

WITNESS THIS!

FORMAL REQUIREMENTS: Section 6 of the Wills Act (Cap. 352) states that your will must be in writing and must be signed by you at the foot or end of your will in the presence of 2 or more witnesses both present at the same time.

DISQUALIFIED WITNESSES: When you sign your will, any other responsible adult could be a suitable witness. However, Section 10 of the Wills Act disqualifies a beneficiary of your will from witnessing it as otherwise, he will lose his entitlement. Neither should the spouse of a beneficiary witness your will, for the same reason.

APPLICATION OF SECTION 10: How would Section 10 apply if a testator (a widower) should bequeath in his will his entire estate to his only child (as sole beneficiary), if the spouse of that beneficiary was one of the attesting witnesses? If the attesting witness to the same will was also appointed as executor, would Section 10 operate to nullify such appointment? The Singapore courts have not squarely dealt with these issues; but the answers can be found in the rulings of the English courts in applying Section 15 of the UK Wills Act, which is almost identical to Section 10 of the Singapore Wills Act.

EFFECT ON THE GIFT UNDER SECTION 10: In the English case of *Alpin v. Stone* ([1904] 1 Ch 543), the issue to be decided by the court was whether a gift by a testator to his daughter (with a substitutional gift to her children) was valid considering that the daughter's husband witnessed the will. The daughter argued that since Section 15 invalidated the devise to her, it should be struck out and "accelerated to her children" who stood as alternative devisees. The court, however, rejected the argument and ruled that Section 15 "does not say that the devise is to be struck out, but merely that it should be null and void, so far only as the devisee is concerned."

The court ruled further that they could not simply disregard the gift to the daughter and give the property to her children, but that on "the face of the will, she [the daughter] takes absolutely...., and her interest being rendered null and void by s.15 of the Wills Act, there is an intestacy as to her share." As such, the devise nullified by the above rule falls into intestacy, and more importantly, since the rule

does not altogether invalidate the will, an application for a grant of probate should be filed by the executor, rather than another person applying for a grant of letters of administration.

EFFECT OF SECTION 10 ON AN ATTESTING WITNESS APPOINTED AS EXECUTOR: Section 10 of the (Singapore) Wills Act does not nullify an appointment of an attesting witness as executor. Only the gift/benefit itself to him or his spouse is nullified and then, only because he witnessed the will, not because he is an executor.

The English case of *In re Pooley* ((1888) 40 Ch.D. 1) dealt precisely with the appointment of an executor who was also an attesting witness to a will which included a gift to him that was invalidated by Section 15 of the UK Wills Act. The validity of the appointment of the executor was not called into question. Only the beneficial gift to the executor was void because the executor was one of the two witnesses to the will.

CONCLUSION

Section 10 is intended to complement the formal requirements for signing a will to help prevent fraud. As a gift genuinely intended by the testator to have effect can also be defeated simply because of ignorance of the law, it is important that you seek legal advice to ensure proper formal compliance and the validity of all gifts under a will.

The content of this article is only intended to provide general information on the subject covered. Nothing in this article should be treated as legal advice.

For further information, please contact:

Quek Li Fei

Partner

DID: +65 6349 8687

Fax: +65 6323 8282

Email: lfquek@cnplaw.com

Simon Trevethick

Senior Associate Manager

DID: +65 6349 8714

Fax: +65 6323 8282

Email: strevethick@cnplaw.com