Competing against your ex-partners - A bridge too far?

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For years it has been assumed that partnerships are able to enforce onerous restrictive covenants against departing partners. The authority for this view is the 1984 Privy Council decision of Bridge v Deacons; a decision based on outdated ideas, peppered with outdated language and not even binding on the UK courts. Bridge v Deacons is ripe for review!Robin Bridge was an equity partner in Deacons, a law firm in Hong Kong. The partnership agreement included a restriction preventing him, for five years, from acting as a solicitor in Hong Kong for any person who had been a client of the firm within the three years prior to his departure. Mr Bridge left Deacons in 1982, receiving a substantial payment for his share of the partnership. He then set up his own practice acting for former clients of his old firm. Deacons successfully applied for an injunction to enforce the restrictive covenant.

- Mr Bridge argued that he had contact with less than 10% of Deacons' clients but the Privy Council pointed out that he owned, together with the other partners, the whole of the assets, notwithstanding any 'departmentalisation' of the practice.
- Strangely, the Privy Council said a restriction limited to clients for whom Mr Bridges had personally acted 'might well be difficult to apply' and felt that such a clause 'might work very unfairly in the case of a partner who for some reason had acted for only a small number of clients.' This is opposite to the law for employees where just such a limitation is required by the courts.
- Although there was no evidence to justify a five-year period of restriction (or its application to anyone who had been a client within the last three years) the Privy Council felt 'these are matters which are hardly susceptible of proof by specific evidence'. Yet in employment cases these clauses have to be justified by those seeking to enforce them.
- On the palpably excessive five years, the Privy Council said 'there appears to be no reported case where a restriction which was otherwise reasonable has been held to be unreasonable solely because of its duration'. Again, in employment disputes, excessively long covenants are regularly struck down.
- The Privy Council said 'there is a clear public interest in facilitating the assumption by established solicitors' firms of younger men as partners'. It is extraordinary that, as recently as 1984, the Privy Council was still using such gender-specific language. It would be simple enough to read 'men' as 'people' but the language used indicates how much times have changed since this decision. It is time to have another look at not only the language but also the reasoning.

In Deacons there were 27 partners and I wonder how much control each partner actually exercised. Nevertheless, their power was probably substantial compared with a modern firm of 50 or 150 partners where an individual's influence is often very small. A firm could change strategic direction against a partner's will and yet enforce the restrictions against that partner. If two solicitors enter into partnership with each other, each will have a reasonable bargaining position. A solicitor 'made up' in an existing practice is likely to have little influence over the terms of the partnership deed. Of course, it is always open to the solicitor to decline partnership (just as it is open to any employee to decline an offer of employment) but the imbalance of bargaining power needs to be taken into account. One reason why Bridge v Deacons has not yet been challenged is because of the practical reality — it will annoy the clients! When teams move from firm to firm, a commercial deal tends to be struck and the courts are rarely troubled. While there is some merit in the view that, as a part-owner of a business, a partner should be subject to different rules on covenant enforceability, the authority of Bridge v Deacons should not lead partnerships to be too complacent. Lengthy restrictions may be unreasonable in many modern partnerships and someone is bound to challenge the long-held assumption that, in this area, partnerships can get away with almost anything.