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**SYLLABUS****A. SUCCESSION PLANNING IN SINGAPORE****1. Introduction to succession planning generally:**

- (a) Wills
- (b) *Inter vivos* gifts
- (c) Lasting Powers of Attorney
- (d) Trusts
- (e) Family Office

**B. WILLS – PREPARATION, EXECUTION AND INTERPRETATION****1. Types of wills**

- (a) Mutual wills
  - (i) *Hiroto Watanabe v Law Yen Yen & Anor* [2012] 8 MLJ 202
- (b) Joint wills
  - (i) Jointly executed by 2 or more persons, combining their last Will and Testament, with the surviving party inheriting the entire estate when the other party passes away.

**2. Who can make a will?**

- (a) Section 4 Wills Act 1838 (“**WA**”), but see exceptions at Section 27 WA
- (b) Note the restrictions in the Administration of Muslim Law Act 1966 on the power of a Muslim testator to dispose of his estate by will
  - (i) *Mohamed Ismail Bin Ibrahim v Mohd Taha Bin Ibrahim* [2004] 4 SLR(R) 756

**3. Will formalities**

- (a) Formalities (Section 5 WA)
- (b) Execution of wills under WA (Section 6 WA)
- (c) Who can and who cannot be a witness to a will (Sections 9, 10, 11 and 12 WA)
- (d) Duties and liabilities of solicitors

- (i) *Low Ah Cheow v Ng Hock Guan* [2009] 3 SLR (R) 1079 at [72]–[74] (duties of solicitor re will preparation)
  - (ii) *Cheo Yeoh & Associates LLC v AEL* [2015] 4 SLR 325
  - (iii) Law Society of Singapore – Ethics Committee Guidance Note – “Ethical Considerations in Preparing and Witnessing the Execution of a Will” – Law Gazette, April 2011
  - (iv) Rules 211 and 215 Family Justice Rules 2014 (“FJR”)
- 4. Testamentary capacity
  - (a) Establish the testamentary capacity of the client
    - (i) *Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] 4 SLR 373 (CA) at [37]–[62]
    - (ii) *ULV v ULW* [2019] 3 SLR 1270 (HCF)
- 5. Executors – who cannot (or should not) be appointed
  - (a) Infants (Section 21 Probate and Administration Act 1934 (“PAA”))
  - (b) Lunatics (Section 22 PAA)
  - (c) Undischarged bankrupts (Section 400 Insolvency, Restructuring and Dissolution Act 2018 (“IRDA”))
  - (d) Failure of executors (Sections 13, 15 and 27 PAA)
- 6. Properties
  - (a) Joint tenancies of immovable property
    - (i) Sections 35 and 66A Conveyancing and Law of Property Act 1886 (“CLPA”)
    - (ii) Section 53(5) Land Titles Act 1993
    - (iii) *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (CA)
    - (iv) *Ong Chai Soon v Ong Chai Koon* [2022] 2 SLR 457 (CA)
  - (b) Considerations for certain types of immovable property
    - (i) Sections 2, 3, 4 and 25(5) Residential Property Act 1976 (“RPA”)
    - (ii) Sections 50, 58 and 59 Housing and Development Act 1959
    - (iii) Property subject to mortgages (Section 26 Civil Law Act 1909 (“CLA”))
  - (c) Joint bank accounts
    - (i) *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 (HC)

- (ii) *Estate of Yang Chun (Mrs) nee Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 (HC)
- (iii) *Chye Seng Kait v Chye Seng Fong (executor and trustee of the estate of Chye You, deceased)* [2021] 2 SLR 1131 (CA)
- (d) Central Provident Fund monies
  - (i) Section 25 Central Provident Fund Act 1953
- (e) Revocable nomination of insurance policy proceeds under Part 3C of the Insurance Act 1966 (“IA”) for policies after 1 September 2009
  - (i) Sections 131 to 133 IA
  - (ii) Section 150(2) IA read with the Insurance (General Provisions) Regulations 2003 – Insurance companies can pay up to S\$150K without grant

## 7. Construction of wills

- (a) Overriding aim of court in construction of wills
  - (i) *Foo Jee Seng v Foo Jhee Tuang* [2012] 4 SLR 339
  - (ii) *Zhao Hui Fang v Commissioner of Stamp Duties* [2017] 4 SLR 945 at [46]–[54]
- (b) Relevance of evidence from lawyer assisting in drafting and execution of the will
  - (i) *Lau Tyng Tyng v Lau Boon Wee* [2014] 3 SLR 1014 (precatory wording in wills)
- (c) Construction of gifts under wills (Sections 21, 24, 25 and 26 WA)
- (d) Subsequent conveyance does not prevent operation of the will (Section 18 WA)
- (e) Ambulatory nature of wills (Section 19 WA)
- (f) When beneficiaries predecease the testator (Sections 20, 23 and 26 WA)
  - (i) Special rule that applies if the beneficiary who predeceases the testator is one of the testator’s children (Section 26 WA)
  - (ii) *Re Will of Loke Soh Lui* [1997] 3 SLR(R) 956
  - (iii) Note the importance of a gift-over provision (provision by which a “substitute” beneficiary can “take over” the gift to the original beneficiary)
- (g) Ademption (*Low Gim Har v Low Gim Siah* [1992] 1 SLR(R) 970 at [57]–[59])
- (h) Abatement (where the assets are insufficient to fulfil all the debts, expenses, and gifts in full)

8. Taking Instructions to prepare a will
  - (a) Domicile of testator
  - (b) Testamentary capacity of the testator
  - (c) Declaration of testamentary intention
  - (d) Revocation of prior wills and codicils
  - (e) Appointment(s) of executor(s), trustee(s), and guardian(s)
  - (f) Disposition of property: legacies (specific and general) and devises, and gift-overs (Note any particular system of law which may apply to the property, e.g., immovable property in a foreign country)
  - (g) Residuary clauses (Ensure that there is no partial intestacy arising under the will, and what happens where there is partial intestacy – see below on the Intestate Succession Act 1967 (“ISA”))
  - (h) Powers and directions to executors and trustees; implied powers of trustees in the Trustees Act 1967 (“TA”) Part 3 and Section 35(1) CLPA
  - (i) Testimonium clause
  - (j) Attestation clauses variations (where testator is unable to sign, or cannot understand English, or signs with a non-English language, or is blind)
9. Conflicts of interest, ethical issues, and professional negligence
  - (a) Risk of conflict of interest
    - (i) *Mahidon Nichiar bte Mohd v Dawood Sultan Kamaldin* [2015] 5 SLR 62 (CA)
    - (ii) *Kuek Siang Wei v Kuek Siew Chew* [2015] 5 SLR 357 (CA)
    - (iii) Gifts from clients (Rule 25 Legal Profession (Professional Conduct) Rules 2015)
    - (iv) *The Law Society of Singapore v Lee Suet Fern (Lim Suet Fern)* [2020] SGDT 1
  - (b) Professional negligence
    - (i) *Cheo Yeoh & Associates LLC v AEL* [2015] 4 SLR 325
10. Post execution of will
  - (a) Practical pointers after execution
    - (i) Safekeeping of wills
    - (ii) Wills Registry
  - (b) Rectification of error
    - (i) Section 28 WA

- (c) Revocation of wills (Sections 13, 14 and 15 WA)
- (d) Alterations to wills (Section 16 WA)
- (e) Relevant provisions in the CLA pertaining to wills (Sections 23 to 27, and 30 CLA)

### C. INTESTACY

1. Scope of application of the ISA
  - (a) Law regulating distribution (Section 4 ISA)
  - (b) Not applicable to estate of Muslims domiciled in Singapore who die intestate (Section 2 ISA)
  - (c) Rules of distribution (Sections 7 and 9 ISA, note that the “Hotchpot” rule does not apply to *inter vivos* advancements to children)
  - (d) Consider situations of total intestacy and partial intestacy
2. Issues of illegitimate, adopted, and foster children
  - (a) Sections 2, 3 and 10 Legitimacy Act 1934
  - (b) Section 7(2) Adoption of Children Act 1939 (or Section 47 Adoption of Children Act 2022 upon its coming into effect)
  - (c) *Lim Weipin v Lim Boh Chuan* [2010] 3 SLR 423 (illegitimate children)
3. Concept of “half blood” and “whole blood” and priority of distribution
  - (a) Section 6 ISA
  - (b) *Chng Heng Tee (alias Cheng Kim Tee) v Estate & Trust Agencies (1927) Ltd* [2010] 1 SLR 681 (HC)
  - (c) *Low Guang Hong David v Suryono Wino Goei* [2012] 3 SLR 185 (HC) (step children)

### D. OTHER ISSUES RELATING TO ESTATES

1. Inheritance (Family Provision) Act 1966 (“IFPA”)
  - (a) Scope of application; IFPA does not apply to Muslims (Section 1 IFPA)
  - (b) Principles and procedure – concept of dependent and reasonable provision of maintenance (Sections 2 and 3 IFPA)
  - (c) Illegitimate children (*AAG v Estate of AAH, deceased* [2010] 1 SLR 769 (CA))

- (d) Interplay between just and equitable division under the Women's Charter 1961 and reasonable provision of maintenance under the IFPA (*AOS v Estate of AOT* [2012] 3 SLR 721 (CA))
2. Maintenance of Parents Act 1995 ("MPA")
- (a) In particular, consider Sections 3, 5, 7 and 11 MPA

## E. PROBATE AND ADMINISTRATION

Please note that the Family Justice Rules 2014 will be revised and the new rules will comprise of the following (the "New Rules"):

- Family Justice (General) Rules;
- Family Justice (Probate and Other Matters) Rules; and
- Family Justice (Protection from Harassment) Rules.

As at June 2024, the New Rules have yet to come into force.

When the New Rules come into force, the relevant rules for application for a grant of representation will be the Family Justice (Probate and Other Matters) Rules. The Family Justice Courts Practice Directions and the court forms will also be updated for use with the new Family Justice (Probate and Other Matters) Rules.

We will update you when the New Rules come into force. Until then, we will work on the basis that the current Family Justice Rules 2014 continue to apply.

1. Introduction and Concepts, Definitions and Terminology
  - (a) What is probate, administration, testacy and intestacy, personal representative, executor and administrator, trustee, caveator?
2. Practical steps to take when someone passes away
  - (a) Check if deceased made a will
  - (b) If so, locate the will (search belongings, check with previous solicitors, check registry of wills, advertise in Law Society Gazette and/or newspapers)

- (c) If original will is not available because it had been proved and deposited in a court outside Singapore, refer to Section 11 PAA and Rule 248 FJR to apply for probate of a duly-authenticated copy. If the original will cannot be found, consider Section 9 PAA
  - (d) If the will is found, determine the validity of the will, and prepare to apply for grant of probate
  - (e) If no will was made, prepare to apply for grant of letters of administration
  - (f) Check whether the executors/potential administrators are willing and able to act (see Sections 13 and 18 PAA)
3. Obtaining a grant of representation
- (a) Main types of grant
    - (i) Grant of probate (Testacy)
    - (ii) Grant of letters of administration (Intestacy)
    - (iii) Grant of letters of administration with will annexed (Section 13 PAA)
    - (iv) Resealing of grant of representation by a Commonwealth/Hong Kong court. (Sections 47 and 49 PAA, Rule 953 FJR, and Paragraph 65 Family Justice Courts Practice Directions (“FJCPD”))
  - (b) Probate Jurisdiction of Family Justice Courts (namely, the Family Division of the High Court and the Family Court)
    - (i) Value of deceased’s estate (Section 2(a) Family Justice (Family Proceedings before Family Division of High Court) Order 2014)
  - (c) Deceased died domiciled outside Singapore
    - (i) Rule 227 FJR
4. Non-Contentious Applications
- (a) Entitlement to Grant
    - (i) Testacy – executors named in the will. Where there is failure of executors, see Sections 8, 13 and 14 PAA and Rule 219 FJR
    - (ii) Intestacy (Section 18 PAA and Rule 221 FJR; *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737 at [23])
  - (b) Clearing off prior rights – When are renunciations and consents required?
    - (i) *In the Estate of Tan Hui Cheng also known as Tan Hui Cheng Lily, deceased* [1993] SGHC 106

- (ii) *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737
- (iii) Sections 3 and 5 PAA, Rules 224 and 233 FJR, and Form 53 FJCPD
- (iv) Section 18 PAA – Clearing off of rights of deceased beneficiaries
- (c) Procedural Steps to be complied with for the filing of the application for Grant (Rules 208 and 209 FJR, and Paragraphs 62 to 69 FJCPD and FJCPD Appendix A Form 51)
  - (i) File Originating Summons, Statement, certified true copy of death certificate, certified true copy (“CTC”) of will (if any)
    - CTCs of digitally verifiable death certificates/death extracts issued by the Registrar of Births and Deaths, Singapore are not required
    - Note: no longer mandatory for applicant to conduct searches for cases where the deceased died on or after 15 December 2003 (the date when electronic filing was fully implemented). Backend caveat and probate searches will be done by the system
  - (ii) By 4.30 pm of the next working day after the filing of the originating summons – the original will, original foreign grant or sealed certified true copy of the foreign grant (if any) must be submitted to the Probate Counter for verification
  - (iii) Take note of electronic checklist which will be generated upon filing and will indicate status of documents filed
- (d) Procedural steps after filing of the application:
  - (i) Supporting Affidavit of personal representative (Rule 208 FJR, Paragraph 63 FJCPD and FJCPD Appendix A Form 225)
  - (ii) Administration Oath (Section 28 PAA, Rule 235 FJR and FJCPD Appendix A Form 54)
  - (iii) Schedule of Assets (Paragraph 67 FJCPD and FJCPD Appendix A Form 226)
    - Schedule of assets will be filed on a “to the best of the applicant’s knowledge at that time” basis. The applicant will provide an undertaking to amend the schedule when further information is obtained on the assets. Leave is not required to amend the schedule of assets. The amended schedule can be filed with an affidavit to explain what is being amended and to verify the amended schedule
- (e) Delay in applying for grant (i.e., if grant is filed more than 6 months after death of the deceased)
  - (i) Rule 208(8) FJR
- (f) Additional Requirements (Rules 208 and 209 FJR, Paragraphs 62 to 67 FJCPD):



- (i) Deceased's aliases
- (ii) If will is not executed in English language
- (iii) If death certificate or other documents are not in English language
- (iv) Affidavit of Due Execution
- (v) Affidavit of Foreign Law
- (g) Further steps before extraction of Grant:
  - (i) For letters of administration, consider whether administration bond is required, and if so, what are the requirements regarding sureties to the administration Bond (Section 29 PAA, Rule 236 FJR, Paragraph 68 FJCPD and FJCPD Appendix A Form 55)
  - (ii) Consider the requirements if an application for dispensation of sureties is required (Section 29(3) PAA, Paragraph 69 FJCPD)
- (h) Extraction of Grant (Rule 237 FJR, Paragraph 70 FJCPD)

## 5. Contentious Applications

- (a) Probate actions (Rule 252(1) FJR)
- (b) Issues arising in probate actions
  - (i) Paradigm case: dispute as to testator's testamentary capacity and allegations of undue influence or duress in execution of will
  - (ii) Fraud/Forgery
  - (iii) Subsequent marriage which revoked the will
  - (iv) Passing over of named executors under will (Section 8 PAA)
  - (v) Revocation of grant of probate (Section 32 PAA)
- (c) Commencement of probate actions and procedure
  - (i) Caveats
    - Function and effect of caveats; Section 33 PAA, and Rules 239(1) and 242 FJR
    - Procedure: entry of caveats, warnings to caveats, appearance to Warnings, summons process, disposal in a summary manner; rule 239 to 242 FJR
    - Expiry of caveat (Rule 239(3) FJR)
  - (ii) Citations
    - Function of citations and pre-conditions
      - Note: the citor must enter a caveat before issuing a citation (Rule 243(4) FJR)

- Rules 243 to 245 FJR
- Rules 256, 258 and 259 FJR
- (iii) Probate action must be begun by writ
  - Rules 17(2)(b) and 253 FJR
- (iv) Entry of appearance and filing of pleadings
  - Rules 261 to 265 FJR
- (v) Intervener in probate action
  - Rule 260 FJR
- (vi) Joinder of parties and notice of proceedings
  - All parties affected by the probate action should either be joined as parties or served with notice of the proceedings under Rule 362 FJR (Notice of Action)
- (vii) Discontinuance
  - Rule 267 FJR
- (d) Administration pending trial
  - (i) Section 20 PAA
  - (ii) Rule 271 FJR
- (e) Costs
  - (i) Rule 855 FJR

6. When can personal representatives commence acting for the deceased's estate?

- (a) After obtaining the grant of letters of administration
  - (i) *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai)* [2014] 4 SLR 15 (CA)
- (b) Before obtaining the grant of probate
  - (i) *Lee Han Tiong v Tay Yok Swee* [1996] 2 SLR(R) 833
- (c) The *Wong Moy* exception
  - (i) *Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and another v Ayaz Ahmed and others and other appeals* [2024] SGHC(A) 17

7. The act of one executor could bind the estate and the other executors, but administrators of an estate must act jointly and the act of one administrator cannot bind the estate, unless that act was ratified by all the administrators
  - (a) *Tacplas Property Services Ltd v Lee Peter Michael* [2000] 1 SLR (R) 159 (CA)

## F. THE LASTING POWER OF ATTORNEY AND MENTAL CAPACITY ISSUES

When the New Rules come into force, the relevant rules for applications under the Mental Capacity Act 2008 will be the new Family Justice (General) Rules. The Family Justice Courts Practice Directions and the court forms will also be updated for use with the new Family Justice (General) Rules.

We will update you when the New Rules come into force. Until then, we will work on the basis that the current Family Justice Rules 2014 continue to apply.

1. Statutory principles
  - (a) Sections 3 and 6 Mental Capacity Act 2008 (“MCA”)
  - (b) Code of Practice and Section 41 MCA
2. Capacity
  - (a) Sections 4 and 5 MCA
  - (b) *Re BKR* [2015] 4 SLR 81
  - (c) *BUV v BUU* [2020] 3 SLR 1041
3. Acts and decisions covered by the MCA
  - (a) Acts done in connection with care or treatment (Sections 7, 8, 9 and 10 MCA)
  - (b) General powers of the Court (Sections 19, 20, 22 and 23 MCA)
    - (i) Note: The Court may exercise these powers upon application, even if there has been no LPA executed or Deputy appointed
  - (c) Excluded decisions (Sections 26, 27, 28 and 29 MCA)
4. Lasting Power of Attorney (“LPA”)
  - (a) Preparation and registration of LPAs
    - (i) Requirements for donee (Sections 12 MCA)

- (ii) Prescribed forms (Section 11(2) and First Schedule to the MCA; Regulation 4C Mental Capacity Regulations 2010 (“MCR”))
  - Form 1: standard form – donee(s) given wide-ranging powers to make decisions on behalf of the donor relating to personal welfare and/or property & affairs
  - Form 2: drafted by lawyer – customised powers granted to donee(s)
- (iii) Application for Registration
  - Office of the Public Guardian Online (OPGO) system – donor and donee(s) to login via their Singpass account to verify their details and complete the LPA application digitally
  - Certificate Issuer to digitally certify and witness the donor’s execution of the LPA using Singpass
  - Situations where hardcopy form can be used (Section 11(2A) MCA)
  - Objection to registration of LPA (Regulation 13 and 15 MCR)
- (iv) Appointment of Professional Deputy as donee
- (b) Duties and Responsibilities of LPA Certificate Issuers (Regulation 7 MCR)
  - (i) *Law Society of Singapore v Sum Chong Mun and Kay Swee Tuan* [2017] 4 SLR 707
- (c) Power of the Court in relation to validity and operation of LPAs (Sections 17 and 18 MCA)
- (d) Powers of Donees (Section 14, read with Sections 3, 6, 11, 13, 26, 27 and 28 MCA)
- (e) Revocation of LPA (Sections 15 and 16 of the MCA, Regulation 21 MCR)

## 5. Deputies

- (a) Deputyship application procedure
  - (i) Court’s power to appoint deputies
    - Section 20 MCA
  - (ii) Requirements of deputies
    - Section 24 MCA
    - Professional deputies (Section 25A MCA)
  - (iii) Application to court
    - Originating summons and supporting affidavit (Rules 176(1) and 177 FJR and Paragraphs 46 and 54 FJCPD)

- Whether leave is required for application to court (Section 38 MCA, Rule 176(2) and (3) FJR, and Paragraphs 47 to 48 FJCPD)
  - Service of application on named defendants and relevant persons (Rule 179 FJR and Paragraphs 49 FJCPD)
  - Relevant persons (Rule 180 FJR, and Paragraphs 50, 51, and 53 FJCPD)
  - Notification of person who lacks or is alleged to lack mental capacity (“P”) (Rules 181 and 182 FJR, Paragraph 52 FJCPD)
  - Reports (Section 37 MCA, Rule 188 FJR, and Paragraph 54 FJCPD)
  - Litigation representative for P (Rule 184 FJR, Paragraph 58 FJCPD)
  - Third party intervention (*TWD v UQE* [2019] 3 SLR 662 at [56]–[84])
  - Vesting of property in person appointed outside Singapore (Section 23(4) read with Paragraph 7 of the Second Schedule to the MCA)
  - Costs of proceeding (Rule 190 FJCPD)
- (iv) Powers that the Court may confer on deputies
- Sections 22 and 23 MCA (Note the restrictions under Section 25 MCA)

## REFERENCES

### Recommended textbooks

- G. Raman, *Probate and Administration in Singapore and Malaysia* (4<sup>th</sup> ed, 2018)
- Parry and Kerridge, *The Law of Succession* (13<sup>th</sup> ed, 2016)
- Williams, Mortimer & Sunnucks, *Executors, Administrators and Probate* (21<sup>st</sup> ed, 2018)
- K L Wong, *Non-Contentious Probate Practice in Singapore* (2<sup>nd</sup> Rev ed, 2018)
- Williams on Wills (11<sup>th</sup> ed, 2021)

### Recommended practice guides

- Halsbury's Law of Singapore: Probate, Administration and Succession, Volume 15
- Singapore Precedents & Forms: Wills, Trusts and Administration
- Tristram and Cootes's Probate Practice (32<sup>nd</sup> ed, 2020)

### Main legislative references

- Wills Act 1838
- Intestate Succession Act 1967
- Probate & Administration Act 1934
- Inheritance (Family Provision) Act 1966
- Mental Capacity Act 2008
- Family Justice Rules 2014
- Family Justice (General) Rules 2023 (upon it coming into effect)
- Family Justice (Probate and Other Matters) Rules 2023 (upon it coming into effect)
- Family Justice Courts Practice Directions

### Additional legislative references

- Mental Capacity Regulations 2010, see First Schedule, Regulations 4C, 7, 13, 15 and 21
- Legal Profession (Professional Conduct) Rules 2015, Rule 25
- Central Provident Fund Act 1953, Section 25
- Civil Law Act 1909, see Sections 23 to 27, and 30
- Insurance Act 1966, Sections 131–133 and 150(2)
- Insurance (General Provisions) Regulations 2003, Regulation 7
- Conveyancing and Law of Property Act 1886, Sections 35 and 66A

- Land Titles Act 1993, Section 53(5)
- Residential Property Act 1976, Sections 2, 3, 4 and 25(5)
- Insolvency, Restructuring and Dissolution Act 2018, Section 400
- Central Provident Fund Act 1953, Section 25
- Trustees Act 1967, Part 3
- Housing and Development Act 1959, Sections 50, 58 and 59
- Adoption of Children Act 1939, Section 7(2) (or Section 47 of the Adoption of Children Act 2022 upon its coming into effect)
- Legitimacy Act 1934, Sections 2, 3, and 10
- Maintenance of Parents Act 1995, Sections 3, 5, 7, and 11
- Family Justice (Family Proceedings before Family Division of High Court) Order 2014, Section 2(a)

#### Other materials

- Code of Practice, Mental Capacity Act, Office of the Public Guardian