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Inheritance Feuds

by SM Shanmugam and Shona Anne Thomas

"Death is not the end. There remains the litigation over the estate."
— Ambrose Bierce

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It was reported[1] that when celebrity Prince died in 2016, he left behind an estate estimated at US$200 million — and no Will. Although a judge ruled that the music superstar's six siblings should inherit his fortune, more than 45 other people claimed to be legitimate beneficiaries. While family squabbles over celebrity estates is foreseeable, inheritance feuds among common folk are not at all rare. This is especially so since globally, we are on the cusp of a sizeable intergenerational wealth transfer as baby boomers enter retirement. Why then is estate planning overlooked by so many?

Death is a taboo topic for some but the more commonly shared factors inhibiting proper estate planning is possibly because most people:

(a) assume that they are not wealthy enough to make an estate plan; or

(b) consider themselves too young to do so.

Estate planning

Every individual has an estate. An "estate" is simply the total possessions one has at any given time. The purpose of estate planning is twofold — preservation and protection. They say blood is thicker than water, but unfortunately familial bonds can get strained or severed over the issue of inheritance and "fair" distribution of assets. Studies reveal that 70% of wealthy families will lose their inherited wealth by the second generation and 90% will lose it by the third.[2] In some cases, this is primarily due to prolonged inheritance feuds.

"*What is the simplest method to avoid such a debacle*", you may ask. Write a Will. Having a well-drafted (and legally enforceable) Will can ensure your wishes in relation to distribution of assets after death is respected. Not only that, but a Will is also useful in appointing guardians for minors or those who

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1 Mark Reilly, "Prince estate fight get even thornier with heir's death and will" *Minneapolis/St Paul Business Journal* (23 February 2020)

2 David Kleinhandler, "Generational Wealth: Why do 70% of Families Lose Their Wealth in the 2nd Generation?", Nasdaq (19 October 2018) https://www.nasdaq.com/articles/generational-wealth%3A-why-do-70-of-families-lose-their-wealth-in-the-2nd-generation-2018-10

lack mental capacity as well as to levy conditions on beneficiaries. Examples include:

(a) providing an annual stipend to children on the condition that they make monthly visits to their grandparents; or

(b) bequeathing the family home to a sibling on the condition that they allow the parent to reside at the family home for the latter's lifetime.

Writing a valid Will

The requirements for a Will to be valid and enforceable are simple. Firstly, the Will must be in writing. Secondly, it must be signed by the testator (who is at least 18 years of age) in front of two witnesses who are not beneficiaries to the Will. Lastly and most importantly, the testator must be of sound mind or have testamentary capacity at the time of signing the Will. The meaning of testamentary capacity is best explained as follows:

> "It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties — that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."[3]

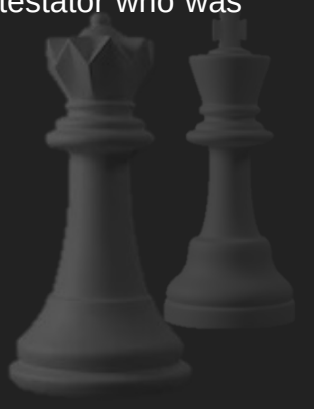
Trouble usually arises when either the beneficiaries to the estate or the family or relatives or friends of the testator challenge the Will on the basis that it was drafted and/or executed under suspicious circumstances, such as:

(a) The Will was not signed by the testator but was forged;

(b) The contents of the Will were not understood at the time of signing;

(c) The testator lacked testamentary capacity at the time of signing; and

(d) The contents of the Will were misrepresented to the testator who was illiterate or blind.



[3] *Banks v Goodfellow* (1870) LR 5 QB 549

This can even arise in cases where the testator signs his or her Will while admitted in hospital or is on his or her deathbed. The saving grace in such situations would be the attending doctor or nurse present as either a witness to the signing of the Will or has made notes on the mental capacity of the testator at the material time.[4] Where the Will was prepared by a lawyer upon the instructions of the testator, the lawyer may also be another key witness during the litigation of the matter.[5]

Conclusion

Disputes over the validity of a Will may stem from a genuine place of concern that the testator was possibly manipulated or unduly influenced by a less than righteous party. In such a situation, the aggrieved party should immediately seek legal advice to safeguard his or her interest until the dispute is determined by a court of law.

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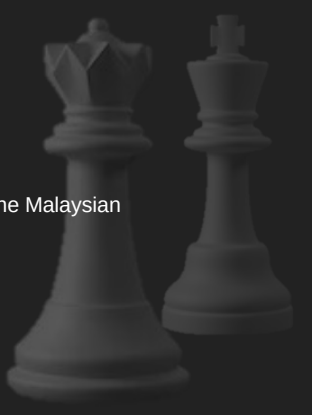

4 *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [2020] 4 MLJ 581 (FC)

5 *In re Estate of Luce* No 02–17–00097-CV (Tex App Nov 15, 2018). This American case was referred by the Malaysian FC in *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [2020] 4 MLJ 581