IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 270

Originating Summons No 163 of 2019

Between

British and Malayan Trustees Limited

… *Applicant*

And

(1) Lutfi Salim bin Talib
(2) Abdul Aziz bin Amir Talib
(3) Murtada Ali Salem Talib
(4) Ameen Ali Salim Talib
(5) Helmi Bin Ali Bin Talib
(6) Saadaldeen Ali Salim Talib

… *Respondents*

JUDGMENT

[Succession and Wills] — [Construction]

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Introduction

1 Mr Shaik Sallim bin Mohamed bin Sallim bin Talib ("the Settlor") was an Arab Mohamedan, born in Yemen. He came to Singapore in the early 1900s after having made a fortune in Indonesia as a trader.[1] He made Singapore his permanent residence until about 1935. In that time, he amassed a large portfolio of immovable properties in Singapore.[2]

2 By an Indenture made in 1933, the Settlor made provisions to distribute the income from the immovable properties and the capital moneys arising from

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1 1st Affidavit of Lutfi bin Salim bin Talib ("Lutfi") para 6.

2 Applicant's Bundle of Affidavits ("ABA") Tab PMP-7, p 124, paras 25 to 26.

their compulsory acquisition amongst his numerous family members and their descendants upon his passing ("the Settlement").[3]

3 The Settlor has long since passed on, but the income that continues to derive from the considerable assets remains significant.

Sole issue for determination

4 This application concerns a question of construction of the Settlement. Presently, the sole issue that arises for the court's determination is how, on a proper construction of the Settlement, the share of net income held previously for the benefit of a deceased beneficiary under the Settlement who had passed on without any offspring ought to be distributed.[4]

Background facts

5 The applicant is a professional trustee entity and the trustee of the Settlement who is responsible for the distribution of the net income of the settled property among the beneficiaries of the Settlement.[5] The respondents are amongst the surviving income beneficiaries of the Settlement.[6]

6 Before delving into the two conflicting interpretations of the Settlement put forth by the parties, it is necessary to detail briefly the structure of the Settlement.

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3 ABA Tab PMP-1, especially pp 38 and 41.

4 ABA Tab 1, para 4.

5 ABA Tab 1, paras 2 and 6.

6 Lutfi para 3; 1st Affidavit of Murtada Ali Salem Taleb at paras 2 and 4.

7 The general scheme of the Settlement was to make the income payable to the Settlor's children or their descendants such that a parent takes to the exclusion of his or her children with a weighting in favour of males over females in the ratio of 2:1.

8 Under Clause 3(1) of the Settlement, upon the Settlor's death, the net income of the settled property ("the Settlement Income") is deemed to be divided amongst the Settlor's children, with each son and daughter of the Settlor receiving two and one portion of the Settlement Income respectively. For sons who pre-deceased the Settlor, two portions would be allocated if they had surviving sons or descendants in the male line, while one portion would be allocated if they only left female descendants. No portion would be allocated for daughters of the Settlor who pre-deceased him.[7] Hence, if the Settlor had two sons and one daughter who survived him, each son would be entitled to two portions of the Settlement Income, while each daughter would be entitled to one portion of the Settlement Income.

9 Aisha binte Salim bin Talib ("Aisha") was a daughter of the Settlor,[8] and thus received one portion of the Settlement Income upon the Settlor's death. Aisha passed away in 2008. Clause 3(3) of the Settlement provided, in gist, that upon Aisha's passing, the income of her one portion in the Settlement would be divided amongst her male and female children in a 2:1 ratio.[9]

10 Thus, upon Aisha's passing, her three sons (Aisha having had no daughters), namely Shafeeq bin Salim Talib ("Shafeeq"), Kamal bin Salim

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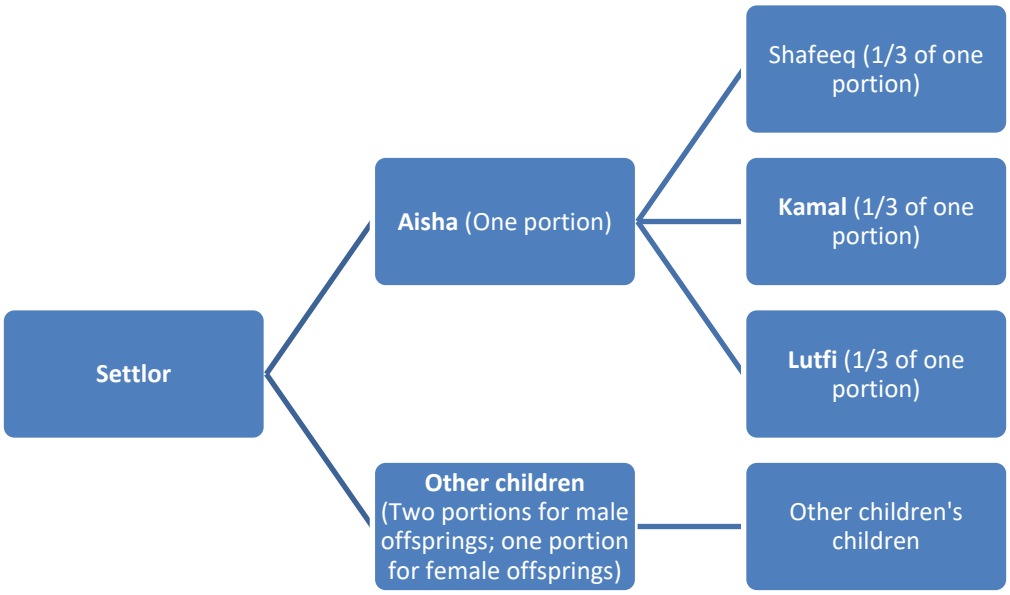
7 ABA Tab PMP-1, p 6, clause 3(1).

8 ABA Tab 1, para 15; Affidavit of Tang Hang Wu ("THW") para 4.

9 ABA Tab PMP-1, p 7, clause 3(3).

Talib ("Kamal") and Lutfi Salim bin Talib ("Lutfi")[10] each obtained a one-third share in Aisha's one portion of the Settlement Income.

11 Diagrammatically, the Settlor's interest passed to Aisha's children in the following manner:



12 Clause 3(3) of the Settlement further provided that upon the death of one of the Settlor's daughter's children (*ie,* the Settlor's grandchild), the Settlor's grandchild's children (*ie,* the Settlor's great-grandchildren) would take the Settlor's grandchild's interest. As is consistent with the rest of the Settlement, each male great-grandchild is given two shares of his parent's interest, while each female great-grandchild would obtain one share.[11]

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10 ABA Tab 1, para 16.

11 ABA Tab PMP-1, p 7, clause 3(3).

13 To illustrate, if one of Aisha's three sons ("B") has one son and one daughter, upon the passing of B, B's son and daughter would split B's interest in Aisha's one portion in the ratio of 2:1. In other words, out of B's one-third share in Aisha's one portion, B's son would take two-thirds of B's one-third share, while B's daughter would take the remaining one-third of B's one-third share.

14 In 2014, Aisha's son, Shafeeq, a grandchild of the Settlor and an income beneficiary under the Settlement, died without leaving any offspring.[12] This eventually led to the present application, which involves the proper construction to be given to the Settlement. In particular, should Shafeeq's share in the Settlement (being a one-third share of Aisha's one portion) be:[13]

(a) divided amongst, and held upon trust for, all the surviving income beneficiaries under the Settlement ("the pari passu interpretation"); or

(b) divided amongst, and held upon trust for, *only* those surviving income beneficiaries whose shares in the Settlement Income were derived from the same child of the Settlor (*ie,* Aisha), being Shafeeq's siblings, namely Lutfi and Kamal ("the branch interpretation")?

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12 ABA Tab 1, para 16.

13 ABA Tab 1, para 4.

Which is the proper interpretation: the pari passu or the branch interpretation?

15 The applicant, as well as the third to sixth respondents, advocate for the pari passu interpretation. On the other hand, the first and second respondents advance the branch interpretation.

Plain reading of Clause 3(3)

16 The key clause that falls for interpretation is Clause 3(3) of the Settlement. This clause provides for how the Settlor's daughter's portion of the net income is to be divided amongst her offspring and their issue (meaning their descendants) after her decease.[14] For the purposes of interpreting this provision, which consists of a single continuous sentence, I have broken the clause into multiple segments:

> The Trustees shall hold the one portion of the net income so to be allowed as aforesaid for a daughter of the Settlor who shall survive him upon trust for that daughter during her life …
>
> and after her decease the Trustees shall hold the same portion of the net income for her issue then living or born afterwards … ,
>
> that is to say throughout the period of the Settlement such of the issue of that daughter as shall for the time being be living and shall have attained the age of seven years shall take the same portion of the net income if more than one in equal shares per stirpes through all degrees (the children of such daughter being the original stocks)
>
> except that a male child of such daughter or his issue shall take a share double the amount of the share of a female child of such daughter or such female child's issue

[14] ABA Tab PMP-1, p 44.

> and so that through all degrees the share of a male child of any person (such person being issue of such daughter) shall be double the share of a female child of the same person
>
> and so that a child of such daughter shall take during his or her life to the exclusion of and not concurrently with his or her issue
>
> and so that each issue remoter than a child of such daughter shall take during such issue's life to the exclusion of and not concurrently with his or her issue
>
> and so that through all degrees issue remoter than a child of such daughter shall take by substitution the share whether original or accruing which such issue's parent if living would for the time being have taken in the same portion of the net income.
>
> [original emphasis omitted; emphasis added]

17 Before explaining each of the segments in the clause in detail, I make the following observations:

(a) First, Clause 3(3) states that each daughter of the Settlor shall have an interest in *one* portion of the net income of the Settlement. This is consistent with Clause 3(1)(*b*) of the Settlement, which provides for "[o]ne portion to be allowed for each daughter of the Settlor who shall survive him".[15]

(b) Second, upon the death of the Settlor's daughter, "the Trustees shall hold the *same* portion of the net income for her issue then living or born afterwards" [emphasis added]. It is undisputed that "issue" refers to the descendants of the Settlor's daughter in all degrees. I find that there is nothing to displace this ordinary meaning of "issue": *OCBC Trustee Ltd v Koh Boon Leong Francis and others* [1995] 1 SLR(R) 375

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15 ABA Tab PMP-3, p 43.

("*OCBC Trustee*") at [34]. Thus, the ordinary meaning of this aspect of Clause 3(3) is that upon Aisha's death, her children will take her interest in the *same* portion (*ie*, her one portion) of the Settlement. The means by which her children are to divide Aisha's portion will be according to a 2:1 ratio, where the sons of Aisha would take "a share double the amount of the share of a female child of such daughter".

(c) Third, until the death of Aisha's child, who takes a share of her portion, the children of Aisha's child (*ie,* Aisha's grandchildren) will not take any share in the Settlement Income, as "a child of such daughter [*ie*, Aisha] shall take during his or her life *to the exclusion of and not concurrently with his or her issue*" [emphasis added].

(d) Fourth, upon the death of Aisha's child, the children of such a child, who is referred to as an "issue remoter" (but whom I shall refer to as a remoter issue), will take a share of his/her parent's share in Aisha's portion, provided that each male will take double the share of a female.

18 From the above observations, it can be seen that Aisha's issue, which refers to her descendants in *all degrees* (*OCBC Trustee* at [34]), are to take a share of Aisha's one portion in the Settlement.

Shares originate from a portion

19 It thus appears from the above analysis that the income is divided into "portions" and further sub-divided into "shares". The shares stem from a portion such that shares are fractions of either two portions or one portion. Shares are accordingly a sub-genre of a portion.

20 However, the applicant submits that since Clauses 4, 5 and 9 of the Settlement only utilise the word "shares" to the exclusion of the word "portions" it shows that both words may be used interchangeably or loosely.[16]

21 I respectfully disagree. Clause 4 is a protective provision to protect against a spendthrift beneficiary. It allows the Trustee to hold the benefits of such a beneficiary for his spouse(s) and children (if any), rather than for the spendthrift beneficiary who may squander the income derived from his share of the Settlement Income.[17]

22 Clause 5 provides for the forfeiture of a beneficiary's share of the Settlement Income in the event the beneficiary ceases to be a Muslim.[18]

23 Clause 9 provides the means by which the Settlement Income has to be distributed. For example, Clause 9(1) states that the "net income shall be distributed annually and each beneficiary's share … shall be deemed to be due and payable on the first day of January next following the end of that year."[19]

24 Clauses 4, 5 and 9 clearly apply to *all* beneficiaries under the Settlement, whether or not such beneficiaries directly obtained a *portion* from the Settlor, or if they obtained *shares* of such a portion from the Settlor's children. For instance, it cannot be right that the Settlor would have allowed his own child, who would gain one or two portions upon his passing, to retain the portion(s)

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16 Applicant's Written Submissions pp 21 to 22, para (b).

17 ABA Tab PMP-1, pp 48 to 49; Applicant's Core Bundle of Documents ("ACB") Tab 6, p 51, para (6).

18 ABA Tab PMP-1, pp 49 to 50; ACB Tab 6, p 51, para (7).

19 ABA Tab PMP-1, p 54.

even after he or she ceases to be a Muslim, in contravention of Clause 5. However, this does not necessarily lead to the conclusion that "shares" and "portions" may be used interchangeably.[20]

25 Herein, Clause 3(3) repeats that Aisha's issue, and each remoter issue (being her grandchildren onwards), shall take *from* the "same portion", being the "one portion" which Aisha received upon the Settlor's decease.

26 This is confirmed by Clause 1 of the Settlement, which provides different definitions of a "portion" and a "share":[21]

> **"A portion of the net income"** means one of the equal portions into which the net income of the settled property is for the time being divisible in accordance with the provisions contained in subclause (1) of Clause 3 hereof.
>
> **"Share in the net income of the settled property" or "share in the net income"** means a share whether original or accruing in any two portions of the net income or in any single portion thereof according to whether a beneficiary is entitled to a share in two portions or one portion thereof, or may mean a share in the whole of the net income if as provided in subclause (7) of Clause 3 hereof the net income ceases to be divisible into portions.
>
> [emphasis in original]

27 From a plain reading of the above, a share stems from a portion, and hence a "share in the net income" means "a share … in any two portions … or in any single portion".

28 Referring to Clause 3(1) of the Settlement, it can also be seen that a "portion" relates only to the interest that is inherited by the Settlor's immediate

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20 Applicant's Written Submissions p 20, para 20(1)(b)(iii).

21 ABA Tab PMP-1, pp 41 to 42.

children (individually, "the original beneficiary"; collectively, "the original beneficiaries"):[22]

> The net income of the settled property shall after the death of the Settlor be deemed to be divided into a number of equal portions to be calculated as follows, that is to say:-
>
> (a) Two portions to be allowed for each son of the Settlor who shall survive the Settlor.
>
> (b) One portion to be allowed for each daughter of the Settlor who shall survive him.
>
> (c) Two portions to be allowed for each son of the Settlor who has already died or shall die in the Settlor's life time and shall leave a male child or remoter male issue in the male line who shall survive the Settlor.
>
> (d) One portion to be allowed for each son of the Settlor who has already died or shall die in the Settlor's life time without leaving a male child or remoter male issue in the male line who shall survive the Settlor but leaving other issue of whom one or more shall survive the Settlor.
>
> [original emphasis omitted]

29 Plainly, Clause 1 read with Clause 3(1) show that only original beneficiaries of the Settlement (such as Aisha) may inherit a *portion* of the Settlement Income. From such a portion, clauses like Clause 3(3) of the Settlement then states that each remoter issue (such as Aisha's descendants) is to take a *share* of the "same portion". Hence, a "share" is the more general term that refers to any beneficiary's entitlement under the Settlement, whereas a "portion" is a specific term that is used to measure the entitlement of the children of the Settlor himself. A share thus stems from a portion, but a portion does not

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22 ABA Tab PMP-1, p 43.

stem from a share. In other words, a share is a sub-genre of a portion under the Settlement.

30 Such an interpretation of shares as a sub-genre of a portion is consistent with the sole use of "shares" in Clauses 4, 5 and 9 of the Settlement, since those clauses were fully intended to apply to *all* beneficiaries, whether they were the Settlor's children holding full-portions or merely shareholders who derived their beneficial share from a child of the Settlor.

31 However, this does not *ipso facto* explain what happens to Shafeeq's share upon his decease without leaving any issue of his own. My observations of Clause 3(3) at [17] above show that the clause does not appear to directly provide for such a situation.

Each portion is to remain intact along the same familial line

32 Nonetheless, a closer inspection of Clause 3(3) does reveal that "after [Aisha's] decease, the Trustees *shall* hold the *same* portion [being Aisha's portion] of the net income for her issue then living or born afterwards" [emphasis added]. In my view, this means that Aisha's one portion is to remain intact even after the death of one or more of her children, so long as there remains at least one issue "living or born afterwards" that stems from her familial line.

33 The effect of such an interpretation is that Shafeeq's share will accrue to his siblings, thereby increasing their share in Aisha's portion. This accords with the last section of Clause 3(3), which provides that "through all degrees issue remoter than a child of such daughter shall take by substitution the share *whether original or accruing* which such issue's parent if living would for the time being have taken in *the same portion* of the net income" [emphasis added].

34 While drafted in archaic terms, this section of Clause 3(3) is significant, as it tells that "all degrees issue remoter than a child of such daughter", which refers to issue other than Aisha's own children (*ie,* Aisha's grandchildren onwards), shall take their parent's "original or *accruing*" share in the same portion of the net income. The use of the word "accruing" as an alternative to "original" shows that the parents of such a remoter issue, such as Shafeeq's siblings, may accrue a larger share of Aisha's one portion than they inherited originally. It also shows that Shafeeq's share ought not to be distributed to other beneficiaries of the Settlement who are *not* Aisha's issue. Doing so would mean that Aisha's *same portion* would in fact be diluted, and thus no longer the "same".

35 Hence, upon Shafeeq's death, his one-third share of Aisha's portion ought to accrue to his siblings, or other issue of Aisha (assuming his siblings have passed on), so that Aisha's one portion remains the *same* portion.

36 In this regard, Prof Tang Hang Wu ("Prof Tang") has opined that the words "or accruing" in the last section of Clause 3(3) is insufficient to amount to an "accruer clause" in favour of Shafeeq's siblings. This is because Clause 3(3) does not contain a detailed "accruer clause", unlike Clause 7 of a separate Relations Settlement that was also executed by the Settlor. According to Prof Tang, the lack of a detailed "accruer clause" in the Settlement gives rise to the inference that he did not intend for the plain words "or accruing" to operate as an "accruer clause" in favour of Shafeeq's siblings.[23]

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[23] ACB Tab 5, p 47, para 35.

37 Prof Tang has not cited any authority for his proposition that an "accruer clause" must be sufficiently detailed before it can be given its effect. On the contrary, Mr Nicholas Le Poidevin QC ("Poidevin QC"), who was also tasked to interpret the Settlement, has opined that: "[i]t is difficult to see any function for the words 'or accruing' unless they mean that a share may be increased by the death of a sibling."[24] As he explained, "in the law of property and the law of trusts, the word 'accrue' is used to denote the addition of further rights or interests to existing rights or interests" (quoting *Commissioner of Probate Duties v Wilson* [1979] VR 592).[25]

38 In my judgment, reading the words "or accruing" as amounting to an "accruer clause" accords with the objective that the issue of Aisha are to take "in equal shares *per stirpes* through *all* degrees" [emphasis added]. As Lord Hope of Craighead explained in *Sammut and others v Manzi and others* [2009] 1 WLR 1834 at [29]: "[c]orrectly used, the phrase ['*per stirpes*'] enables a gift to a person who predeceases the testator to be distributed among the person's descendants, if any, so that it is kept within *that* person's family" [emphasis added]. Similarly, in *OCBC Trustee*, it was observed at [37] that the phrase "*per stirpes*" means that:

> [T]he issue of such deceased child of the testator, if there are more than one, shall take the benefit which their parent would have taken, and shall share that benefit equally. In other words, their claim is through their parent, the parent being a child of the testator. They together cannot take more *or less* than what their parent would have taken if he or she were alive. Thus, the six Tan children would *together* take what their mother … would have taken if she was alive. [emphasis added]

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24 ACB Tab 6, p 53, para 17(3).

25 ACB Tab 8 para 3.

39 Distribution "*per stirpes*" therefore signals that issue of the original beneficiary collectively take the *same* interest as the original beneficiary. The original beneficiary's interest is to be kept within her family, and her issue collectively cannot take more or *less* than what she would have taken. Hence, the use of the words "*per stirpes*" in Clause 3(3), which deals with the distribution of Aisha's one portion, shows that the intention was for the shares of her portion to be distributed within *her* family, among her issue through *all* degrees. This would carry on in the proportion of shares as stipulated in Clause 3(3) (two shares for each male, and one share for each female).

40 That the original beneficiary's portion (such as Aisha's) is to remain intact until she has no more surviving issue is supported by Clause 3(2) of the Settlement, which deals with the distribution of the *two portions* allotted to a son of the Settlor upon his passing:[26]

[26] ABA Tab PMP-1, p 43, para (2).

> The Trustees shall hold the two portions of the net income to be allowed for a son of the Settlor who shall survive the Settlor …
>
> and after his decease the Trustees shall hold the ***same two portions*** of the net income for his issue then living or born afterwards …
>
> and so that a child of such son shall take during his or her life to the exclusion of and not concurrently with his or her issue and so that each issue remoter than a child of such son shall take during such issue's life to the exclusion of and not concurrently with his or her issue and so that through all degrees issue remoter than a child of such son shall take by substitution the share whether original or accruing which his her or their parent if living would for the time being have been taken in the ***same portions*** of the net income.
>
> [original emphasis omitted; emphasis and paragraph breaks added]

41 Except for the fact that it deals with two portions and a son of the Settlor, Clause 3(2) is *in pari materia* with Clause 3(3). In my finding, Clause 3(2) further demonstrates that, regardless of whether the original beneficiary's two portions are distributed downwards to his own children, or the issue of his children (*ie,* a remoter issue), the two portions should remain the same. Hence, any shares within the two portions are not to be distributed to other non-issue of the original beneficiary. Otherwise, the "two portions" would not be the "same two portions" anymore.

42 Hence, unless and until there are no more surviving issue stemming from the same portion(s), the shares that stem from such portion(s) ought not to be distributed outwards to non-issue of the original beneficiary. It is only when no more descendants stem from the original beneficiary that Clause 3(7) of the Settlement would take effect.

Clause 3(7) applies only to portions, not shares

43 Clause 3(7) of the Settlement provides that[27]

> If the trusts herein declared *concerning* any two portions or any single portion of the net income shall fail or determine during the period of the Settlement, the total number of portions into which the net income shall thenceforth be divisible shall be accordingly reduced and the amount of each remaining portion accordingly increased and if it shall happen that there shall be only two portions or a single portion … then the whole of the net income shall during the residue of the period of the Settlement be held on the trusts declared concerning those two portions or single portion in respect of which the trusts have not failed or determined. [original emphasis omitted; emphasis added]

44 The applicant submits that the use of the word "concerning" before "any two portions or any single portion" shows that a share, being a part of a portion, may fail.[28] This, the applicant argues is precisely the case here, since Shafeeq passed on without leaving any issue, and his share may thus be deemed to have failed. Accordingly, Clause 3(7) of the Settlement shows that "the total number of portions into which the net income shall thenceforth be divisible shall be accordingly reduced and the amount of each remaining portion accordingly increased". Therefore, the applicant submits that the pari passu interpretation ought to be preferred.

45 With respect, I do not agree with this submission. While it is linguistically attractive, the result of such an interpretation is to ignore the words "or accruing" in Clause 3(3), which, in my finding, shows that Shafeeq's share has not failed notwithstanding his passing without offspring. Instead, his share has accrued to other issue of Aisha, being his siblings. As Poidevin QC rightly

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27 ABA Tab PMP-1, p 46.

28 Applicant's Submissions, p 7, para (5) and p 22, para 24.

pointed out, "you never get to [C]lause 3(7) if the deceased grandchild [*viz*, Shafeeq] had one or more siblings who survive him."[29] There is thus no failure of Shafeeq's share, and Clause 3(7) is not at present relevant.

46 Furthermore, a full reading of Clause 3(7) shows that it refers to portions as a *whole*, rather than sub-genres of such a portion, being a share. It does not deal with the accrual of a share; rather, it deals with the accrual of a portion. This is why Clause 3(7) contemplates an eventuality where there is "only two portions or a single portion of the net income" remaining. The reference to "two portions or a single portion" is in my view significant, since a share is defined in Clause 1 as "a share … in any *two portions* of the net income or in any *single portion* thereof" [emphasis added].[30] Clause 1 makes it clear that a share originates from a single portion or two portions, depending on whether the original beneficiary of the portion is a male or female heir of the Settlor. Thus, that Clause 3(7) repeats the words "two portions or a single portion" without including the words "or part thereof" after the word "portion" shows that the Settlement does not contemplate the failure of a *share* within a portion, unless the share constitutes the entirety of the portion. My view is reinforced by the fact that nowhere in Clause 3(7) are *parts* of a portion referred to, and portions are always referred to as a whole (be it a single portion or two portions).

47 In this regard, I do not agree with Prof Tang's observation that the interchanging use of the terms "one portion" and "single portion" in the Settlement suggests that "one portion" refers to the Settlor's children's entitlement, while "single portion" refers to the Settlor's grandchildren's

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29 ACB Tab 7, p 58, para 6.

30 ABA Tab PMP-1, p 42, "share in the net income of the settled property".

entitlement.[31] Apart from giving no regard to the great-grandchildren of the Settlor, such a reading suggests that *every single* child of the Settlor *must* have left issue. Otherwise, their portion would be held in abeyance indefinitely, since Clause 3(7) only refers to a "single portion", and never to "one portion". Furthermore, if the Settlor indeed intended a "single portion" to refer to his grandchildren's interest, why did "two portions" apply irrespective of whether he was referring to his children or grandchildren? In other words, why did the Settlor *never* utilise the term "double portion" to refer to his grandchildren's interest? I thus find that "one portion" and "single portion" were used interchangeably to mean the same thing in the Settlement.

48 With respect, I am also unable to agree with the opinion of Mr Eric Choa ("Mr Choa"), tendered in 1980, in which he opined that Clause 3(7) of the Settlement operates to support the pari passu approach.[32] Mr Choa's opinion did not recognise the distinction between "portion" and "shares" under the Settlement, a significant point given my finding that Clause 3(7) only applies to a portion, and not to shares derived from such portion(s).

49 Therefore, Clause 3(7) of the Settlement is inapplicable, since Aisha's portion has not failed despite Shafeeq's passing without leaving issue. Instead, Shafeeq's share of Aisha's portion simply accrued to his siblings, pursuant to Clause 3(3) of the Settlement.

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31 ACB Tab 5, p 43.

32 ACB Tab 3, p 17.

Conclusion and summary of interpretation of the Settlement

50 In summary, my interpretation of the Settlement in this judgment is as follows:

(a) A share is a sub-genre of a portion, such that shares always originate from a portion and not *vice versa*.

(b) Upon the passing of the original beneficiary of one or two portions, the portion is to be divided amongst his or her issue, provided that each male issue receives two shares while each female issue receives one share. The same happens for remoter issue who pass on after receiving their share in the same portion.

(c) Upon the death of an issue or remoter issue, who passes on without issue, the shares of such issue or remoter issue are to accrue to other issue who own shares under the same portion(s). This will go on *ad infinitum* until the expiry of the Settlement,[33] or if there are no remaining issue under the portion(s). In such a case, Clause 3(7) of the Settlement provides that such a portion is to be extinguished and the "number of portions into which the net income shall thenceforth be divisible shall be accordingly reduced and the amount of each remaining portion accordingly increased".

51 Therefore, the branch interpretation is to be preferred. Shafeeq's share shall remain within his mother Aisha's portion, in the sense that it accrues to his siblings, who are the surviving issue of Aisha.

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[33] ABA Tab 1 p 11, para 15.

52 This accords with the plain wording of Clause 3(3), which provides that "the Trustees shall hold the same portion [being Aisha's portion] of the net income for her issue then living or born afterwards", provided that "a child of such daughter [*ie*, of Aisha] shall take during his or her life to the exclusion of and not concurrently with his or her issue".

53 For completeness, I find the cases of *In re Tate* [1914] 2 Ch 182 ("*Tate*") and *In re Hey's Settlement Trusts* [1945] 1 Ch 294 ("*Heys*"), which were cases relied on by the applicant, to be irrelevant to the facts of this case. In *Tate,* the testator had died, leaving three children, namely Elijah, Emile, and Frances, surviving him. Emile died shortly after the testator, leaving one child, who inherited her share under the will. Frances subsequently died without issue. The question was whether Frances' one-third share was to be divisible in equal shares between Emile's issue and Elijah, or whether it was payable exclusively to Elijah. Sargant J held that, on his construction of the will, it was clear that Emile's issue substituted her in respect of the shares, and that Emile's issue was thus "equally so substituted in respect of an accruing share [from Frances] given over by way of cross-remainder" (*Tate* at 185).

54 In *Heys*, the similar question of cross-remainder arose, and the Judge agreed with Sargant J's reasoning in *Tate* (*Heys* at 303–304), holding therefore that if a child of the testator died without issue, "her share will thenceforth be divisible among the surviving children and the issue of any child then dead leaving issue" (*Heys* at 306).

55 Therefore, *Heys* and *Tate* both stand for the proposition that remoter issue (being the issue of the original beneficiaries) can substitute the original beneficiaries, and thus obtain by accrual the share of another original

beneficiary who passes without leaving issue. This is referred to as a "cross-remainder".

56 This question does not arise in the present case, as none of Shafeeq's siblings has passed. Hence, there is no claim for Shafeeq's share from any remoter issue with a share stemming from Aisha's portion. In any case, should the question of a "cross-remainder" arise in future (*ie*, upon the passing of Shafeeq's siblings), Clause 3(3) is clear that such remoter issue "shall take by substitution the share whether original or accruing which such issue's parent [being Shafeeq's siblings] if living would for the time being have taken in the same portion of the net income." Hence, Shafeeq's nephews and nieces would simply inherit the shares of their parent, whether original or as accrued from Shafeeq.

57 I will hear parties on the consequential orders, and the question of costs at a later date.

Vincent Hoong
Judicial Commissioner

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Daryl Ong Hock Chye and Valerie Seow Wei-Li (LawCraft LLC) for the first and second respondents;
Lem Jit Min Andy and Ng Hua Meng, Marcus (Eversheds Harry Elias LLP) for the third to sixth respondents.