

SILE Part B 2024

Probate and Succession Planning

Contact Session 2

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Question 1

(a) Advise Wayne as to the considerations if he were to apply to be appointed as Bruce's deputy.

1. Does Bruce lack mental capacity
 - a. Section 4(1) MCA
 - b. Section 5(1) MCA
 2. Who can be appointed as Bruce's deputy
 - a. Section 20(3), 20(4) MCA – principles in appointing deputy
 - b. Section 24(1) – who can be deputy
 - c. Options – Selina, Barry and Wayne
 3. Suitability of intended decisions
 1. Domestic helper v. care facility (code of practice para 6.1.2 and 6.5.2)
 2. Sale v. lease of 5-room flat
- See: sections 3(5). 3(6), 6(2), 6(3), 6(4), 6(7) MCA; code of practice para 6.3

(b) Assuming that Wayne wishes to be appointed as the deputy in respect of Bruce's personal welfare and property and affairs, state the steps that would have to be taken to obtain the requisite Court order.

1. Does Bruce lack mental capacity?
 - a. Section 4(1) MCA, Section 5(1) MCA
 - b. Medical report – made not more than 6 months before date of application
2. Is permission of court required?
 - a. Section 38(2) MCA, rule 176(2), (3) FJR
 - b. Para 47(2) FJC PD – documents re permission of court is not required
 - c. Para 48(2) FJC PD – prayer for permission may be included in the main application.
 - d. Considerations – section 38(3) MCA

(b) Assuming that Wayne wishes to be appointed as the deputy in respect of Bruce's personal welfare and property and affairs, state the steps that would have to be taken to obtain the requisite Court order.

3. Consent of "relevant persons"

- a. Relevant persons – para 50 FJC PD
- b. Rule 175 FJR
- c. Barry? Selina? Wayne?

4. Documents to be filed in court

- a. Para 54 of FJC PD – OS (Form 217 Appendix A FJC PD), supporting affidavit (form 218), Doctor's affidavit exhibiting medical report (Form 224), consent of relevant persons (Form 221)
 - a. Drafting of prayers – section 20(4) MCA; para 54(5) of FJC PD
 - b. Single affidavit for all applicants – para 54(8A) FJC PD
 - c. Searches to be conducted – para 54(8B) of FJC PD – OPG re LPA, re MDTA, Wills registry

(b) Assuming that Wayne wishes to be appointed as the deputy in respect of Bruce's personal welfare and property and affairs, state the steps that would have to be taken to obtain the requisite Court order.

5. Service of documents

- a. On relevant persons (para 50(4) of FJC PD – OS, supporting affidavits and notice to relevant persons (Form 222))
- b. On P – dispensation (rule 181(6) to (8) FJR/ notification rule 181(3) FJR)

(c) Bruce's wishes - Advise if these can be included in the application to court for appointment of deputy.

- Section 25 MCA (restriction of deputies)
- Section 26 MCA (excluded decisions)

Divorce

- Section 26(c) MCA

CPF nomination

- Section 25(3)(e) MCA

Donation

- Section 25(3)(a) MCA

Authority and restrictions

For LPA

- Restrictions – section 11(4) MCA; section 13 MCA

For court

- Powers – sections 20, 22 and 23 MCA

For deputies

- Restrictions– section 25 MCA

Excluded Decisions - section 26 MCA

(d) Certificate issuer

Trainee – cannot be certificate issuer (Regn 7(1) Mental Capacity Regulations)

- Not an advocate and solicitor of the Supreme Court who has in force a practicing certificate

Partner of trainee/ brother-in-law of donor (Regn 7(2) Mental Capacity Regulations, regn 2 “family member”)

- Can be certificate issuer

Note also

- Para 2(1)(e), schedule 1, MCA – duty of certificate issuer.

Question 2

Geraldine approached her friend Patrick to be the donee of her lasting power of attorney. Patrick offered to ask his brother-in-law Bill to be the certificate issuer for this lasting power of attorney. Bill can be the certificate issuer because:

- A. He is an advocate and solicitor of the Supreme Court, but has left practice for more than 5 years.
- B. He is related to the donee Patrick by marriage and stay next door to Patrick.
- C. He and Patrick both stay with their spouses' parents.
- D. Geraldine and Bill are business partners.

Answer: B

See regn 7 of the MCR and the definition of “family members” in regn 2(f) – Bill is related by marriage to the donee Patrick, but as they are not staying in the same household, Bill can be the certificate issuer.

Question 3

Victoria has been appointed the donee by her husband Robert in his lasting power of attorney. Victoria can:

- A. Make gifts to herself as the LPA expressly authorised gifting with no limits as to the value of the gifts.
- B. Settle Robert's assets into a trust to better take care of him, in case something untoward should happen to Victoria.
- C. Acquire a new insurance policy for Robert and nominate their children as beneficiaries to that policy under section 133(2) of the Insurance Act.
- D. None of the above

Answer: D

Section 14 MCA – even if LPA authorises the Donee to make gifts, value of such gifts must not be unreasonable having regard to all circumstances and in particular, the size of the donor's estate, and must have regard to the principle in section 6(6) (preservation of donor's property for application towards the costs of his maintenance during his life).

Question 4

Victor and Janet are married. Victor has however left Janet about 10 years ago and has been residing with his mistress Alice. Janet has been taking care of her two minor children with Victor. Victor has an aneurysm and has been in a coma for about 3 months. It is not clear whether he will recover. In an application for appointment of deputy, which of the following statements are correct?

- A. As Victor and Janet's two children are minors, they cannot be deputies.
- B. Alice is a "relevant person" and needs to be informed of the application to appoint a deputy for Victor.
- C. Janet is a "relevant person" and can make an application for the appointment of Victor's deputy.
- D. All of the above are correct.

Answer: D

Section 24 MCA; Para 50 FJC PD "relevant persons"

The Tan Family

