INTRODUCTION TO WILLS AND WILLS DRAFTING[1]

> ***"A will is one of the most important legal documents which an individual can execute. Often, it embraces assets which an individual may have taken a lifetime of effort to amass. It may also deal with properties that have not only immense monetary value, but also (and, perhaps, more importantly) incalculable sentimental or emotional attachment for both the testator and the family members or beneficiaries concerned."***
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> ***"… there ought to be no room for even the slightest doubt (or the slightest possibility of a mistake) on the part of a solicitor in both understanding the testator's intention and expressing that intention in the will to be drawn up."***
>
> ***"The preparation of a will involves serious professional responsibilities, which solicitors must uncompromisingly observe and discharge. Regrettably, it seems to us [the Court of Appeal] that, all too often nowadays, solicitors appear to consider the preparation of a will to be no more than a routine exercise in form filling. This is wrong..."***
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> ***"If the solicitor might be perceived as anything less than a completely independent adviser to the testator, he ought not, as a matter of good practice, to be involved in the explanation, the interpretation and the execution of the will. In particular, exceptional restraint and care are called for if the solicitor concerned has a pre-existing relationship and/or past dealings with the sole beneficiary under a will, and all the more so if the will has been prepared urgently and executed in unusual circumstances with that sole beneficiary's active involvement"***

Low Ah Cheow v. Ng Hock Guan [2009] SGCA 25 at [72, 73, 74]

1. INTRODUCTION

(1) The above passages appear in the Court of Appeal's decision in *Low Ah Cheow v Ng Hock Guan* [2009] ("*Low Ah Cheow*") with the heading "Some Final Observations", wherein the C.A. had taken great pains to remind solicitors how critically important a will is to a client and the duties and responsibilities of solicitors when preparing wills for clients and to attending to the execution of wills.

(2) A few months after *Low Ah Cheow* was decided, the Court of Appeal again took the opportunity when it decided the case of *Chee Mu Lin Muriel v Chee Ka Lin Caroline ("Chee Mu Lin")* [2010] 4 SLR 373 to remind solicitors of their duties and responsibilities when preparing wills for clients: -

> *In our view, this case demonstrates that solicitors who undertake the task of preparing wills and/or witnessing the execution of wills must take the necessary precautions or steps in order to fulfil their duties to their clients. The precautions are not complicated nor are they time consuming. In any case, as solicitors, they must do what is required, however complicated or difficult the task may be.* ***The central task is to ensure that the terms of the will reflect the wishes of the testator.*** *How this is done depends on the circumstances of each case. In every case, the solicitor should be cautious about taking instructions from any person who is to be named as a beneficiary in the will. If a testator is known to be suffering from any mental infirmity, a doctor should be called to certify her mental capacity before she is*

1 Originally prepared by Goh Kok Yeow, revised in 2022 by Daniel Tan Kim Seah and revised in 2024 by Vincent Ho.

allowed to sign the will to ensure that such a testator fully understands the will. In the case of a person with mental infirmities like Mdm Goh, it should have included attending on Mdm Goh personally to take instructions from her, providing her with and explaining a draft of the will to her, and if there is any doubt as to her mental capacity, to advise that a psychiatrist (or some other qualified medical practitioner) attend on her to assess her mental capacity. Furthermore, the solicitor should ask the appropriate questions to ascertain the testator's capacity to understand the contents of the will. The testator should be asked as simple a question as whether he or she is making a will for the first time or whether he or she had made a will previously. In the latter case, the solicitor should ask whether the testator knows that he or she is revoking the existing will. These questions may be formulaic, but they are necessary to avoid cases such as this. Finally, as a matter of good professional practice, if not professional prudence, the solicitor should make a contemporary written record of his or her attendances on the testator so that he or she would be able to recall exactly what had transpired during the meeting or meetings… (Emphasis added).

Chee Mu Lin Muriel v Chee Ka Lin Caroline ("Chee Mu Lin") [2010] 4 SLR 373 at [60]

(3) As pointed out by the Court of Appeal in the 2 cases mentioned above, *"a will is one of the most important legal documents which an individual can execute... [which affects]* ***both the testator and the family members or beneficiaries concerned."*** and "***the central task is to ensure that the terms of the will reflect the wishes of the testator."***

(4) Therefore, when you draft a will for a client, make sure:

(a) you know what the client wants to do,

(b) that what he wants can be done,

(c) that he knows what he wants to do,

(d) that what you write for him in the will says what he wants to do, and,

(e) if there is a time-line for the will to be prepared and executed, to ensure that it is done on time[2].

(5) To paraphrase the Court of Appeal in *Low Ah Cheow* at this juncture***, there ought to be no room for even the slightest doubt (or the slightest possibility of a mistake) on the part of a solicitor in both understanding the testator's intention and expressing that intention in the will to be drawn up. The preparation of a will involves serious professional responsibilities, which solicitors must uncompromisingly observe and discharge. [It must not be treated as] no more than a routine exercise in form filling. "***

(6) It is settled law that a solicitor who is careless in drafting, or seeing to the execution of a will, may be liable for his negligence to a person excluded by that lawyer's negligence from taking a share of the estate. A very recent well-known example of this is the Court of Appeal's landmark decisions in *Cheo Yeoh & Associates LLC and another v AEL* [2015] SGCA 29 upholding the decision of Justice Chan Seng Onn (*AEL and others v Cheo Yeoh & Associates LLC* [2014] 3 SLR 1231).

(7) Presumably, the same standards and duties of care will apply to non-solicitors who prepare

[2] The landmark solicitor's professional negligence case of *White v Jones* arose out of the solicitor failing to prepare the will timeously.

wills as a business service. It is of interest to note that although Section 33(2) of the Legal Profession Act 1966 stipulates that "any unauthorised person who, directly or indirectly (a) draws or prepares any document or instrument relating to any movable or immovable property or to any legal proceeding...shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence", nevertheless, Section 33(10) then provides that "In this section, "document" and "instrument" do not include a will or other testamentary document", which has the result that anyone can set up a business of providing wills writing services for a fee, even when he has no qualification or experience in writing wills!

2. LEARN THE LAW BEFORE PREPARING YOUR FIRST WILL

(1) Before preparing your first will, read carefully and build up a good understanding of the Wills Act 1838 ("WA")[3].

(2) <u>Requirements / Considerations for a valid will</u>

(a) Section 4, WA: "No will made by any person under the age of 21 years shall be valid." (However, soldiers in actual military service, and mariners or seamen being at sea, may make wills even though they are less than 21 years of age (Section 27, WA).

(b) Section 3, WA: What can be disposed of under a will? "Subject to the provisions of this Act, every person may devise, bequeath or dispose of by his will, executed in the manner required under this Act, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death."

(c) Section 6, WA: 6(1) "No will shall be valid unless it is in writing and executed in the manner mentioned in subsection (2)."

> "6(2) Every will shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator as the signature to his will or codicil in the presence of two or more witnesses present at the same time, and those witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.
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> (3) Every will shall, as far only as regards the position of the signature of the testator, or of the person signing for him as mentioned in subsection (2), be deemed to be valid under this section if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will;
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> (4) ... no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

[3] It is also essential that one has to have a working knowledge of the Probate and Administration Act 1934 ("PAA"), Intestate Succession Act 1967 ("ISA"), Civil Law Act 1909 (Sections 24 to 28, 30), Inheritance (Family Provision) Act 1966 ("IFPA"), Mental Capacity Act 2008 Sections 4 and 5, and also Administration of Muslim Law Act 1966 (sections 110 to 118) ("AMLA") [*although it should be reiterated that candidates will not be tested on AMLA provisions for this course]*.

It is therefore of the utmost importance where the signatures of the testator and witnesses should be placed. A salutary warning of the result of non-compliance is found in the case of *Re Beadle* [1974] 1 All ER 493; the testatrix dictated to two friends the details of the will she wished to make. The testatrix read the will through and signed on the top-right hand corner. One of the friends also signed. The will was sealed in an envelope on which the testatrix wrote "My last will and testament, E.A. Beadle, to Charley and Maisy." Her 2 friends signed the envelope. On the testatrix's death, it was held that the will was invalid since the formalities had not been observed, notwithstanding the fact that the deceased's testamentary intention was not in doubt.

(d) The testator must have testamentary capacity. (see *Chee Mu Lin v Chee Ka Lin Caroline* [2010] 4 SLR 373 agreeing with *George Abraham Kathu v Jacob George* and also referring to the tests of mental capacity set out in Sections 4 and 5 of the Mental Capacity Act).

(e) Where a testator possesses testamentary capacity, then he has the freedom to do as he wishes with his estate (subject to some qualifications, for example if he has "dependants" as defined by the Inheritance (Family Provisions) Act 1966, or if he is of the Muslim faith). Testamentary freedom was explained by JC Aedit Abdullah in *Leow Li Yoon* v *Liu Jiu Chang* [2016] 1 SLR 595 as follows: -

> 28 The common law desires to uphold a testator's decision to leave his assets to those who survive him as he sees fit but only if the testator had capacity when he exercised his testamentary freedom. This point is put across in the following manner in *The Vegetarian Society v Jennifer Mariegold Scott* [2013] EWHC 4097 (Ch) ("*Vegetarian Society*") at [23]– [24]:
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> > "23 … [T]here is no legal fetter to the general principle of testamentary freedom by which a person may leave his or her assets as he or she sees fit, whether such disposition be unexpected, inexplicable, unfair and even improper (see *Gill v Woodall* [2010] EWCA Civ 1430, [2011] Ch 380, Lord Neuberger, Master of the Rolls (as he then was) p.390G) or surprising, inconsistent with lifetime statements, vindictive or perverse (the same case and judgment p.390H) or hurtful, ungrateful or unfair to those whose legitimate expectations of testamentary benefit are disappointed, (see *Hawes v Burges* [2013] EWCA Civ 94, Mummery LJ para.14 with whom Patten LJ agreed).
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> 24 However, the law does require that when exercising testamentary freedom, the testator has capacity so to do. …"

See also *Yeo Henry (executor and trustee of the estate of Ng Lay Hua, deceased)* v *Yeo Charles and others* [2016] SGHC 22, at paragraph 46

(f) Testators who are of the Muslim faith and are domiciled in Singapore can only make wills disposing of one-third of their estate, and there are also many complex rules regarding the making of a valid Muslim will, who are eligible to be witnesses to the execution of a Muslim will, who are the beneficiaries of a Muslim estate (which depends on which school of Islam the testator is a follow of), etc. Advising Muslims regarding making of wills in accordance with Syariah law is outside the scope of this course, and candidates will not be tested on this, although candidates who are interested in Muslim inheritance law (which is known as "*Faraidh*") are strongly encouraged to do so as it is a fascinating area of jurisprudence.

(g) Where is the client domiciled? This is a material question for foreign clients as they may be domiciled in jurisdictions where there are "*forced heirship*" laws or who hail from countries where Islamic law is the governing law. This requires a good working knowledge of the laws of conflicts of laws which are applicable in succession and inheritance, and is beyond the scope of this course, and candidates will not be tested on this.

(3) Other things you should know about a will

(a) Ambulatory Nature of a Will

A will is often described as having an ambulatory nature or quality. This is the result of S. 19 WA:

> **"Will to be construed to speak from death of testator.**
> **19.** Every will shall be construed with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will."

As such, a will has no effect until the testator dies, unlike settlements made *inter vivos* (during the life of the person). Therefore, you should inform your client that he may change or revoke the will at any time before his death (unless the client has made a "mutual will" with his or her spouse, in which case the advice that he may change or revoke the will may not be as easy to answer).

(b) Who cannot be an attesting witness

(1) It may appear trite or banal, but a solicitor preparing a will must ensure that certain persons must not attest the will as a witness:

> **Gifts to attesting witness or to wife or husband of attesting witness to be void.**
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> **10.** —(1) If any person attests the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate, other than and except charges and directions for the payment of any debt, shall be thereby given or made, the devise, legacy, estate, interest, gift or appointment shall, so far only as concerns the person attesting the execution of the will, or the wife or husband of that person, or any person claiming under that person or wife or husband, be utterly null and void.
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> (2) The attesting witness referred to in subsection (1) shall be admitted as a witness to prove the execution of the will or to prove the validity or invalidity thereof, notwithstanding the devise, legacy, estate, interest, gift or appointment mentioned in the will.
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> (3) The attestation of a will by a person to whom or to whose spouse there is given or made any disposition as is described in subsection (1) shall be disregarded for the purposes of that subsection if the will is duly executed without his attestation and without that of any other such person.

(2) In *Ross v Caunters*, the solicitor had sent by post the will he had prepared for a client for the client to execute, without any accompanying advice that the attesting witness must not be a beneficiary or spouse of the beneficiary. As it turned out, one of the attesting witnesses was

the spouse of a beneficiary, with the result being that the gift to that beneficiary became "utterly null and void". The disappointed beneficiary sued the solicitor for negligence, and succeeded in her claim.

(3) If when the will was executed, the witness was not married to a beneficiary, but at the date of the testator's death, the witness is a beneficiary's spouse, S. 10(1) is not applicable, and the gift to the beneficiary remains valid.

(4) An attesting witness can be deaf, mute, have any physical impediments except that he must be able to "witness" the execution of the will by the testator. In short, the attesting witness must not be blind or visually handicapped to such a degree that he cannot see.

(c) Age and possible disqualifications of Executor / when to name new Executor

(1) S. 21 of the Probate and Administration Act 1934 stipulates that a person has to be at least 21 years of age to be appointed. However, due to the ambulatory nature of a will, the client can appoint an infant as his executor (or one of the executors) since the will is only to be construed when the client passes away, which in most cases would be a good number of years after the making of the will. By then, the person appointed as the executor (or one of the executors) would have attained the age of majority. Incidentally, this is to be contrasted with the making of a lasting power of attorney, as the donee has to be at least 21 years old at the date of appointment.

(2) Next, the testator should be asked to confirm that the executor (especially if he is a sole executor) is not currently a bankrupt, as a bankrupt cannot be appointed as a personal representative, which is a term that covers both executors and administrators, without leave of the High Court. This is due to S. 400 of the Insolvency, Restructuring and Dissolution Act 2018, which stipulates: -

> "400. — (1) In addition to any disqualification under any other written law, a bankrupt is disqualified from being appointed or acting as a trustee or personal representative in respect of any trust, estate or settlement, except with the leave of the court."

Hence, if at the time of the making of the will, the person named in the Will as the executor is not disqualified under S. 400 of the Insolvency, Restructuring and Dissolution Act 2018, but he becomes one subsequently, the client is strongly advised to make a new will (or perhaps a codicil) appointing a different person as his executor.

(3) The same should apply if the appointee as executor subsequently becomes mentally incapacitated and unable to accept appointment as Executor; in such a case, the testator should make a new will naming new and different executor(s).

(4) One more occasion where the client is well-advised to re-look at his will vis-à-vis the executor appointed in his will is if his relationship with the intended executor has soured such that there is a likelihood that the executor will renounce the right to executorship. One technique to dissuade persons from renouncing the executorship power would be for the client (the testator) to include a gift for the executor on condition that he accepts the appointment and applies for grant of probate.

(d) How amendments are to be made to wills and testamentary dispositions

(1) Please pay heed to S.16 WA, as non-compliance with this statutory provision can have very serious consequences:

> **Effect of obliteration, interlineation or alteration**
> **16.** — (1) No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless the alteration shall be executed in the like manner as by this Act is required for the execution of the will.
>
> (2) A will referred to in subsection (1), with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of or opposite to a memorandum referring to the alteration and written at the end or some other part of the will.

(2) It should be the standard practice for solicitors who are preparing wills for clients that if there are to be any amendments, and there is time available to do so, a fresh copy of the will should be prepared for the client's and witnesses' execution, instead of the amendments being made by hand on the will with signatures to confirm the amendments as set out in S. 16(2).

(e) Revocations of previous wills

(1) The revocation of previous wills is quite a thorny subject, as shown by the decision of the Court of Appeal in *Cheo Yeoh & Associates LLC v AEL* [2015] SGCA 29 [2015] 4 SLR 325, which discussed at some length the "doctrine of conditional revocation". For the purposes of this course, it suffices that candidates must know and be able to apply the following provisions from the Wills Act:

> ***Will to be revoked by marriage except in certain cases.***
> ***13.*** *—(1) Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator or the person entitled under the Intestate Succession Act.*
>
> *(2) Notwithstanding subsection (1), where a will made on or after 29th August 1938 is expressed to be made in contemplation of a marriage, the will shall not be revoked by the solemnization of the marriage contemplated; and this subsection shall apply notwithstanding that the marriage contemplated may be the first, second or subsequent marriage of a person lawfully practising polygamy.*
>
> ***No will to be revoked by presumption from altered circumstances.***
> ***14.*** *No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.*
>
> ***Revocation of will or codicil.***
> ***15.*** *No will or codicil, or any part thereof, shall be revoked otherwise than -*
>
> *(a) as provided in section 13;*
>
> *(b) by another will or codicil executed in the manner by this Act required;*
>
> *(c) by some writing declaring an intention to revoke it, and executed in the manner in which a will is by this Act required to be executed; or*

(d) by the burning, tearing, or otherwise destroying the will by the testator, or by some person in his presence and by his direction, with the intention of revoking it.

Revival of revoked will.
17. — (1) No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner required by this Act and showing an intention to revive the will or codicil.

(2) When any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, the revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

(2) In preparing a new will in Singapore for a client, especially a client who is a foreigner or a person who has assets overseas, one should ask the client if he has made a will or wills in other countries. As a rule of thumb, a person should make a will in every jurisdiction where he has substantial assets, and such will should be made with the advice of local counsel or local legal advice in such jurisdiction and be governed by the law of the jurisdiction. Where the client has more than one will, great care should be taken for the client to not inadvertently revoke the other wills made in overseas countries, when his intention was merely to have a Singapore-made will made (which should accordingly only revoke the previous Singapore will(s), and leaving the foreign will(s) intact).

(3) Where one is instructed to prepare a will for a client who is contemplating a marriage (eg, he mentions that he has a fiancé) and it is clear that the client wishes that the will remains valid after the marriage, one must pay special care and attention to Section 13(2) WA. The wording to be used to comply with Section 13(2) can be found in precedents from the Encyclopaedia of Forms and Precedents. An example of such clause is:

I Declare that I make this Will in contemplation of my intended marriage to XXXXXXXXXXXXX, and that this Will shall not be revoked by reason of the said marriage. I Further Declare this Will shall be and remain effective if the said marriage does not take place or it is not solemnized.

Failure to do so may result in a claim for negligence from a disappointed beneficiary since the distribution of the deceased's estate under the ISA (or applicable law of intestate succession, if the deceased died domiciled outside Singapore) could be very different from the provisions of the will which the testator had instructed you to make, but which had become revoked by virtue of S. 13(1) of the WA, in the absence of a clause such as the above, where he was contemplating a marriage.

(f) <u>"Precatory" clauses in Wills</u>

(1) In *Lau Tyng Tyng v Lau Boon Wee* [2014] SGHC 114**;** [2014] 3 SLR 1014, J.C. Edmund Leow explained what are precatory clauses:

"...the use of precatory words ("wish and strong desire") indicated that it is no more than an expression of desire ... "

"If a plain reading of the clause suggests that the testator intended to do no more than express a non-legally binding desire for a certain future state of affairs, and a full and contextual examination of the will does not indicate that the testator intended anything

more than that, a court should also not strain to construe the clause as to give it an imperative character. Giving legal effect to words which are meant to do no more than to appeal to the conscience of the beneficiaries defeats the intention of a testator just the same."

(2) The relevant Clause 4 of the Will stated:

"It is my wish and strong desire that my beneficiaries will not sell or otherwise part with the shares of Lau Loon Seng Holdings Pte Ltd ('the Company'). The Company is the sole shareholder of Southern Printing & Publishing Co Pte Ltd, which was founded and built up by me through many years of hard work and toil. It is also my desire that my children will work together, hand in hand, to continue to grow the business of Southern Printing & Publishing Co Pte Ltd. Otherwise, I entrust the business to my daughter, LAU TYNG TYNG."

(3) This case is a salutary reminder to will draftsmen of the need to take great care when preparing any will (and the remark by the Court of Appeal in *Low Ah Cheow* at the start of this document must be borne in mind at all times). It is the duty of the solicitor to ensure not only that probate of the will can be granted by the Family Justice Courts after the testator dies (which calls for ensuring that all the formalities under the Wills Act are satisfied), but also that what the testator had intended under his will can and will be carried out, so that when the Courts are called upon to construe the meaning of the will, the testator's intentions are given effect to.

(g) <u>Construction of Wills</u>

(1) The Court of Appeal in *Foo Jee Seng v Foo Jhee Tuang* [2012] 4 SLR 339 at [17] summarised the principles governing the construction of wills as follows:

"It is clear that the overriding aim of the court in construing a will is to seek and give effect to the testamentary intention as expressed by the testator. This intention must predominantly be derived from the wording of the will itself, although the circumstances prevailing at the time the will was executed may be taken into account. Where a strict literal construction of the will would give rise to an effect which is clearly out of sync with the general intention of the testator as derived from the will as a whole, such a reading should give way to a more purposive interpretation. Hence, there exists a presumption that effect should be given to every word of the will, and the court should not discount any part of the will if there can be some meaning that is not contrary to the express intention that could be ascribed to it. As the High Court remarked in *Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453 ('*Nellie Goh*' at [62], 'A testator, in other words, does not will in vain'. "

(2) The goal of a will draftsman should be to draw up such a well-prepared will that there is no room for any challenge to the contents of the will. However, if someone nevertheless challenges the contents of the will, the corresponding goal would then be for the Court to rule that the testator's testamentary intentions are accurately set out in the will and can be administered or carried out accordingly.

3. ASSETS OR PROPERTIES THAT SHOULD NOT BE GIVEN BY THE WILL

(a) all monies in the CPF accounts of the testator;

(b) Joint tenancy immovable properties;

(c) Trust insurance policies taken out under S. 132 of the Insurance Act 1966.

4. INHERITANCE (FAMILY PROVISION) ACT

If the client making the will is a married person, and he or she wishes to make a will which fails to make reasonable provision for the maintenance for his or her "dependant(s)", the client should be advised regarding the legislative provisions of the Inheritance (Family Provision) Act 1966 ("IFPA") and how and to what extent the dependants can make claims against the estate after his/her death.

The IFPA is only applicable to deceased persons who die domiciled in Singapore (so clients who are not domiciled in Singapore will not need to worry about the IFPA, though they may have to be concerned for the jurisdiction where they are domiciled as many countries have equivalents of the IFPA, such foreign legislation frequently impose higher payments or distributions out of the non-Singapore-domiciled deceased's estate than is possible under the IFPA).

Under the IFPA, the following persons are "dependants" of the deceased:

(a) a wife or husband;

(b) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;

(c) an infant son[4]; or

(d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

If the court on application by or on behalf of any such dependant of the deceased is of opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of that dependant, Provided that no application shall be made to the court by or on behalf of any person in any case where the disposition of a deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

The provision for maintenance to be made by an order shall, subject to s. 3(4), be by way of periodical payments and the order shall provide for their termination not later than-

(a) in the case of a wife or husband, her or his remarriage;

(b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;

[4] "son" and "daughter", respectively, include a male or female child adopted by the deceased by virtue of an order made under the provisions of any written law relating to the adoption of children for the time being in force in Singapore, Malaysia or Brunei Darussalam, and also the son or daughter of the deceased *en ventre sa mere* at the date of the death of the deceased.

(c) in the case of an infant son, his attaining the age of 21 years;

(d) in the case of a son under disability, the cesser of his disability,

or in any case, his or her earlier death.

Please read the following cases in relation to the IFPA

1. *AAG v Estate of AAH, deceased* [2009] SGCA 56 (a case determining that illegitimate children of the deceased are not "dependants")

2. *AOS v Estate of AOT, deceased* [2012] 3 SLR 721 (a CA decision discussing the interplay between just and equitable division under the Women's Charter and the reasonable provision of maintenance under the IFPA and the considerations of the court in such cases)

Please read the IFPA. The commentary to the IFPA in Butterworths' Annotated Statutes of Singapore (Volume 10) pages 1 to 13 are very helpful.

5. TYPICAL CONTENTS OF WILLS

(1) A typical will is shown at pages 12 and 13. It will serve as a good starting point for analysis of the contents of a typical will.

(2) A will is divisible into the following parts[5]:

(a) Declaration of testamentary intention: identification of testator.

(b) Revocation of previous wills.

(c) Appointment of

(i) Executor

(ii) Trustee

(d) Disposition of property:

(i) Specific legacies

(ii) General legacies and annuities

(iii) Specific devises:

-absolute

- in settlement.

- gift-over[6]

(e) Residuary estate clause.

(f) Powers and directions to Executor - Trustee.

(g) Appointment of testamentary guardian of infant children (Guardianship of Infants Act, S.6 and 7).

(h) Testimonium clause and Attestation clause.

[5] See Butterworths' Encyclopaedia of Forms and Precedents Edition.

[6] To provide for the gift of property to a second legatee if a certain event occurs, such as the death of the first legatee.

SAMPLE OF TYPICAL WILL

THIS IS THE LAST WILL of me RICHARD LEE TECK SENG (Singapore NRIC No. S1234567M) of 10 Anson Road Singapore 066608.

1. I REVOKE all former Wills and testamentary dispositions heretofore made by me.

2. I APPOINT my wife FRANCES TAN MEI LIEN (Singapore NRIC No. S1345678F) of 10 Anson Road, Singapore 066608 to be the Sole Executrix and Trustee of this my Will if she survives me by a period of thirty (30) days[1], but if she fails to do so, or she is unable or unwilling to act as the Executrix and Trustee of this my Will, I then Appoint my sister, **DAISY LEE CHI YING** (Singapore NRIC No. S0003459B), to be the Executrix and Trustee of this my Will. I declare that in the interpretation of this Will, the expression "my Trustee" shall (where the context permits) mean and include the trustee for the time being hereof whether original or substituted.

3. I GIVE all my property to my Trustee UPON TRUST:

   (a) to give One Hundred Thousand Dollars (S$100,000.00) to my mother, **MARY LEE AH MOI**, if she survives me, failing which I then give the same to my sister, **CECILIA LEE LI YEN**;

   (b) to give to **NATIONAL KIDNEY FOUNDATION** (UEN 200104750M) Twenty Thousand Dollars (S$20,000) to be used for its general purposes; and

   (c) to give the rest of my property absolutely to my wife, **FRANCES TAN MEI LIEN**, if she shall survive me by a period of thirty (30) days; but if she does not, then to my children, **JAMES LEE HAO LIEN, ABIGAIL LEE MEI LIEN** and **DOUGLAS LEE BO LIEN**[2], in equal shares *per stirpes*.

4. I EMPOWER my Trustee to sell for cash or upon such terms as she deems fit, and to call in, and convert into money, my said property or such part of parts thereof as shall be of a saleable or convertible nature, at such time or times and in such manner as my Trustee shall, in her own absolute and uncontrolled discretion, think fit, with power to postpone such sale calling in and conversion of such property, or of such part or parts thereof for such period or periods as my Trustee shall in his own absolute and uncontrolled discretion think fit and to stand possessed of the moneys arising therefrom, together with any ready moneys forming part of my Estate, for the trusts of this my Will.

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[1] This is an example of a *commorientes* provision, which was important to include in wills when estate duty was not yet abolished. Notwithstanding the abolition of estate duty for deaths after 15 February 2008, clients may still wish to consider including a commorientes provision, as it would serve little purpose for the testator to give legacies to legatees who do not live long enough to enjoy such legacies. Note S. 30 of the Civil Law Act, which states that "In *all cases where 2 or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court) for all purposes affecting the title to property be presumed to have occurred in order of seniority and accordingly the younger shall be deemed to have survived the elder*."

[2] Candidates must read and understand the important decision of JC Chan Seng Onn (as he then was) in *Re Loke Soh Lui [1997] 3 SLR(R) 956*, for the proper interpretation and construction of a gift to a child of the testator who predeceases the testator, where the child has issuing living at the date of death of the testator.

5. I appoint my sister **CECILIA LEE LI YEN** to be the guardian of such of my children while he or she is an infant, if my wife, FRANCES TAN MEI LIEN, predeceases me[3].

IN WITNESS whereof I have hereunto set my hand this 23rd day of July, 2015.

SIGNED by the Testator RICHARD LEE TECK SENG)
as and for his last Will before both of us,)
the undersigned, who in his presence) *Richard Lee Teck Seng*
and in the presence of each other have)
hereunto set our names as witnesses:)

John Ang Lok Si *Mabel Teng Leng May*

John Ang Lok Si
Advocate & Solicitor
88 Lawyer Lane
Singapore 123456

Mabel Teng Leng May
Legal Secretary
88 Lawyer Lane
Singapore 123456

6. BEFORE PREPARING YOUR FIRST WILL:

A timely reminder by the Court of Appeal extracted from *Low Ah Cheow's case* and *Chee Mu Lin Muriel's case*:

> "*The solicitor ought to painstakingly and accurately document his discussions with and his instructions from the testator. He should also confirm with the testator, prior to the execution of the will, that the contents of the will as drafted accurately express the latter's intention. A translation, if required, must be thoroughly and competently done. Half measures or the cutting of corners in the discharge of these serious professional responsibilities will not do."*
>
> *Low Ah Cheow* [2009] 3 SLR(R) 1079, at para 73
>
> *"Finally, as a matter of good professional practice, if not professional prudence, the solicitor should make a contemporary written record of his or her attendances on the testator so that he or she would be able to recall exactly what had transpired during the meeting or meetings… (Emphasis added)".*
>
> *Chee Mu Lin Muriel* [2010] 4 SLR 373, at para 60

[3] Check and understand the provisions of S. 7 and 8 of the Guardianship of Infants Act with regard to appointment of testamentary guardians and their roles.

7. ANALYSIS AND UNDERSTANDING OF THE WILL'S CONTENTS

7.1 Beginning of the Will

(1) By saying: **"THIS IS THE LAST WILL"**, (or 'will and testament') "of me" followed by the testator's name, you show:

(a) What the document is; that it is intended to be a will, and,

(b) You identify the person whose will it is.

(2) It is good drafting practice to state and identify the document as a "Last Will" to preclude any doubt that the document is a will.

(3) Similarly, stating the Testator's name, address, and NRIC number will pre-empt disputes as to the testator's identity. Make sure in taking instructions you obtain and record accurately the testator's full name (including his alias names appearing in his NRIC), his NRIC No., his address. It is good practice to make and keep a copy of the testator's NRIC in your will file records.

(4) You should always state the testator's names as it appears in his NRIC (or passport, if he is not a Singapore citizen or PR). If he has any properties which he may own under a name which is not shown in his NRIC or passport, this should be stated in the Will too, as the grant of probate to be obtained upon the client's demise will have to state those additional names. An example is shown below:

> "My name shown in my Singapore NRIC is "TAN AH KOW". I am however the sole owner of the property which is situated at 1 Arcadia Road, Singapore 289844 which is registered in my name as "CHANAHKOW" and accordingly, the probate of this my Will should show my additional name "CHANAHKOW"."

7.2 Revocation of previous wills and testamentary dispositions

(1) The draftsman should always have included as a beginning provision of the Will that the testator "revokes all former Wills and Testamentary Dispositions". This is so even if the client says that he has not made any wills previously and this is his first will. This is a standard provision in all wills, and the inclusion of a revocation clause for a testator making his first and only will is not likely to lead to any dispute. A person seeking to challenge the will on the ground, say, that the testator had not made any previous will and therefore the inclusion of a revocation clause showed that the testator did not fully understand all of the contents of his will, will not go very far with such an argument.

(2) Nowadays, it is common for people to have assets in more than one country, it is advisable that clients who have assets in more than one country should make a separate will for the assets in those countries, after taking legal advice from lawyers in those countries. In the case of a testator who has made a will for his assets in other countries, take care however that the will made in Singapore does not inadvertently revoke all those other wills for the client's estates in those countries, and *vice versa*.

(3) You will note that in **S. 2 WA**, the word "Will" includes "codicil".

(4) Apart from the exceptional case mentioned later, always include a "revocation clause" in a will.

If you do not, the old will may still stand alongside the new will and be admitted to probate. The combination of the two may produce results not intended by the testator.

(5) Once a will is revoked be sure there can be no doubt about it. Some people destroy revoked wills. There is certainly evidence of an *animus revocandi*: of the intention to revoke it. Others are of the view that a revoked will should be destroyed to prevent the possibility of its being made the subject of an application for probate, accidentally or otherwise. This will involve ascertaining the whereabouts of the prior will, if there is one, and taking steps to get it, and having it destroyed by the testator, or in his presence at his direction.

(6) However, sometimes prior wills are retained, but in these cases, they should be marked to show the revocation, and to prevent their subsequent use in a probate application. The wording "Revoked" followed by the effective date, is recommended.

(7) Prior wills, on occasion, may be useful in ascertaining the testator's desires, and may illustrate his intentions. In applications for maintenance of the testator's family out of the estate, they may supply information of assistance to the executors, the court and the parties concerned.

(8) There is always the chance that because of lack of capacity in the testator to make a will or for some other cause, what purports to be the last will might not be valid, so that the "prior" will may not have been revoked and may survive to be the last will after all (if the doctrine of conditional revocation applies). That is unlikely where competent lawyers are employed, but it could happen.

(10) In connection with the revocation or attempted revocation of a will, regard should be given to Rule 214 of the FJR:

> Attempted revocation of will
> 214. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, must be accounted for to the Registrar's satisfaction

(11) Therefore, whatever method you follow, always make sure there is no doubt that revoked prior wills cannot be put forward for probate unchallenged.

7.3 Appointment of Executor

(1) At least one executor should be appointed; it is advisable that the client appoints a back-up executor (or more) in case the first-choice executor renounces the right to apply. If none is appointed by the will, an application will need to be made for Letters of Administration, as on intestacy. In Singapore, the class of persons who may apply for administration is limited (see S. 13, Probate and Administration Act). An administrator appointed under those circumstances is known as an administrator-with the will annexed.

(2) If an application for administration with will annexed has to be made, the court may require (and ordinarily will require) the applicant to furnish an administration bond, which causes additional inconvenience, and in larger estates, considerable nuisance unless all the creditors and beneficiaries can and do consent to the dispensation of the administration bond.

(3) So always take care to appoint at least one executor. There may of course be more than one executor, but if you have too many executors, then dealing with the estate, swearing and signing documents and dealing with the executors can cause difficulty, especially if some live

abroad.

(4) There is no ethical rule prohibiting a solicitor who drafted his client's will or another solicitor from the same law practice from being appointed as executor/trustee under that will, if the executor/trustee is not a beneficiary/legatee under the will. In fact, this is a common practice in other jurisdictions. Moreover, with the amendment of the Trustees Act which introduced a new Section 41Q that applies to deaths of testators on or after 15 December 2004, solicitors who are professional executors need no longer fear that their entitlement to charge for their services as executors would be in danger (due to Section 10 of the Wills Act). It is recommended that candidates should refer to Section 41Q

(5) However, solicitors must nevertheless note Rule 25 of the Legal Profession (Professional Conduct) Rules 2015 ("PRC"), which states solicitors are prohibited from acting for a client in preparing a will under which he would receive a significant gift, whether as beneficiary or otherwise.[4] Candidates are encouraged to refer to: -

(a) Legal Profession (Professional Conduct) Rules 2015;
(b) *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221
(c) Ethical Considerations in Preparing and Witnessing the Execution of a Will (http://www.lawgazette.com.sg/2011-04/85.htm)

7.4 Appointments of Trustee and Powers of Trustee

(1) The offices of **executor** and **trustee** are different, though the executor acts in a fiduciary capacity. An executor in Singapore has a statutory power of sale for administration purposes. However, those powers are lost once the duties have been completed, and the person to whom probate has been granted holds as trustee.

(2) Therefore, when selling the testator's immovable property, the executor should describe himself as selling as executor. If he describes himself as trustee, unless the will contains an express power of sale, he will have trouble in dealing with the requisition: "*Upon what does the vendor rely for his power of sale?"*

(3) Unless the will is a very simple one, it is wise to appoint the executor(s) as the trustee(s) of the will as well.[5]

(4) Normally, a trustee can only do those things which he is specifically empowered to do under the instrument constituting the trust, or under some other instrument ancillary thereto. In Singapore, certain powers are conferred upon trustees by the **Trustees Act 1967**. However, unless a will is properly written to give the trustee the powers he might need, you will probably find that situations will arise in which the trustee is powerless to do what should be done. Neither the Trust Instrument (in this case, the Will), nor the **Trustees Act 1967** might give him the power he is seeking.

(5) In that event, the trustee would have to apply to the High Court for an Order from the Court giving him power to do a specific act.

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[5] Note however that in *Low Ah Cheow's case, the appointment of the Executor as "Trustee"* as well backfired, because the Court of Appeal construed that it could not have been the intention of the testator to give the entire estate to the Executor since, in such a case, the Executor should not have been appointed as trustee, and he could not be holding the estate on trust for himself.

(6) In preparing the clauses to give powers, you should make provision:

(a) to define the power to be given;

(b) the circumstances, if any, in which the power may be exercised;

(c) the consent to be obtained of a person, if any, before the power can be exercised, and

(d) what releases and indemnities are to be given to the trustee.

(7) In drafting powers of the trustee for your client, care should be taken (a) to understand what powers are being given to the trustees, and (b) ensure that the trustees' powers are not wider than the testator had intended. A very instructive case of the importance of taking great care in drafting trustees' powers is the important case of *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] SGCA 41.

(8) In *Foo Jhee Tuang,* the trustees were given the following powers:

> "1. I GIVE and DEVISE my property known as No. 39, Lorong Marzuki, Singapore, unto my Trustees UPON TRUST to sell call in and convert the same into money with power to postpone the sale calling in and conversion thereof so long as they shall in their absolute discretion think fit without being liable for loss and to hold the net proceeds of the said sale and conversion upon the following trusts: -..."

(9) The words used unwittingly created a "trust for sale" (with its accompanying legal consequence being that the doctrine of conversion operated to convert the beneficiaries' entitlement under the Will from immovable property to movable property or personalty) with the trustees having "power to postpone the sale calling in and conversion thereof so long as they shall in their absolute discretion think fit without being liable for loss".

(10) *In Foo Jee Seng*, the Court of Appeal had held: -

> "22 The device of a trust for sale rests on the operation of the doctrine of conversion. This is based on the maxim "equity looks on that as done which ought to be done". Hence if there is a trust for sale of land (realty), equity notionally regards that land as money (personalty) from the moment the trust instrument takes effect; in the case of a will, that is the date of the testator's death. As a result, the land will devolve as personalty irrespective of the time of sale. The original function behind this doctrine was to prevent the injustice of beneficial interests being altered due to a trustee's failure to execute his duty to sell, especially during the period prior to the English Law of Property Act 1925 (c 20) ("LPA 1925") coming into effect when different rules applied to the devolution of personalty and realty.
>
> 23 **It must be made clear that a trust for sale is distinct from a power of sale.** The trust for sale produces an immediate notional conversion, whereas a mere power does not. Hence where powers of sale are concerned, the property changes in nature only upon sale, unlike the trust for sale. A trust for sale is mandatory, and imposes upon the trustee a duty to sell and convert, whereas a power of sale is a discretion which allows the donee of the power to decide when best to sell. Very

often, differentiating the two is not easy (exacerbated by the tendency of textbooks and judgments to use both terms interchangeably: see S J Bailey, "Trusts and Titles" (1942) 8 Cambridge Law Journal 36 at 39), and it is a matter of construction of the trust instrument to ascertain if a duty to sell exists. Yet, even with a duty to sell, the trust for sale often contains a power for trustees to postpone sale, a common feature in express trusts for sale."

(11) Candidates should read *Foo Jee Seng's* case carefully, as the case examines the pitfalls of careless reliance on precedents. Candidates should note that the "trust for sale" doctrine has been abolished in England since 1996 by virtue of the Trust of Land and Appointment of Trustees Act 1996 ("TLATA"), but the TLATA does not apply in Singapore.

(12) Provided the trustee appointed by the testator is a reasonable and honest person, and a person whose character and judgment the testator can trust, it is advisable to give the trustee specific powers to enable him to carry out the administration of the estate without incurring expense and trouble.

7.5 Appointment of Testamentary Guardian

(1) In Singapore, a testator may appoint a person to be the testamentary guardian of his infant children. The statutory provisions regarding the appointment of testamentary guardians, and their rights and powers, are found at Sections 5 to 8 of the Guardianship of Infants Act 1934. Salient provisions from the GIA are found below: -

Rights of surviving parent as to guardianship
6. — (1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the mother.

(2) On the death of the mother of an infant, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother. When no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the father.

(3) Where an infant has no parent, no guardian of the person and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the infant.

Power of father and mother to appoint testamentary guardians
7. — (1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother or father remains alive, unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court, and the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the infant, and in the later case may make such order regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.
(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(6) If a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

Dispute between joint guardians
8. Where two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper including power -

(a) to make such orders regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit;

(b) to order the mother or father to pay towards the maintenance or education of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable; and

(c) to vary or discharge any order previously made under this section.

(2) It can be seen from the above statutory provisions that the powers of testamentary guardians are very wide indeed.

7.6 Gifts and Legacies – Bequests (Personal Properties) and Devises (Real Properties)

(1) This is an area where the draftsman needs to use his knowledge and skill. It can be the most difficult part of writing a will and great care must be used;

(a) to ascertain what the testator wants to do,

(b) in considering what is the best way to do what he wants,

(c) to decide if anything he wants to do cannot be done. For example, it might infringe the

rule against remoteness of vesting of property or the rule against perpetuities[6].

(d) to ensure he is doing what he ought to do. For example, providing for spouse and children.

(e) to describe persons and things accurately.

(f) to use words that state what the testator intends and are not capable of bearing another meaning, and

(g) to make sure that all the testator's property will be disposed of under the will, so as not to cause even a partial intestacy.

(2) For some precedents In some will precedents, you will note that the testator in establishing a trust uses the formula:

> *"I give devise bequeath and appoint unto my trustee all my property, both real and personal, and wherever situate, and including any property over which I may have a power of appointment or dispositions upon trust, with power to sell call in and convert the same into money with power to postpone the sale calling in and conversion thereof etc."*

(3) Again, it is recommended that candidates should study the Court of Appeal's decision in *Foo Jee Seng* carefully for the legal implications of such clauses conferring powers upon the trustees; as explained in the case, there is a difference between a *trust for sale* and a *trust with a power to sell.*

7.7 Residue.

(1) In drafting a will, the draftsman must always make sure that the whole of the testator's estate is disposed of and that there is no partial intestacy (otherwise the provisions of the Intestate Succession Act will apply to such undisposed portion of the estate; see s. 10, Intestate Succession Act[7]). Unless the whole of the estate is wholly disposed of, for example, half to A and the other half to B, there will always be the possibility of something not thought of. Therefore, always look at the disposition clauses of the will after you have written it to see if there is any contingency in which an intestacy could occur and make sure of inserting a residuary clause.

(2) Absence of a residuary estate disposal clause can easily result in a claim or complaint of inadequate professional services or even negligence.

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[6] For the current Singapore statutory provisions on the rule against perpetuities and accumulations, read S. 31, 32, 33, and 34, Civil Law Act.

[7] S. 10, ISA stipulates:

> "Partial intestacy
> Where any person dies leaving a will beneficially disposing of part of his property, … this Act shall have effect as respects the part of his property not so disposed of, subject to the provisions contained in the will:
> Provided that the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is entitled to take that part beneficially.

[Note: the proviso to S.10, ISA is similar to S.24 Civil Law Act]

(3) An example of a residuary clause would be:

> *"To hold the rest and residue of my estate upon trust for my children, [AAA, AAB, and AAC] as shall be living at the date of my death in equal shares per stirpes[8]."*

7.8 Gift over clause

Where a gift is made to a person (not being a child or issue of the testator), then in the event that the beneficiary predeceases the testator or fails to satisfy some condition for the gift stated in the will, the gift, if it is of real estate or an interest therein will lapse and fall into the residuary devise[9] In such a case, it is necessary to have a "gift over" clause to give the legacy to another beneficiary (or to specifically provide – where it comprises personal property – that it shall form part of the residuary estate upon it lapsing or failing for any reason.

8. FAILURE OF GIFTS (LAPSING, ADEMPTION AND ABATEMENT)

8.1 Some Reasons for Failure

(1) There are many possible reasons why a testamentary gift (i.e. a gift made in a will) may fail:

- the beneficiary disclaims the gift (disclaimer);
- the beneficiary predeceases the testator (lapse);
- the beneficiary or his spouse witnesses the will (s 10 of the Wills Act);
- a specific gift is adeemed;
- by reason of public policy or because it promotes an illegal purpose;
- abatement or insolvency;
- uncertainty with reference to the gift;
- the gift is contingent on a condition which is not satisfied or it is forfeited due to the beneficiary doing an act that disqualifies him from inheritance (a `no-contest' clause);
- the gift was made as a result of fraud on the testator.

(2) We will discuss the usual grounds of failure:- lapse, ademption, abatement and disclaimer. Candidates are encouraged to read up on their own as to the other possible grounds of failure of testamentary gifts.

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[8] If a child who is a beneficiary of the residuary estate dies before the testator, there must be a gift-over clause. When preparing a a gift over clause, close attention should be paid to Section 26, Wills Act and the decision of *Re Loke Soh Lui* where the residuary beneficiary is a child of the testator and also *ADG v ADH* [2010] 1 SLR 557. In ADG v ADH, the following general principle was stated:-

> **"[40] … The applicable general principles which differentiate between the lapse of a specific gift and a residuary gift. *Williams* … states that:**
>
> > **A lapsed specific devise or specific bequest falls into residue. A lapsed gift of residue or a share of residue or a lapsed general gift of property passes as on an intestacy."**

[9] Note that S.20 WA only applies to lapsed devises of real estate, and not to personal property, so a gift over clause is necessary where there is a specific legacy of personal property to a beneficiary who is not the testator's child or issue.

8.2 Lapse

A testamentary gift lapses, with the consequence that that the gift fails if the beneficiary (other than where the beneficiary is a lawful child of the testator) predeceases the testator, unless there is a "gift over" clause. This is because the will is of no effect until the testator dies. The same applies to gifts to a limited company or other corporate body which has been dissolved.

8.3 Ademption

(1) Say, your client gave his car to his nephew in the will but before the death he sold the car. The gift to the nephew is considered to be adeemed.

(2) A specific gift is said to be 'adeemed' if at the testator's death the subject matter of the gift has been destroyed or converted into something else by the act of the testator (or has been acquired by the Government). If your client wanted to provide in his will for the proceeds of sale to be given to his nephew in the event that the property is sold before his death, it should be expressly stated in the will that the proceeds of the sale go to the nephew. In the absence of such a provision, your client's nephew does not have a right to the proceeds of sale of the property.

8.4 Abatement

(1) Abatement occurs when a provision has been made for a legacy, but the fund from which a legacy is to be paid is insufficient. The commonest example of abatement is where the testator directs certain moneys to be paid out of a particular fund. If the fund is inadequate to meet the total amount specified by the will, that margin which is not sufficient is said to have abated. If there is more than one beneficiary taking the share in the fund, the abatement will be proportionate to each of them.

(2) Alternatively, sometimes, the testator may simply provide that a beneficiary is to be given $X. The fund from which this money is to be paid may not be specified. In such cases, it is the duty of the trustee to provide for such a legacy from the funds that are available in the estate. This is where the provisions of the Second Schedule of the Probate and Administration Act will apply.

8.4 Disclaimer

(1) It is the prerogative of any beneficiary to disclaim a gift by will or an entitlement on intestacy. This includes a beneficiary who is a company or an unincorporated association. "*The law certainly is not so absurd as to force a man to take an estate against his will.*" (Abbot CJ in *Townson v Tickell* (1819) 3 B & Ald 31). For that matter, the beneficiaries under an intestate's estate may also disclaim.

(2) What happens to the gift where there is a disclaimer will depend on whether there is an effective gift over clause, and in the absence of a gift over clause, then it will depend on whether it is a specific gift or it is a residuary gift. The explanation by Justice Belinda Ang in *ADG v ADH* (referred to at Footnote 8 above) is very illuminating.

9. EXECUTION, ATTESTATION AND ALTERATIONS

(1) Finally, after possibly draft after redraft of the Will, the client is satisfied and is ready to execute the Will. This is no time to relax.

(2) The solicitor in charge of the preparation of the will must take care to ensure:

(a) the Will is signed at its end by the testator,

(b) in the presence of two witnesses (neither of whom are beneficiaries or spouses of beneficiaries), and who,

(c) in the testator's presence, and

(d) in the sight and presence of each other also sign as witnesses, and that

(e) it is signed in the presence of the drafting solicitor if possible, and that,

(f) it is checked by him after execution, especially if not executed in his presence.

(3) As mentioned above, no witness should be a beneficiary or the spouse of the beneficiary. A gift under the will to such a witness, or spouse will fail. If a beneficiary subsequently becomes the spouse of a witness, the gift will not fail:

(4) However, pursuant to S. 10 WA, the attestation of a will by a person to whom or to whose spouse a disposition is given shall be disregarded if the will is duly executed without his attestation, i.e. there are 3 witnesses to the execution of the will (which, in practice is an uncommon occurrence)

(5) It is advisable to have as witness persons with reasonable expectancy of life, who are likely to be accessible when the testator dies, so that one of them at least may make the affidavit of attesting witness if this is required, or can give formal evidence of due execution should that be an issue in the case of a contested will, or where the will is required to be formally proved. There is no legal requirement in the Wills Act that the attesting witnesses must be above 21 years old (or of any age, but that said, the attesting witnesses should be credible witnesses in case the due execution of the will is challenged).

(6) An attesting witness can be deaf, mute, have any physical impediments except that he must be able to "witness" the execution of the will by the testator. In short, the attesting witness must not be blind or visually handicapped to such a degree that he cannot see.

(7) For that reason, it is wise to require each witness, after his signature, to write his address and preferably his NRIC Number.

(8) Usually the solicitor himself would be one of the witnesses, and the other is usually one of the more "permanent" employees of his office. Temporary and transitory employees should be avoided if possible.

10. ATTESTATION

(1) In Singapore, no special form of attestation is required by law, although in practice words should be used to show that the Act has been complied with (**section 5 WA**). The procedure of obtaining probate of a will is easier if it contains a proper attestation clause duly completed, and the names and addresses and other identifying particulars (e.g. NRIC no of the witnesses

and/or their occupations) are clearly and legibly shown on the Will at the attestation clause.

(2) In a probate application, an affidavit of the attesting witness or other evidence may be required where:

(a) the attestation clause is incomplete

(b) there is doubt as to the testator's knowledge and approval of its contents

(c) the will is undated

(d) there are unattested interlineations, obliterations or alterations.

(e) different pens have been used by the deceased and/or the witnesses (Commentary: In most texts on wills drafting, it is strongly advised that the testator and the witnesses should sign with the same pen, as this is evidence that shows or suggests that the will was signed at the same time by all 3 (the testator and the 2 witnesses) thereby satisfying the requirements of S. 6, Wills Act). However, it does not appear to this writer that the Probate Registry of the Family Justice Courts considers the practice of having the testator and witnesses sign with different pens to be objectionable in any way.

(f) where there are any other matters requiring explanation.

(3) The practice of wills being taken away from the solicitor's office for execution is a perilous one. No matter how well the correct procedure may be impressed on laymen, they will show the greatest ingenuity and talent in getting it wrong (the facts in *Ross v Caunters* is a good cautionary example of why the solicitor who prepared the will should be one of the witnesses to the will). The lawyer should try to supervise the execution himself so that it is done properly. If the will is not signed in his presence, the lawyer should make sure it is brought to him afterwards for inspection. If anything is wrong it can be corrected then. This is better than having shocking surprises later when the testator has departed beyond recall.

11. ALTERATIONS

(1) Alterations made after the execution of the will necessitates the re-execution of the will (**S. 16 WA**). "Alterations" includes "obliteration" and "interlineation". Alterations made prior to execution should be authenticated by:

(a) being referred to specifically in the body of the will itself, or

(b) the signature or initials of the testator and witnesses being placed on the will, usually in the margin, adjacent to the alteration.

12. AFTER EXECUTION

(1) In law and in principle there is nothing wrong with a testator executing more than one original copy of the same will[10]. However, law firms have differing policies and practices, so candidates

[10] There is however a counter argument that this could lead to confusion subsequently if the testator has made a new will or wills, and there are still undestroyed originals of the earlier wills in existence and their could enable the earlier wills, although they have been revoked by the later wills, being submitted to the Family Justice Courts for grant of probate. Nevertheless, this type of occurrence is a usually quite rare, compared with the situation where the original will is lost, and if there is no original available, but only a photocopy thereof, it becomes very cumbersome and costly to apply to court for an order under Rule 248 of

should check with their firms as to their firm's policy or usual practice.

(2) Similarly, if there is only one original of the will, then there is no hard and fast rule as to who – i.e. whether the client or the law firm – should keep the original, and how it should be kept and stored. Please check with your firm as to the firm's policy or usual practice (if any).

(3) At the very least, though, a photocopy of the will should be kept by the Solicitor, completed with copies of drafts prepared in the course of the making of the will, and attendance notes of the instructions from the client, attendance on him for the drafting and the execution of the will. [11] If the will turns out to be the subject matter of a contested probate after the death of the deceased, the solicitor who had prepared the will is required to produce all "testamentary scripts" to the parties for an affidavit of testamentary scripts to be filed in the action. "Testamentary script" is defined at Rule 260(5) of the Family Justice Rules as:-

> (5) In this rule, "testamentary script" means a will or draft of the will, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed

(4) For the detailed provisions as to what the parties are required to do in relation to the testamentary script, please see Rule 260 of the FJR.

(5) As to whether information regarding your client having made a will ought to be notified to the Registry of Wills (for which a filing fee of $50.00 is payable to the Registry each time a will or codicil is notified to the Registry), please check with your firm as to their practice.

(6) Candidates should take advantage of the Practice Sessions to engage their Facilitators in discussions regarding these matters.

13. CODICILS

(1) A codicil is a testamentary document altering an existing will or other testamentary document. A solicitor should not draft a codicil unless he has the original will and other testamentary documents before him at the time. The risk is so great that if the solicitor has not the original will before him, an entirely new will should be made.

(2) If possible, the codicil should be endorsed on, or sewn into or otherwise attached to the will to which it is a codicil. However it is a wise practical rule to execute a new will whenever any substantial alteration is intended.

(3) Great care must be taken to correctly identify the original will (and subsequent codicils, if any) in the actual wording of the codicil. Merely endorsing the codicil on the original will is not, of itself, sufficient.

(4) Take care, that subject to the variations made by the codicil, the original will (and subsequent

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the Family Justice Rules to "admit to proof a will contained in a copy ... where the original will is not available" before the executor can apply for a grant of probate.

[11] For a case where the Court of 3 Judges drew an adverse inference arising from the paucity or absence of attendance notes recorded by the solicitor for the preparation of a client's will, see *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221

codicils, if any) are confirmed by the codicil. Apart from reducing the possibility of any conflict, to confirm the previous instrument "republishes" it as at the date of the codicil.

(5) The codicil is legally a will and it must be executed in the same way.

14. GIFTS TO CHARITIES

(1) Clients may wish to leave money to institutions or to charities under their wills and special attention must be paid to how those desires are met. Always make sure of the correct name of the institution or charity intended to be assisted, and make sure that the charity represented by the name stated in the will is a charity which is still in existence, otherwise there might have to be a *cy-pres* Application made to the Court, and apart from the trouble and inconvenience, it might well be that the solicitor may be held answerable. Charities are registered in Singapore by the Commissioner of Charities; **Charities Act.**

(2) For an interesting Singapore case of a will where the testator had made her own home-made will naming charities (and other beneficiaries) which either had the wrong names, never existed or it was unclear who the beneficiaries were intended to be, see *Re Will of Samuel Emily* [2001] 3 SLR(R) 0335

(3) It is advisable to include in charitable bequests a release for the trustee, so that the trustee is not bound to see to the application of the bequest. Obviously, it would be an unfair burden to load the trustee with the responsibility for the proper application of a charitable bequest where the bequest consists of a gift of money to some large charitable institution and, particularly where that gift constitutes a fund to be disbursed over a long period of years.

(4) Similarly, in relation to gifts to religious orders, congregations and unincorporated associations, it is usual to include a clause releasing the trustee. A form of release is as follows:

> *"and I direct that receipt from the Treasurer for the time being of the Singapore Association of the Visually Handicapped shall be a sufficient discharge for moneys paid by my trustee to that charity in accordance with this bequest."*

15. MISCELLANEOUS PROBLEMS

It is part and parcel of every solicitor's practice that he will be asked at some point to prepare, supervise and ensure the due execution of a will. The formalities cause little trouble in practice, and lead to very little litigation. But problems, mostly of a practical nature, do come before the courts from time to time and may serve as a warning to any solicitor who may feel that he will never have any problem.

15.1 Mental Capacity of the Testator

(1) Suppose the testator is foolish, irrational, eccentric, very old and suffering from senile decay, or possibly mentally ill, what should the solicitor do? Certainly he should point out to the client any lack of wisdom in any proposed course, and should keep a careful contemporary memorandum of having done so, otherwise he may in due course be faced with some disgruntled relatives. If there is a satisfactory will in existence and the testator is proposing unwise testamentary changes the solicitor may be able to stall for a bit and time may resolve the problem. If there is any doubt about testamentary capacity then he might approach the

client's doctor, though this is manifestly a delicate matter and he may receive no response.

(2) A medical certificate, if obtainable would be very helpful. In addition or alternatively, the doctor may agree to be a witness to the will. It might be appropriate to suggest that the client might like to talk it over with a relative such as a grown up son, or a friend, though manifestly any risk of undue influence would have to be carefully watched, and the solicitor should in any event see the client again, alone, before finally acting on the instructions. If the solicitor is satisfied that the client has testamentary capacity then he must, unless he refuses to act, act upon instructions, however eccentric. But an apparently valid will ought not be made just to humour the client if the solicitor is satisfied that there is in fact no testamentary capacity. In the end the question must be: what is best for the client? It may be that the execution of a will, is psychologically the best thing to do. But again a detailed and carefully recorded contemporary attendance note should be made fully setting out the solicitor's judgment, and the evidence on which it is based, of the client's testamentary capacity.

(3) As stated by the Court of Appeal in *Chee Mu Lin Muriel:*

> *"62. With Singapore's aging population and the increased life expectancy of Singaporeans, aged members of our community not infrequently experience resultant loss in memory or mental capacity. In these circumstances, it is desirable that members of the legal profession play a part in reducing the opportunities for litigation over testamentary dispositions by testators who are suffering from dementia, Alzheimer's disease and the whole range of mental illnesses that are associated with old age. If solicitors do their part, it will reduce, if not eliminate, all the borderline cases where doctors are asked to give their best opinions on the mental condition of someone they might not even have attended to, based on medical records which often are not helpful for the purpose at hand. When psychiatrists err, judges will also err if they rely on their evidence. The judicial process is not the best mechanism to determine the testamentary capacity of a testator, and solicitors who draw up wills bear a special responsibility to the testator and the legitimate beneficiaries not to have their handiwork picked over by psychiatrists acting on imperfect information in a court of law."*
>
> *Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] SGCA 27

15.2 Mutual Wills / Mirror Wills / Joint Wills

(1) Married couples frequently wish to make wills together, and ask the solicitor to draw up "joint wills" for them. While it is technically possible to have a "joint wills" which is a will where there is more than 1 testator, it is almost unheard of in actual practice as it leads to a host of difficult problems when one person dies or when one person wishes to revoke the "joint will".

(2) Actually, what the clients usually have in mind are mirror wills or mutual wills.

(3) Mirror wills are merely wills each of which precisely reflects or mirrors the terms of the other will, and these are frequently entered into between spouses. They are nothing more than wills with reciprocal terms, and each party is free to revoke the will at any time, without informing or obtaining the consent of the other party.

(4) However, mutual wills are made by one testator under a legally binding contract with another testator to make the will and not revoke it without the other party's consent. The contract need not be a written one unless the will disposes of an interest in land. To be a legally binding contract to make mutual wills, the contract must (a) be intended to create a legally

binding relationship and (b) must be supported by consideration.For an interesting recent case on mutual wills from across the Causeway, see *Hiroto Watanabe v Law Yen Yen & Anor* [2012] 8 MLJ 202.

(5) If the court determines that the parties had made mutual wills, equity can intervene under the doctrine of mutual wills to impose a trust on a testator's property. This occurs where two or more people make wills in agreed terms and agree' that neither will revoke without the consent of the other. If the first to die carries out his part of the agreement equity will regard it as unconscionable for the survivor to deviate from the agreed terms. Therefore, equity will impose a trust on the survivor's property. The survivor remains free to revoke his will but because of the existence of the trust the new dispositions of the property will be ineffective.

15.3 What if a beneficiary who is a child of the testator predeceases him, leaving issue?

(1) Where, before the testator's death, one of his beneficiaries, who is a legitimate child of the testator, has passed away leaving issue, the will draftsman should ascertain from the client what his intentions are regarding the gift to the deceased child.

(2) Candidates must read S. 26, WA very carefully and understand it well. Section 26 reads:

Gifts to children or other issue who leave issue living at testator's death not to lapse

26. Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of that person shall die in the lifetime of the testator leaving issue, and any such issue of that person shall be living at the time of the death of the testator, that devise or bequest shall not lapse, but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

(3) A cursory reading of Section 26 will lead one to think that it is similar to what happens in the analogous case of a person dying intestate and one or more of his children had predeceased him leaving issue, namely:

Section 7, Intestate Succession Act

Rule 3

Subject to the rights of the surviving spouse, if any, the estate (both as to the undistributed portion and the reversionary interest) of an intestate who leaves issue shall be distributed by equal portions per stirpes to and amongst the children of the person dying intestate and such persons as legally represent those children, in case any of those children be then dead.

Proviso No. (1) — The persons who legally represent the children of an intestate are their descendants and not their next-of-kin.

Proviso No. (2) — Descendants of the intestate to the remotest degree stand in the place of their parent or other ancestor, and take according to their stocks the share which he or she would have taken.

(4) Actually, the true meaning of Section 26 as interpreted by the Courts (*Re Loke Soh Lui* [1997] 3 SLR 958) is radically different from the situation where a person has died intestate. Candidates should read *Re Loke Soh Lui* carefully; the decision may be somewhat counter-intuitive, but it

remains good law[12] today.

(5) The following quotes are from the *Re Loke Soh Lui* decision:

"20. How the gift devolves if [s. 26] is applicable has been dealt with in In re Hurd, In re Curry, Stott v Stott [1941] Ch 196 where the headnote reads as follows:

Held, that [s 26] applies only to prevent lapse. It does not alter the way in which the estate of the person predeceasing the testator is to be administered. It simply increases that estate, and does not alter the persons entitled to it under the law in force at the date of the death of the person predeceasing the testator.

21 I am of the view that s 26 does not apply to a class gift. There is thus an important difference between gifts to a class and those which are not.

23 When a testator intends to give to his child or other issue of his (hereinafter called "named children") and not to a class, with the gift falling into the estate of those named children should any of them predecease him leaving issue living at the time of the testator's death, the testator need not express that intention in the will as s 26 will operate to ensure that the gift will be saved to the estates of those named children predeceasing the testator. The issue of such deceased children may then benefit under the estate. Of course, the testator is not precluded from spelling out that intention in his will if he wishes to do so out of abundance of caution.

24 When a testator intends the gifts to the named children to lapse should they predecease him, then the testator has to spell out that intention in his will. With that clear contrary intention appearing, s 26 will not operate and his intention as expressed in the will would prevail. If he does not state that contrary intention, then s 26 will operate to assume that there was no such intention for the gift to the named children predeceasing him to lapse and hence, the gift devolves to the estate and the living issue of the named children may then be able to benefit under the said estate.

25 When a testator intends the gift to be given to a class of persons, and intends that the share of the member of the class predeceasing him is to lapse and be redistributed to the other members of that class surviving him, it is sufficient for him to simply state in the will that the gift is to that class of persons without having to specify the aforesaid manner of distribution. Again, if out of abundance of caution, the testator wishes to spell out that only the remaining surviving members of the class are to share the whole gift, he is not precluded from doing so.

26 Should a testator intend that the gift be given to a class of persons such that the estate of the member of the class predeceasing the testator is to step into the shoes of that deceased member to take his share, then the testator has to express that intention clearly in the will. Otherwise, the estate of the member of that class predeceasing the testator will be excluded from the gift in accordance with the rules relating to class gifts. One cannot in such a case rely on s 26 of the Wills Act to have the gift passed over to the estate as s 26 is not applicable to class gifts.

[12] The Wills Act in England was amended in 1983 and hence the position in England is now similar to Section 7 Rule 3 of the Intestate Succession Act. However, this is not the case for Singapore as our Section 26 is still unchanged. Candidates should therefore be mindful of the difference in the legislative provisions when reading UK legal texts and case law post 1983.

27 It must also be noted that s 26 does not apply where the gift is to named individuals who are not the issue of the testator. The gift will lapse and fall into the residue, if such a named individual predeceases the testator unless the testator has stated clearly in the will that there is a gift over should that named individual predecease him.

28 Knowledge of the law concerning wills and the scope of application of s 26 of the Wills Act must be imputed to the testator and his solicitor who has been instructed to draft the will on behalf of the testator, unless there is evidence to the contrary. It must follow that it is upon such factual basis that we interpret the language of the will to ascertain the intention of the testator. It cannot be from any other basis. The applicable principles of construction are those existing at the time of making the will. If the legal rules pertaining to the construction had changed since the will was made, it is my opinion that the determination of what the testator had truly intended at the time of making the will must not be by reference to the new rules of construction appearing thereafter."

37 In any event, s 26 is not applicable to class gifts and one invariably has to discover the intention of the testator as evidenced by the will to determine how the assets of the testator are to be distributed ...

15.4 Difference in treatment of lapse of a specific gift and lapse of a residuary gift

(1) A wills drafter should always remember that

"A lapsed specific devise or specific bequest falls into residue. A lapsed gift of residue or a share of residue or a lapsed general gift of property passes as on an intestacy."

(ADG v ADH [2010] 1 SLR 557, at para 40).

(2) In the case of specific gifts, the general rule is that lapsed or void legacies fall into residue unless it is disposed of by a contrary provision in the will, but where the disposition of the *residue itself lapses*, the principle is that a gift of residue which lapses passes as on an intestacy, unless the testator had in the will given directions to the contrary, for example, it is stated in the will that in such a case, "any such share of the residuary estate, whether lapsed or revoked, shall fall into residue and such direction operates as a gift of that share to the other residuary legatees".

15.5 Solicitor or Solicitor's Family Member(s) Benefitting Under a Will

(1) A solicitor is entitled to proper remuneration for drawing and preparing and supervising the execution of the will, but he ought not to benefit as a legatee. If the client is a friend and wishes to benefit the solicitor then the client should be advised, with a tactful explanation of the reason, to seek the advice of an independent solicitor.

(2) The Court of 3 Judges had considered in great detail the issue of gifts made by clients to solicitors, whether inter vivos or as testamentary gifts in *Law Society of Singapore v Wan Hui Hong James*. In the decision, the Court had stated, *inter alia:-*

(3) The rule on solicitors receiving gifts from clients

"3 Before turning to the facts and issues in this case, we take the opportunity to clarify the rationale and purport of r 46 of the Rules. As there has been no judicial guidance thus far

on r 46 – this being the first occasion on which a breach of that rule has come before this court as far as we can ascertain – we think that it would now be appropriate to provide some such measure of guidance to the profession. Rule 46[13] reads as follows:

> Gift by will or inter vivos from client
>
> 46. Where a client intends to make a *significant gift by will or inter vivos, or in any other manner*, to —
>
> (*a*) an advocate and solicitor *acting for him*;
>
> (*b*) any member of the law firm of the advocate and solicitor;
>
> (*c*) any member, director or employee of the law corporation of the advocate and solicitor;
>
> (*ca*) any partner or employee of the limited liability law partnership of the advocate and solicitor; or
>
> (*d*) any member of the family of the advocate and solicitor,
>
> the advocate and solicitor *shall not act for the client **and** shall advise the client to be independently advised in respect of the gift*."

[bold in original omitted; emphasis added in italics and bold italics] **(Court of Appeal's annotation note)**

(4) *Law Society of Singapore v Wan Hui Hong James* is a very important decision and exposition of the duties of solicitors vis-a-vis their duties to advise clients with regard to gifts (especially if it is a "significant gift"]. In that case, the solicitor – who at the time of the hearing was a solicitor of 42 years' standing, was ordered to be struck off the roll and pay the Law Society's costs.

(5) Rule 25 of the Legal Profession (Professional Conduct) Rules 2015 re-enacts, and in fact has expanded the said Rule 46. Rule 25 reads as follows:-

> Gifts from client
>
> 25.—(1) Paragraph (2) applies -
>
> (a) where a client of a legal practitioner intends to make a ***significant gift, whether by will*** or while the client is alive, or in any other manner, to -
>
> (i) the legal practitioner;
>
> (ii) the sole proprietor, or any partner, director, consultant or employee, of the law practice in which the legal practitioner practises;
>
> (iii) any immediate family member[14] of –

[13] Re-enacted as Rule 25 of Legal Profession (Professional Conduct Rules) 2015, to be read with Rule 22.

[14] This is defined at Rule 2(1) as a spouse, child, grandchild, sibling, sibling's child, parent or grandparent;

(A) the legal practitioner; or

(B) the sole proprietor, or any partner, director, consultant or employee, of the law practice in which the legal practitioner practises; or

(iv) the law practice in which the legal practitioner practises; or

(b) where a client of a law practice intends to make a significant gift, whether by will or while the client is alive, or in any other manner, to -

(i) the law practice;

(ii) the sole proprietor, or any partner, director, consultant or employee, of the law practice; or

(iii) any immediate family member of the sole proprietor, or any partner, director, consultant or employee, of the law practice.

(2) The legal practitioner or law practice -

(a) must not act for the client in relation to the gift; and

(b) must advise the client to obtain independent legal advice in relation to the gift.

15.6 Solicitor's Negligence in Wills Drafting / Execution

Candidates are required to read and comprehend *Cheo Yeoh & Associates LLC and another v AEL* [2015] SGCA 29, which is the first reported case in Singapore of a solicitor having been held to be liable for professional negligence to beneficiaries under a will which was not validly executed and hence was not a valid will.

----- End -----