud, would be scrutinised carefully even if made just prior to the trial, never mind after the trial is over.

65. What Mr Sutcliffe would have sought to persuade us is that comity obliges the English court, including the Court of Appeal, to take notice of the fact (if it be the fact) that performance of a contract is contrary to a foreign law.

66. I cannot believe that there can be any such far reaching obligation. I suppose there may conceivably be circumstances where the Court of Appeal itself takes for the first time a point on English Public Policy which might lead to an inquiry as to the position under a foreign law. But having regard to the following facts:
    (1) that if a party wants to take a point in his favour raising illegality under a foreign law he is perfectly free to do so;
    (2) that if a party does so, the foreign law must be pleaded and proved like any other aspect of the case;
    (3) that the allegation that someone has committed an offence is often, and was in this case, a very serious allegation to make;

67. I find it difficult to think of circumstances where it would be fair to allow, on the application of a party, an amendment to plead the commission of a serious offence under foreign law for the first time in the Court of Appeal, never mind the introduction of fresh evidence to prove it.

Order: application to adduce fresh evidence on 30th October 1996 dismissed with costs on an indemnity basis; appeal dismissed with costs on the standard basis

MR. A. SUTCLIFFE (instructed by Messrs. Berwin Leighton, London EC4) appeared on behalf of the Appellant Defendant.
MR. K. CRAIG (instructed by Messrs. Lewis Silkin, London SW1) appeared on behalf of the Respondent Plaintiff.