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LEGISLATION COMMENTS AND LIST

WILLS (AMENDMENT) ACT 1992[1]

AMENDMENTS to the Wills Act[2] are quite a rarity. Leaving aside a technical amendment in 1986 to delete a redundant section,[3] the Act was last amended in 1949. In other common law jurisdictions there have been some important developments over the last half century and the Singapore Wills Act now seems rather dated. The Wills (Amendment) Act 1992 is a step in the direction of bringing the Singapore law of succession up to date.

The Explanatory Statement attached to the Bill[4] states that it amends the Wills Act "to clarify the law relating to the formal validity of wills and to restrict the operation of section 9 of that Act relating to the avoidance of gifts to attesting witnesses and their spouses". It should, however, be pointed out that the 1992 Act makes no change at all in the rules relating to the formal validity of wills under the domestic law of Singapore. The main purpose of the Act is to alter the rules of private international law to be applied by the Singapore courts in determining the validity of wills. The amendment to section 9 of the Wills Act is a minor matter designed to overrule the case of *In the Estate of Bravda.*[5]

The 1992 Act is *in pan materia* with two United Kingdom statutes, the Wills Act 1963 and the Wills Act 1968. It is hardly surprising that Singapore has chosen to update its law of succession by reference to English law. The Singapore Wills Act is derived from the United Kingdom Wills Act

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1 No. 24 of 1992. The Act was passed by Parliament on 29 May 1992 and assented to by the President on 8 June 1992. It came into force on 26 June 1992 (G.N. No. 302/92).

2 Cap. 352, 1985 Rev. Ed.

3 The Statute Law Revision Act 1986 (which according to the long title is "An Act to provide for amendments, additions and omissions considered desirable by the Law Revision Commissioners in their preparation of a revised edition of Acts") repealed s. 26 of the Wills Act. S. 26 had provided that devises of estates tail should not lapse where inheritable issue survived. However, it has been impossible to create an estate tail in Singapore since 1886. See s. 51, Conveyancing and Law of Property Act, Cap. 61, 1985 Rev. Ed.

4 Published in the Government Gazette Bills Supplement on 28 February 1992 as Notification No. B 11.

5 [1968] 1 W.L.R. 479.

1837, which is still the principal statute governing wills in England. However, major changes were made to the Wills Act 1837 by the Administration of Justice Act 1982, and it is unfortunate that these more recent developments in English law are not reflected in the latest Singapore legislation.[6]

Private International Law

The 1992 Act adds a new section 4A to the Wills Act, which gives a series of clear and simple rules enabling a will to be valid under Singapore law if in certain circumstances it complies with the formal requirements of another legal system. These rules increase the number of situations where a will with a foreign element will be valid and there will rarely be a need any longer to refer to the more complicated common law conflict of law principles, which previously governed this area.

Broadly speaking, under section 4A a will is treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national. A will is also treated as properly executed so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated. Special provisions are also made to cover the case where a will is executed on board a vessel or aircraft and also for wills which exercise a power of appointment. Section 4A follows closely the wording of the United Kingdom Wills Act 1963 and is identical in effect. However, a number of drafting changes have been made and, as a result, the Singapore version is easier to read than the U.K. original. Section 4A does not apply to testators who died before the commencement of the 1992 Act, but it applies to the will of any testator who died after that time, regardless of the date of execution of the will.

The U.K. 1963 Act was passed to give effect to the provisions of the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, which was concluded at the Hague on 5 October 1961.[7] The United Kingdom was a party to this Convention, which was based largely on the Fourth Report of the Private International Law Committee on the Formal Validity of Wills, chaired by Wynn Parry J.[8] The Hague Convention

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[6] It may seem strange that *minor* amendments were made to the U.K. Wills Act 1837 by two acts bearing the title "Wills Act", whereas *major* amendments were made by an act with the obscure title of "Administration of Justice Act". Such are the vagaries of the law reform process in England.

[7] 510 U.N.T.S. 175.

[8] Cmnd. 491.

was ratified by the United Kingdom government on 6 November 1963 and entered into force on 5 January 1964. As of 1 January 1991 the Convention had been ratified by 35 countries.[9] Singapore has not yet ratified the Convention. Indeed, the Convention was not mentioned in either the Explanatory Statement attached to the Bill or in the parliamentary proceedings which led to the enactment of the 1992 Act. Nevertheless, as a result of this Act, Singapore law complies with the provisions of the Convention and there would appear to be no reason why Singapore should not ratify it now.

Gifts to Witnesses

Section 9 of the Wills Act provides that where a witness or the spouse of a witness receives a gift under the will, the gift will be void. In all other respects, however, the will remains valid. Where wills are professionally drafted, this provision is unlikely to present any problem. Indeed, it has been held that a solicitor, who does not take steps to prevent a gift failing under section 9, is liable not only to his client, but also to the disappointed beneficiary.[10] Few laymen are familiar with this rule of law, and it is by no means uncommon for gifts to fail on this ground where a testator writes his own will without any legal assistance. Fortunately home-made wills are quite exceptional in Singapore. In England, however, they are by no means uncommon[11] and have given rise to many cases.

In the case of *In the Estate of Bravda*[12] the testator, who had long been separated from his second wife, made a home-made will in which he left his entire estate to his two daughters from his first marriage. The will was witnessed by four people, the daughters and two others, who were not beneficiaries. Had the daughters not signed the will as witnesses, they would clearly have been able to benefit under it. The will would still have been valid because only two witnesses are required. However, the Court of Appeal held that as the daughters were witnesses to the will, they could not benefit under it, given the clear language of the English equivalent of section 9.[13] The estate therefore passed in its entirety to the testator's second wife, an outcome which he had clearly sought to avoid.

The result of the case was certainly most unfortunate and all the members

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[9] See Bowman and Harris, *Multilateral Treaties Index and Current Status* (1984) and *8th Cumulative Supplement* (1991). The Hague Convention is listed as Treaty 420.

[10] *Ross* v. *Counters* [1980] Ch. 297.

[11] It is quite usual for public libraries in England to stock books, which give instructions on how to draft one's own will. Stationers also sell will forms with instructions on how to complete them to ensure that the will is valid.

[12] [1968] 1 W.L.R. 479.

[13] S. 15, Wills Act 1837.

of the Court of Appeal expressed their regret at what they felt the statute forced them to decide. Two of them[14] called for the Wills Act 1837 to be amended so that, where there are two independent credible witnesses, the mere fact that a beneficiary has also signed as a witness, should not operate to defeat the intention of the testator. A short amending statute – the Wills Act 1968 – was passed in the same year that the case was decided by the Court of Appeal. This has now been adopted in Singapore by the 1992 Act, which adds a new subsection (2) to section 9 of the Wills Act, providing that "The attestation of a will by a person to whom or to whose spouse there is given or made any disposition... shall be disregarded for the purposes of ... [section 9] if the will is duly executed without his attestation and without that of any other such person." This subsection applies to the will of any person dying after the passing of the 1992 Act, regardless of the date of execution of the will.

Even in countries where home-made wills are common, it is quite unusual for wills to be witnessed by more than two people. The chances that similar facts to those of the *Bravda* case might occur in Singapore are remote in the extreme. Nevertheless, the case reveals a flaw in the design of the Wills Act, which merits correction, as has now been done.

Further Reform

Reference has been made above to the further reforms to the law of succession effected by the English Administration of Justice Act 1982. Many of these are most useful and it is unfortunate that the opportunity was not taken within the framework of the 1992 Act to incorporate them into Singapore law. It is not clear why the Administration of Justice Act 1982 was overlooked by the draftsman of the 1992 Act and it is to be hoped that Parliament will soon have the opportunity again to legislate for further reform in this area. It may be convenient here to list briefly the more important changes in the law made by the Administration of Justice Act 1982. It is not suggested here that the reforms made in England are perfect solutions to the problems they seek to address. In the context of a law reform programme it will undoubtedly be worthwhile considering amendments made to the law of succession in other common law countries. However, reform on the lines of the English legislation is definitely preferable to leaving the law in its present state.

The English Act relaxes the formal requirements for making wills.[15] The current rules in section 5 of the Singapore Wills Act are rather rigid, in particular in so far as they relate to the positioning of the testator's signature

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[14] Russell and Salmon L.JJ., *supra* note 5, at pp. 491, 492.

[15] See Wills Act 1837, s. 9 (as substituted by the Administration of Justice Act 1982, s. 17).

and the method of witnessing. These provisions have caused difficulties in a number of cases.[16] The new English rules are much simpler and could usefully be adopted in Singapore. It is true, of course, that formality problems rarely arise in the case of professionally drafted wills. Nevertheless, the legislature has shown by overturning the *Bravda* case its concern for problems that are mainly likely to affect home-made wills.

Section 12 of the Singapore Wills Act provides for a will to be revoked automatically when the testator marries. The proviso to this section provides for an exception where the will is expressed to be made in contemplation of a marriage and the marriage contemplated is solemnized. The proviso is not very well drafted and in the case of *Re Coleman,*[17] Megarry J. held that the English provision, which is *in pari materia,* did not apply where a gift in a will, as opposed to the will as a whole, was expressed to be in contemplation of a particular marriage. This artificial distinction has been criticized,[18] but it seems to follow from the language of the proviso. The provision has been satisfactorily redrafted in the new English legislation.[19]

Although the Singapore Wills Act makes provision for marriage, it ignores the possibility of divorce. The new English legislation provides that a gift to a former spouse contained in a will lapses on dissolution of the marriage, except in so far as a contrary intention appears by the will.[20] Of course, a client who is contemplating divorce proceedings should be advised to consider changing his will. However, this is a matter which can often be overlooked and the new English provisions are therefore most useful.

Generally speaking, gifts contained in a will lapse where the intended beneficiary predeceases the testator. Section 25 of the Singapore Wills Act provides for an exception where the gift is made to the child or remoter descendant of the testator, who predeceases the testator leaving a child or remoter descendant of his own. In this case the gift does not lapse under the will, but instead forms part of the estate of the intended beneficiary. Its ultimate destination therefore depends on the terms of the beneficiary's will or the operation of the Intestate Succession Act.[21] The intention of section 25 was undoubtedly to ensure that the gift would reach the testator's

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[16] See, *e.g., Re Stalman* [1931] W.N. 143, *Wyatt* v. *Berry* [1893] P. 5, and *Re Colling* [1972] 1 W.L.R. 1440.

[17] [1976] Ch. 1

[18] See *Parry & Clark on the Law of Succession* (7th ed., 1977). This criticism is not repeated in later editions, as the law has been changed in England.

[19] See Wills Act 1837, s. 18 (as substituted by the Administration of Justice Act 1982, s. 18(1)).

[20] See Wills Act 1837, s. 18A (as inserted by the Administration of Justice Act 1982, s. 18(2)). The section also provides that on dissolution or annulment of marriage the will shall take effect as if any appointment of the former spouse as an executor or as the executor and trustee of the will were omitted.

[21] Cap. 146, 1985 Rev. Ed.

grandchild or remoter descendant. However, the method adopted does not guarantee that result. Where the testator *(T)* leaves property to his child *(B)* in his will and that child has a child *(G)* of his own, the gift will not lapse. But if *B* has left a will leaving all his property to a stranger, then the stranger will also take the property *B* receives under *T's* will. The new English legislation avoids this unfortunate result by providing that the gift will pass directly to *G*.[22]

Under current Singapore law, a court can *omit* from the will words of which the testator did not know and approve. In certain cases a court may be able to *construe* the will as if certain words had been inserted, omitted or changed, but only if it is clear from the will itself both that an error has been made in the wording and what the substance of the intended wording was. This is clearly a demanding requirement.[23] What a Singapore court cannot do, however, is to *add* to a will words intended by the testator.[24] For example, *T* gives instructions to his solicitor to prepare a will leaving $300,000 to *B,* but by a clerical error the will only leaves $300 to *B.* A Singapore court could omit the figure "$300",[25] but it could not substitute "$300,000" for "$300". An English court now has the power to do this under the Administration of Justice Act 1982. The power of rectification is available if the court is satisfied that a will is so expressed that it fails to carry out the testator's intentions in consequence of a clerical error or of a failure to understand his instructions.[26]

The final important change made to the law of succession by the English Administration of Justice 1982 Act is a modification of the rules allowing the admission of extrinsic evidence to assist in the interpretation of the will. The current rules are quite restrictive and they have been relaxed in the new legislation.[27]

BARRY C. CROWN

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[22] See Wills Act 1837, s. 33 (as submitted by s. 19 of the Administration of Justice Act 1982).

[23] See *Re Whitrick* [1957] 1 W.L.R. 884.

[24] The case of *Re Morris* [1971] P. 62 provides a good illustration of the difficulties this can create.

[25] This may occasionally be useful by bringing into play the doctrine of dependant relative revocation under which a previous will containing a larger gift to *B* may be admitted to probate.

[26] Administration of Justice Act 1982, s. 20.

[27] See Administration of Justice Act 1982, s. 21.