

SILE Part B 2024

Probate and Succession Planning

Contact Session 1

By Sim Bock Eng
September 2024

The Probate and Succession Planning Practice

The Practice

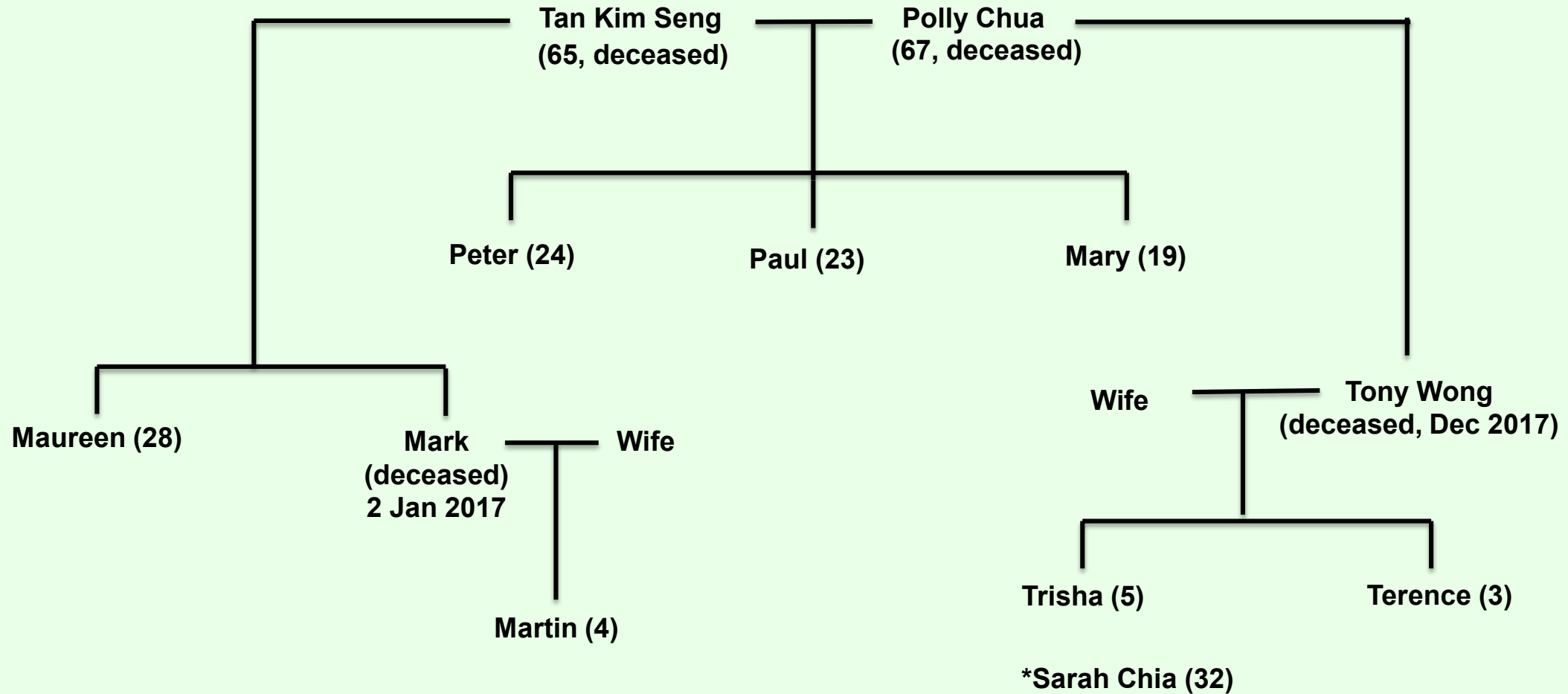
- Wills*
- Inter vivos gifts
- Applications of Grants and Administration of Estate*
- Mental Capacity – Doneeship/ Deputyship*
- Trusts
- Family Offices
- Charities

What we will cover

- Wills and laws of succession; proper execution of wills
- Application for grants of representation
 - Probate
 - Letters of administration
 - Reseal of grants
- Mental Capacity Act
 - LPA
 - Deputyship application

Question 1

Family Tree



(a) Advise on what needs to be considered and the procedural steps to be taken in Kim Seng's estate for the application for a grant of representation.

1. Is there a valid Will?
 - a. Original available? (section 9 PAA, rule 248 FJR)
2. Who are the executors and who will apply for the Grant?
 - a. Polly
 - b. Lucy and Peter (renunciation – section 3(2) of PAA, rule 233 FJR, Form 53(b))
 - c. Who? (section 13 PAA)
3. What type of Grant?
 - a. Grant of Probate
 - b. Grant of Letters of Administration with Will Annexed?

(a) Advise on what needs to be considered and the procedural steps to be taken in Kim Seng's estate for the application for a grant of representation.

4. Death certificates

- a. Translation? And affidavit (rule 953 FJR)**

5. Which court? Gross value of estate (Family Justice (Family Proceedings before Family Division of the High Court) Order 2014)

- a. More than S\$5 mil - Family division of the High Court**
- b. Else Family Justice Court**

6. Timing of application

- a. Within 6 months of death?**

7. Application in other countries?

(a) Advise on what needs to be considered and the procedural steps to be taken in Kim Seng's estate for the application for a grant of representation.

8. Procedure to apply for Grant of Probate

- a. To file ex parte OS, Statement (Form 51). CTC of Will (and translation), CTC of death certificate (and translation), renunciation of Lucy, Administration Oath, Affidavit of competency of translator. A checklist will be generated with a provisional reference number.
- b. Optional whether to carry out probate and caveat searches
- c. By 4:30 pm of next working day – to produce original Will at Probate counter for verification
- d. If documents are accepted by court – a probate number will be generated; if documents are rejected, to make rectifications.
- e. Within 14 days, applicant to affirm and file supporting affidavit exhibiting statement, schedule of assets (if available), CTC of Will and death certificate and other documents).
- f. Hearing date will be provided. If court is satisfied, Order in terms will be made on that day.
- g. If Schedule of Assets were not previously filed, to file under supplementary affidavit
- h. Conduct probate and caveat searches
- i. File request for extraction of Grant

(b) Advise how Kim Seng's estate and Polly's estate (assuming Polly died intestate) are to be administered and distributed.

1. Who died first?
 - a. Section 30 Civil Law Act 1909
2. CPF monies (section 25 CPF Act)
3. Polly's estate
 - a. Survivorship re assets held in joint names with Kim Seng
 - b. To Kim Seng
 - 5 Chestnut Walk
 - Apartment in JB (assume survivorship applies)
 - OCBC fixed deposit
 - c. Polly died intestate – section 7 of ISA
 - d. Kim Seng – half to spouse
 - e. Half to children. Who are her children?
 1. Peter, Paul and Mary
 2. Tony (section 7 rule 3 ISA)
 3. Sarah Chia (Section 7(2) Adoption of Children Act)

(b) Advise how Kim Seng's estate and Polly's estate (assuming Polly died intestate) are to be administered and distributed.

4. Kim Seng's estate

- a. Recipient of assets held in joint names with Polly
- b. Testate

5. Distribution

- a. S\$20k to Atheist Society of Singapore
- b. 31 King's Road to Maureen (US) – sections 3(3), 3(4) of Residential Property Act 1976, section 26 of Civil Law Act 1909
- c. Residue
 - 5 Chestnut Walk
 - Apartment in JB (assume survivorship applies)
 - OCBC fixed deposit
 - Bank of Singapore
 - car
 - shares in CDP
 - half share of Polly's estate

(b) Advise how Kim Seng's estate and Polly's estate (assuming Polly died intestate) are to be administered and distributed.

d. Debts of S\$12k

e. Residue to Polly and "my children in equal shares as shall be living at the date of my death"

6. Who are his children "living at the date of [his] death"?

a. Peter, Paul and Mary

b. Maureen

c. Mark(?)

(c) How would Kim Seng's residuary estate be distributed if Kim Seng's will contained the alternative clause 5

Originally in the Will:

“5. Subject to the payment of my debts, funeral and testamentary expenses and estate duties if any, I give devise and bequeath all the rest of my movable and immovable property wheresoever situated to my wife the said Polly Chua and my children in equal shares as shall be living at my death.”

Alternative:

“5. Subject to the payment of my debts, funeral and testamentary expenses and estate duties if any, I give devise and bequeath all the rest of my movable and immovable property wheresoever situated to my wife the said Polly Chua and my children Maureen, Mark, Peter, Paul and Mary in equal shares.”

(c) How would Kim Seng's residuary estate be distributed if Kim Seng's will contained the alternative clause 5

- Section 26 of the Wills Act
- Re Will of Loke Soh Lui, deceased [1997] SGHC 346

Original clause 5

- Class gift
- “as shall be living at my death”

Alternative clause 5

- Mark's shares will go to Martin

(d) Explain to Peter, who can apply for a grant of letters of administration in respect of Polly's estate.

- Section 18(2) PAA
- Spouse
- Children
 - Tony – deceased
 - Peter
 - Paul
 - Mary – minor
- Number of administrators

(e) Explain to Peter, whether the court will require security to be provided before a grant of letters of administration will be issued in respect of Polly's estate, and of so, what can be done.

- When security is required - Section 29 PAA, para 68 FJC PD
- Application for dispensation of sureties – para 69(1) FJC PD
- Affidavit to address section 33 and 34 of Trustees Act

Question 2

Mabel's will appoints her friends Anna and Belle as her executors. The will contains a gift to Belle of S\$100,000 and leaves the rest of the estate to a charity. The two witnesses to the will are Mabel's friends Catherine and Anna. Which one or more of the following statements is correct?

- a. The will is invalid as it was witnessed by an executor.
- b. The will is valid but the gift to Belle cannot take effect.
- c. The will is valid and the gift to Belle can take effect
- d. The will is valid but only Belle can be the executor

Answer: C

An executor can be a witness to a will and can be a beneficiary to a will. The restriction is only as to witness of a will and his/ her spouse from benefiting from under the will.

Question 3

Colin (28 years old) and David (26 years old) were killed in a car accident when their car hit a building and burst into flames. It was not possible to ascertain their respective times of death. In Colin's will, he gave S\$200,000 to David and the rest to Colin's parents. Colin is not married and is survived by his parents. Which one or more of the following statements is correct?

- a. The S\$200,000 will be given to David's personal representatives.
- b. The S\$200,000 will be given to Colin's parents as residuary estate.
- c. The gift to David fails because it cannot be proven that David survives Colin.
- d. The gift to David fails, the S\$200,000 will become Colin's residuary estate.

Answer: A

Section 30 of Civil Law Act – where a person dies in circumstances rendering it uncertain which of them survived the other, the deaths are presumed to be in order of seniority and the younger is deemed to have survived the older. The gift to David does not fail but instead will go to David's estate.

Question 4

Lucy's only living relative is her sister Lorraine. Lucy's will states as follows:

- Her Audi car to be given to her sister Lorraine;
- Her diamond necklace be given to her secretary Sophia;
- The residue be given to her boyfriend Benjamin.

Lucy lived a long life and at the time of her death, her Audi car has been replaced a few times and lastly by a BMW. She has given her diamond necklace to a nurse who took care of her when she had COVID19. Her boyfriend Benjamin died before her. Which one or more of the following statements is wrong?

- a. The gifts of the Audi car and the diamond necklace fail as a result of ademption and Lorraine and Sophia will not receive their respective stated gifts.
- b. The gift to Benjamin fails as a result of the doctrine of lapse.
- c. All of Lucy's estate does not pass under her Will, but under the laws of intestacy to Lorraine.
- d. All of Lucy's estate will be regarded as residuary and received by the estate of Benjamin.

Question 4

- a. The gifts of the Audi car and the diamond necklace fail as a result of ademption and Lorraine and Sophia will not receive their respective stated gifts.
- b. The gift to Benjamin fails as a result of the doctrine of lapse.
- c. All of Lucy's estate does not pass under her Will, but under the laws of intestacy to Lorraine.
- d. All of Lucy's estate will be regarded as residuary and received by the estate of Benjamin.

Answer D

The gifts to Lorraine and to Sophia are adeemed. The gift to Benjamin lapsed because he predeceased Lucy. All of Lucy's property is thus undisposed of and will pass under intestacy rules to the sister Lorraine.

Question 5

What is the correct sequence for an application for Grant of Probate?

- A. File the originating summons, statement in Form 51, produce the original will and death certificate to the courts, file the supporting affidavit and administration oath, file the schedule of assets.
- B. Get the checklist from the courts, file the originating summons, statement in Form 51 and other documents according to the checklist, file the schedule of assets, file the Administration Oath and Affidavit.
- C. Conduct a search in the record of caveats and record of probate application, produce the original will and death certificate to the courts to obtain the checklist, file originating summons and statement in Form 51, file supporting affidavit and administration oath, file schedule of assets and supporting affidavit.
- D. Conduct a search in the record of caveats and record of probate application, file originating summons and statement in Form 51, file supporting affidavit and administration oath, produce the original will and death certificate to the courts to obtain the checklist, file schedule of assets and supporting affidavit.

Answer: A

Question 6

Andrew in his will appointed his wife Julie and his best friend Thomas as the executors. Andrew and Julie died at the same time in a fire attending a relative's wedding dinner. Thomas is an undischarged bankrupt. Who can apply for Grant of representation for Andrew's estate?

- A. The residuary legatee of Andrew's Will or the legal representative of that residuary legatee.
- B. The executor of Julie's will can apply, in accordance with section 25 of the Civil Law Act 1909.
- C. Thomas as the named executor of Andrew's will.
- D. The person who can apply is determined by the priority as set out in section 7 of the Intestate Succession Act 1967.

Answer: A

Failure of executors – see Section 13(2) PAA

Questions received

Wills

1. Are solicitors who witnessed a will obliged to testify in court? Can they bill for it?
2. On the formalities under the Will Act, what is the minimum "markings" required? 1) Full signature of Testator followed by handwritten name of two witnesses below it ? 2) Full signature of all 3?(as suggested by template provided for the course) 3) Full signature of all 3 plus initialling of every page? 3) is the kiasu option, but is it really called for Australian case law appears relaxed. So long as there are any kind of handwritten markings anywhere on the document by all 3 at the same occasion, the courts there have held the document as a valid will.
3. Can you clarify Wills Act s 6(2)? The teaching material is the best in course, in my view. However, I couldn't understand the point of s6(2) in the Reference Material 6a). Does it create an exception where the Testator can have someone sign on his/her behalf? Yet the Testator has to be present and somehow indicate her approval but not in Attestation? Does she sign or not sign? If she can sign, why have someone else sign on her behalf? Are witnesses' signature sufficient to testify that someone else signed on her behalf? Must extra words be added to the attestation to that effect? What kind of situation is anticipated by s 6(2)? What is meant by the following phrase "... shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." What is meant by "subscribe"? How is it different from "sign"? Whose "Attestation"?

Wills Act 1838 section 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 2 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.

Attestation

SIGNED by the abovenamed
[name of testator]
as his last Will and Testament
in the presence of us both
the same having been first read to him by me
the said _____ in Mandarin
when he appeared to thoroughly understand the same
and approve the contents thereof (he understands
imperfectly the English language but understanding
well Mandarin), we being present at the same time who at
his request and in his presence and in the
presence of each other have hereunto subscribed
our names as witnesses

4. For abatement, does it apply to residual gifts only, or can it apply to specific gifts too ?
Example 1: The will says give \$200 to A and all remaining sums to B, but there is only \$180
How will the \$180 be distributed? Example 2: The will says give \$200 to A and \$100 to B,
but there is only \$200. Does ademption apply, or is it abatement?
5. Where a final will is made without revoking the previous will, both are valid and should be construed as consistently as possible. But what happens in a conflict? Does the latest will take precedence?
6. s9 WA provides that the incompetency of an attesting witness (to be admitted a witness to prove the execution of the will) will not invalidate a will. What are some reasons why a person would be “incompetent to be admitted a witness to prove the execution” of the will? Does s 9 mean that an incompetent witness can still be a witness?
7. Sorry, what does s 9 of the Wills Act mean by incompetency? What is the purpose of having witnesses to a will if s 9 provides that it does not matter whether they are incompetent to prove execution?

Wills Act 1838 section 9

9. If any person who attests the execution of a will shall, at the time of the execution thereof or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, the will shall not **on that account** be invalid.

8. In para 3 under the section “Ethics Committee’s Guidance” of Law Society of Singapore – Ethics Committee Guidance Note – “Ethical Considerations in Preparing and Witnessing the Execution of a Will” – Law Gazette, April 2011, it states that "As the solicitor is effectively his firm’s client". Was wondering whether there is a typo, and it is supposed to be “As the beneficiary is effectively his firm’s client”? If there is no typo, what does this phrase mean?
9. What does "altered circumstances" mean in s14 of the Wills Act?
10. What is the difference between testamentary capacity and mental capacity to make a will
Are they the different terms referring to the same thing?
11. Rule 233(1) FJR states that renunciation of probate must be done expressly. However, I understand that s4 PAA provides for constructive renunciation. Does express renunciation in Rule 233(1) FJR include constructive renunciation by way of s4 PAA?

Intestacy

12. In presentation 2, slide 11, it is stated that "Interesting, if the deceased was an illegitimate child, Rules 4 and 5 must be read with s 10(2) Legitimacy Act". Does this mean that if the deceased is an illegitimate child, has a spouse and no children, the mother of the deceased will be entitled to take an interest in half of the estate?
13. In presentation 2, slide 26, it is stated that s 9 ISA only applies to the entitlements of the child (or his descendants) but not to the others, e.g. spouse, parents, siblings, etc. "Does this mean that advances will be taken into consideration when estimating the distributive share of the spouse? Could you give an example of how this would factor into the estimation of the analysis?"
14. If X died intestate with no surviving spouse, parents or issue, and X has 1 brother, 1 sister, 1 niece (X's sister's child) and 1 grandniece (X's niece's daughter). If both the sister and niece are also deceased, am I right to say that X's brother gets the full estate or is the estate shared between X's brother and X's grandniece?

15. Can I clarify that for section 7 Rules 7 and 8 of the ISA, when the statute says grandparen take in equal portions / uncles and aunts take in equal portions, (a) this is referring to grandparents / uncles and aunts who are alive; and (b) therefore, if a grandparent or uncle/aunt has died, their issues have no claim?

16. Is s 20 meant to codify the position in ADG v ADH [2010] 1 SLR 557 at [40] 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.” Or does s 20 mean to extend the proposition in ADG v ADH to include non-specific gifts of real estate as well?

WA 20. Unless a contrary intention appears by the will, such real estate and interest therein as is comprised or intended to be comprised in any devise in the will contained, which fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in the will.

ADG v ADH @ [42]

Where the gift of a share in residue fails, *prima facie* the lapsed share does not go to increase the other shares of residue but passes on an intestacy; *but the will may direct that any such share*, whether lapsed or revoked, *shall fall into residue and such direction operates as a gift of that share to the other residuary legatees*, or the will may direct that all are to receive an equal participation in the property.
[emphasis added]

17. s 26 is only applicable in respect of the testator's children but *Re Loke Soh Lui* states that s 26 does not include class gifts. Does this mean that s 26 only applies in respect of gifts made to specifically named children, and cannot be made to the testator's children as a class?
18. Slide 4 of the slides on *Dying Testate v Dying Intestate* mentioned s 18(3) of PAA, where only next-of-kin who qualifies under this section can be administrators. However, s 18(3) talks about the court being able to limit grant of LOAs. Should the slide mention s 18(2) instead?
19. In the Intestacy video lecture, the question was posed whether a child adopted under Australian law would be a "child" under the ISA. However, this question was not answered. Further, in *Lim Weipin v Lim Boh Chuan*, the court found that LW was not an "adopted child" under Chinese law, but did not expressly state that if LW had been an adopted child under Chinese law, he would have been a "child" under the ISA. Kindly advise if only children adopted under Singapore, Brunei and Malaysia law would be a "child" under the ISA. Thank you.

20. Does s6 Guardianship of Infants Act 1934 apply only when the parent is dying intestate, or will it also apply when the parent is dying testate?’

21. Please kindly elaborate on s 10 of the Intestate Succession Act. Is the personal representative a person who has to apply to be such and approved/appointed by the court? In terms of interpretation, is it correct to say that the personal representative is a trustee for the undisposed part, but if he is a beneficiary he cannot be a trustee (but the s 10 is not engaged in the first place because the undisposed part is actually disposed of, with the personal representative being the beneficiary).

Inheritance (Family Provision) Act 1966

22. For presentation 3, slide 18, it is stated that for dying intestate, "The persons who apply for grant of LA also cannot commence any proceedings qua administrators of the deceased's estate until after they have extracted the grant of LA.". Does this mean that the administrators will eventually have the right to commence proceedings? So, the advantage of having a will here is just that the right to commence proceedings accrues earlier?
23. In multiple statutes, the term "infant" is used. What is the age range of a child that would be qualified as an "infant"?
24. Hello, I am having trouble understanding s26 CLA. My understanding of the provision is that if a beneficiary is bequeathed mortgaged property under a will, the residuary estate cannot be used to redeem the mortgage, unless specifically provided for in the will. Can you please confirm if my understanding is correct? Thank you.
25. Section 3(1)(c) of IFPA - would like to confirm that an infant daughter would not be able to apply. If yes, why is that so?

Grants of Representation

26. In presentation 5, slide 38, it is stated that 2 administrators are required where "there is a minority or if a life interest arises under a Will". If there is no will and a minority interest arises in the context of intestacy rules, would there also be a requirement for a minimum of 2 administrators?
27. In slide 47, it is stated that "Where security is required, court issues Grant of Letters of Administration automatically after the order for dispensation of sureties has been extracted and the administration bond has been filed in court" If the administrator finds 2 sureties, will there still be an order for dispensation of sureties? If no, does that mean that in such a situation, there will be a Grant of Letters of Administration automatically upon the filing of the administration bond in court?
28. Re-sealing of grant of representation by a Commonwealth court I am unable to find which Commonwealth courts (searched subsidiary legislation and Gazette).
29. Could you explain the implications of s 47(4) PAA?

PAA 47(4) If it appears that the deceased was not, at the time of his death, domiciled within the jurisdiction of the court from which the grant was issued, the seal shall not be affixed unless the grant is such as the General Division of the High Court would have made.

WKR v. WKQ [2023] SGHC(A) 35; [2023] SG HCF 12 see para 34

30. "In the Grants of Representation videolecture, it was mentioned as follows: ""

NOTE: A printed Grant if required (e.g. where a foreign court requires a printed grant for resealing or if some banks require) must be applied for when filing in the Originating Summons"". Please confirm that this is only applicable to an OS filed before 12 April 2023
Thank you."

Others

31. Are we expected to know the information about “Contentious Applications”? It was in the syllabus documents, but it was not covered during the lectures
32. In practice, is there ever a need for me to renounce my right to a grant of letters of administration? Can I simply just not apply for it?
33. Point 5(c)(v) of Section E in the Detailed Syllabus (on page 10) refers to Rule 260 FJR as the appropriate rule for "Intervener in probate action". However, the FJR contains Rule 255 named "Intervener in probate action". Is the reading list meant to state Rule 255 instead?
34. I understand that an application for a maintenance order under the Maintenance of Parents Act can only be made in relation to a living child. Kindly advise how this Act would come into play / have any effect in relation to the Probate and Succession Planning of a deceased. Thank you.
38. The reading list mentions Maintenance of Parents Act 1995 but not the slides. I would like to check we should know the MPA, and if so, whether the focus is on s 7 where the maintenance order would cease upon death.

35. Point 5(b)(iv) under Section E ('Probate and Administration') on Page 9 of the Detailed Syllabus refers to s8 PAA as the reference for 'passing over of named executors under will'. However, s8 PAA does not appear to mention this. Could I please clarify how s8 PAA applies?
36. To clarify, point 4(b)(iv) under Section E ('Probate and Administration') on Page 8 of the Detailed Syllabus refers to Section 18 PAA as 'clearing off of rights of deceased beneficiaries'. Could I please clarify how this provision involves such clearing off of rights of deceased beneficiaries?
37. How detailed must our knowledge of the restrictions in the Administration of Muslim Law Act 1996 on Muslim testator's disposal of his estate by will be?

The End
~ Thank you ~