# Chee Mu Lin Muriel *v* Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)
# [2010] SGCA 27

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| **Case Number** | : Civil Appeal No 147 of 2009 |
| **Decision Date** | : 04 August 2010 |
| **Tribunal/Court** | : Court of Appeal |
| **Coram** | : Chan Sek Keong CJ; Andrew Ang J; Chan Seng Onn J |
| **Counsel Name(s)** | : Sundaresh Menon SC (Rajah & Tann LLP) and Ang Cheng Hock SC and Melanie Chng (Allen& Gledhill LLP) for the appellant; Giam Chin Toon SC and Wong Hur Yuin (Wee Swee Teow & Co) for the respondent; Chew Kei-Jin (Tan Rajah & Cheah) for the interveners. |
| **Parties** | : Chee Mu Lin Muriel — Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners) |

*Probate and Administration*

*Succession and Wills*

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2009] SGHC 229.]

4 August 2010

**Chan Sek Keong CJ (delivering the grounds of decision of the court):**

1 This appeal, arising from Suit No 238 of 2007 ("Suit 238/07"), concerned the validity of a will made on 21 August 1996 ("the 1996 Will") by Madam Goh Hun Keong ("Mdm Goh"). Prior to the making of the 1996 Will, Mdm Goh had made another will dated 16 March 1989 ("the 1989 Will"). The appellant, and propounder of the 1996 Will, in these proceedings was Muriel Chee ("Muriel"), a daughter of Mdm Goh. The respondent was Caroline Chee ("Caroline"), another daughter of Mdm Goh. The trial judge ("the Judge") had declared the 1996 Will invalid (see *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2009] SGHC 229 ("the Judgment")). Muriel appealed against the Judge's decision. We heard the appeal on 18 March 2010 and dismissed it. We now give our reasons.

**Background facts**

2 Mdm Goh was born on 2 February 1921 and died on 9 June 2004 from renal failure. She was married to Dr Chee Siew Oon ("Dr Chee"), who died in 1990. They had six children. In order of seniority, they are:

(a) Chee Ping Chian, Alexander ("Alexander"), the first intervener;

(b) Chee Man Lin, Maureen ("Maureen"), the second intervener;

(c) Chee Ping Kong ("Ping Kong");

(d) Chee Ping Swee ("Ping Swee");

(e) Muriel; and

(f) Caroline.

3 Alexander, Maureen and Ping Kong ordinarily resided in the United States of America ("the USA") while Ping Swee, Muriel and Caroline ordinarily resided in Singapore. Muriel was a lawyer. Caroline was a doctor married to Paul Chew Tec Kuan ("Paul"), also a doctor. Caroline was Mdm Goh's favourite child.

4 Mdm Goh was an English teacher, and after retirement, enjoyed much success in investing in property. After she died, her assets became the subject of the present dispute (see the Judgment at [24]), in particular a property at No 470 Holland Road ("the Holland Road House") which was the most valuable property in her estate.

5 Mdm Goh was a very forceful person and had a strong will, and would often ignore the feelings of her children and treat them unfairly. On 16 March 1989, Mdm Goh executed the 1989 Will appointing Caroline, who was her favourite daughter, as the sole executrix of her estate and bequeathed to her almost the entire residuary estate including, *inter alia*, the Holland Road House (excluding $150,000 in cash which was bequeathed to Ping Swee). The 1989 Will was drafted and its execution witnessed by a lawyer frequently employed by Mdm Goh since the early 1980s, Mr Hin Hoo Sing ("Mr Hin") and a clerk, Lim Bee Leng, both of M/s Hin Rai & Tan.

6 Prior to 1993, Mdm Goh lived with Ping Swee and his wife in the Holland Road House. When they moved out sometime in 1993, Mdm Goh moved into Muriel's home at No 7 Greenleaf Place ("Greenleaf Place"). During this period, Caroline and Paul were looking for a residence of their own. Mdm Goh expressed her intention of transferring the Holland Road House to them by way of gift. This led to a disagreement between Caroline and Muriel, who felt strongly against Mdm Goh leaving such a large part of her estate to Caroline. Muriel wrote a letter to Alexander dated 25 June 1994 ("the 25 June 1994 letter"), the contents of which are set out at [37] of the Judgment, venting her frustration and proposing an equal distribution of Mdm Goh's assets in a manner which, as will be seen, is very similar to the terms of the 1996 Will. She warned Alexander against showing the 25 June 1994 letter to Mdm Goh.

7 Mdm Goh eventually sold a half-share in the Holland Road House to Caroline and Paul for $2.5m on 12 June 1995, despite Muriel's objections. Only $1.34m of the purchase price was actually paid, though Mdm Goh had acknowledged receipt of the remainder sum on 15 June 1995. Consequently, the Holland Road House was held in the names of Caroline, Paul and Mdm Goh as tenants in common with Caroline and Paul holding a half-share and Mdm Goh holding the other half-share. At around the time of the sale, Mdm Goh returned to Singapore from the USA and stayed in an apartment with her maid, San San Myint ("San San"), while the Holland Road House was being renovated.

8 Mdm Goh became unwell and saw a number of doctors from 1995 onwards. In addition to consulting her regular geriatrician, Dr Lee Kng Swan ("Dr KS Lee"), Mdm Goh also consulted Prof Lee Kok Onn ("Prof KO Lee"), an endocrinologist and physician. In November 1995, Prof KO Lee diagnosed Mdm Goh as suffering from an early onset of both Parkinson's disease and dementia, for which he prescribed two drugs, Selegiline and Tacrine. In February 1996, Caroline brought Mdm Goh to visit a psychiatrist, Prof Kua Ee Heok ("Prof Kua"), after Mdm Goh complained of a lack of concentration and memory loss. Prof Kua made a provisional diagnosis of "depression, to exclude dementia" based on Mdm Goh's poor short-term memory and her uncertainty as to what the year, month, day or date was. He prescribed three drugs: Haloperidol to reduce her symptoms of delusions; Stilnox, which is a type of sleeping pill; and Sertraline, an anti-depressant. In March 1996, Prof Kua administered the

"Elderly Cognitive Assessment Questionnaire" ("ECAQ") on Mdm Goh, which was a test for short-term memory loss, poor concentration and orientation, although it was not a diagnostic test for dementia. He diagnosed Mdm Goh as having Alzheimer's disease and progressively poor memory. At his direction, Mdm Goh underwent a computed tomography scan in April 1996 ("the CT scan"), which showed the presence of multiple lacunar infarcts in her brain. Based on the CT scan, Prof Kua diagnosed Mdm Goh as suffering from a combination of Alzheimer's disease and vascular dementia. He prescribed Tacrine for these conditions.

9 On 10 August 1996, Mdm Goh fell in the driveway of the Holland Road House and suffered lacerations to her head. She was treated by Dr John Isaac ("Dr Isaac") at the National University Hospital, where she was discharged after observation overnight because Dr Isaac found her to be alert and oriented.

10 On 18 August 1996, Muriel, Ms May Oh ("MO") and Dr Goh King Hua ("Dr Goh") met with Mdm Goh at the Holland Road House. MO is an advocate and solicitor. MO's father was a cousin of Dr Chee, Mdm Goh's late husband. Dr Goh was Mdm Goh's nephew and a general practitioner in medicine. The day after this meeting, Muriel faxed two documents to MO containing instructions for the preparation of the 1996 Will. The first document sent on 19 August 1996 contained a list of names of Mdm Goh's children ("the First Fax") while the second document ("the Second Fax") sent on 21 August 1996 contained suggestions of terms to be included in the 1996 Will. The Second Fax also contained (a) a handwritten note by Muriel stating "Please consider the following ideas and call me if you need further clarification"; and (b) two handwritten amendments made by MO to the terms suggested therein to replace MO or "W" (who was Ms Wee Eng Hua, MO's partner in her law firm) with Dr Goh's wife as executor of the will and to allow Caroline and Paul one year, instead of six months, after Mdm Goh's death to purchase Mdm Goh's remaining half-share in the Holland Road House.

11 On 19 August 1996, Mdm Goh paid a brief visit to Prof KO Lee where he recommended that she see a neurologist, Dr Benjamin Ong ("Dr Ong"), based on the multiple lacunar infarcts he observed in the CT scan.

12 On 21 August 1996, three days after the meeting at the Holland Road House, MO and Dr Goh witnessed the execution of the 1996 Will by Mdm Goh at Greenleaf Place, Muriel's residence. Muriel was in another room during the execution of the will. It is not disputed that it was MO who drafted the 1996 Will. Under the terms of the 1996 Will, Caroline and Paul were given the option to purchase Mdm Goh's remaining half-share in the Holland Road House at the "prevailing market price" within one year of Mdm Goh's death, and the residuary estate was to be divided among Mdm Goh's other children, namely, Alexander, Maureen, Ping Kong, Ping Swee and Muriel. Clause 2.1 of the 1996 Will further explained that the dispositions were so made because Caroline and Paul had been sold a half-share of the Holland Road House at a "discounted price of $2.5 million in 1995".

13 In early September 1996, Prof Kua took Mdm Goh off Sertraline, Stilnox, Haloperidol and Tacrine because of his suspicion that these drugs had contributed to her falls. A week later, Mdm Goh visited Dr Ong, who noted that Mdm Goh exhibited abnormal gait and palmomental reflexes. Separately, Muriel brought Mdm Goh to see another geriatrician, Dr Chan Kin Ming ("Dr Chan"), in November 1996. Dr Chan conducted an ECAQ as well as a clock completion test on Mdm Goh. He informed Muriel and Mdm Goh that Mdm Goh's scores were consistent with cognitive impairment, of which dementia was a cause. Based on her medical history, Dr Chan assessed that Mdm Goh's falls were a result of her being over-medicated.

14 Subsequently, Mdm Goh did several things which showed that her mental faculties had improved considerably. On 8 December 1996 at MO's house, Mdm Goh signed an instrument prepared by W

granting Muriel a power of attorney over her affairs ("the 1996 POA"). This 1996 POA was subsequently revoked by Mdm Goh by an instrument of revocation on 14 January 1997 ("the POA Revocation") after Mdm Goh found out that Muriel had attempted to obtain information on the prior sale of a half-share in the Holland Road House to Caroline and Paul. The POA Revocation was prepared by Mr Hin and signed at his office. Mr Hin also recorded an unsigned statement by Mdm Goh stating, *inter alia*, that she was not quite clear about the powers she had given to Muriel and that she was willing to give half of the Holland Road House to Caroline. It was not clear whether this statement relating to the gift referred to the half-share she had already transferred to Caroline and Paul or the remaining half-share owned by her.

15 On 22 January 1999, Mdm Goh executed an instrument granting a power of attorney to Caroline ("the First 1999 POA"). The First 1999 POA was witnessed by Mr Hin and Dr KS Lee, who gave the opinion that Mdm Goh possessed the requisite mental capacity at that time. On 2 March 1999, Mdm Goh executed another power of attorney in favour of Muriel for the limited purpose of collecting rents for one of Mdm Goh's properties.

16 Following Mdm Goh's death on 9 June 2004, Mr Hin notified the Chee family (except Ping Kong) that there would be a reading of the 1989 Will at his office. On 28 June 2004, Mr Hin read the 1989 Will in the presence of Alexander, Maureen, Ping Swee and Caroline. Muriel (who was notified of the reading) and Ping Kong did not attend the reading of the 1989 Will. Instead, on 30 June 2004, Muriel invited Alexander and Ping Swee to Greenleaf Place where the 1996 Will was read. Muriel's lawyer, Ms Quek Peck Hong ("Ms Quek"), was also present at this reading.

17 On 13 July 2004, Caroline filed a Petition in Probate No 141 of 2004 for a grant of probate of the 1989 Will. Probate was granted on 26 July 2004. However, on 2 August 2004, Muriel lodged a caveat, Caveat against Grant of Probate No 160 of 2004, against the sealing of the grant of probate to Caroline on the ground that she had an interest in the estate of Mdm Goh under the 1996 Will. In response, Caroline filed a Warning to Caveator on 26 August 2004, to which Muriel entered an Appearance to Caveat on 7 September 2004. This led to the filing of Suit 238/07 on 12 April 2007.

**Issues before the court below**

18 The issues that came before the Judge for determination were as follows:

(a) whether Mdm Goh had the testamentary capacity to execute the 1996 Will;

(b) whether Mdm Goh knew and approved of the contents of the 1996 Will; and

(c) whether Mdm Goh executed the 1996 Will under Muriel's influence.

On the first two issues, the Judge held on the evidence that Mdm Goh did not have testamentary capacity and did not know or approve the contents of the 1996 Will when she executed it. Consequently, it was unnecessary for the Judge to consider the third issue.

**The witnesses' evidence**

19 Four groups of witnesses testified on behalf of the opposing parties: (a) the medical experts; (b) the Chee siblings; (c) the persons who were present at Greenleaf Place on 21 August 1996 when Mdm Goh signed the 1996 Will; and (d) other factual witnesses to Mdm Goh's state of mind.

***The medical experts***

20 Five doctors, *viz*, Prof KO Lee, Prof Kua, Dr Ong, Dr Chan and Dr Yeh Ing Berne ("Dr Yeh"), a neuro-radiologist, testified on the medical condition of Mdm Goh on behalf of Caroline. Muriel, on her part, relied on the expert opinions of two doctors, *viz*, Dr Tan Chue Tin ("Dr Tan"), a psychiatrist, and Dr KS Lee.

21 Dr KS Lee, Mdm Goh's geriatrician, could not testify as she had died earlier in 2006, but her medical notes were admitted in evidence. Dr KS Lee's medical notes showed that the results of Mdm Goh's CT scan were normal. This conclusion was contradicted by Dr Yeh who interpreted the CT scan to show shrinkage or atrophy of Mdm Goh's frontal lobes that was unlikely to be caused by old age, which meant there was a reasonable chance that Mdm Goh had dementia. Similarly, Prof KO Lee, Prof Kua and Dr Ong opined, based on their clinical observations, tests and the CT scan, that Mdm Goh suffered from some degree of dementia consistent with Alzheimer's disease, as well as over-medication from the drugs she was taking, especially Haloperidol, in August 1996. As a result, they opined that Mdm Goh lacked the ability to concentrate or think clearly and therefore lacked the testamentary capacity to execute the 1996 Will. Dr Chan did not adopt the diagnosis of dementia, but opined that Mdm Goh suffered from cognitive impairment in August 1996.

22 On the other hand, Dr Tan, who had not treated Mdm Goh personally, opined from his examination of the medical reports of Prof Kua, Dr KS Lee and Dr Chan as well as from interviewing Muriel, Dr Goh and Ping Swee that the tests conducted by the other medical experts and their reports were inconclusive as to whether Mdm Goh suffered from dementia or a cognitive impairment in August 1996. Instead, in his opinion, given to a reasonable degree of medical certainty, Mdm Goh possessed the requisite testamentary capacity in August 1996 when she executed the 1996 Will. He gave the following reasons for his opinion: (a) dementia was a progressive illness which would not deprive a person of testamentary capacity in its early stages; (b) Mdm Goh had participated in significant financial and legal transactions both before and after August 1996; and (c) the medication prescribed to Mdm Goh and the injuries she had suffered from her fall on 10 August 1996 were unlikely to have affected her mental capacity.

***The Chee siblings***

23 Muriel's testimony may be summarised as follows: in August 1996, Mdm Goh was mentally alert and capable of making her own decisions; Mdm Goh had instructed MO to prepare a draft of the 1996 Will on 18 August 1996, and her (Muriel's) role was to liaise with MO on the matter; Mdm Goh had explained to her that she had sold a half-share in the Holland Road House to Caroline and Paul at a discount – they paid $2.5m when they should have paid $4.5m; for this reason, Caroline would get nothing from her estate.

24 Ping Swee's testimony was that Mdm Goh had not intended to bequeath the majority of her estate to Caroline. Her true intention was for all her children to be included in the distribution of her assets.

25 Alexander and Maureen testified that Caroline had always been Mdm Goh's favourite child and that Mdm Goh had begun to suffer from delusions around the years 1994 to 1995. Alexander also testified that Muriel had earlier told him not to tell Maureen and Caroline of the existence of the 1996 Will, and that at the reading of the 1996 Will, Muriel had told him that it was a preliminary meeting to see how Alexander and Ping Swee felt about it, and that she would withdraw the 1996 Will if they were unhappy about it. He also disclosed that Ms Quek, the solicitor in attendance, then explained that the 1996 Will could not be ignored once it had surfaced.

26 Caroline's testimony may be summarised as follows: (a) she was Mdm Goh's favourite child

because she did not marry a foreigner; (b) Mdm Goh had suggested that she and Paul live with her at the Holland Road House instead of buying a new apartment; (c) Mdm Goh also suggested transferring the Holland Road House to her as a gift since it would be hers eventually; (d) she had declined Mdm Goh's offer and instead suggested buying a half-share of the Holland Road House at market value, determined to be $2.5m, and Mdm Goh had accepted the suggestion.

***The witnesses at Greenleaf Place***

27 MO's testimony may be summarised as follows: she could not recall the meeting on 18 August 1996, but admitted she had drafted the 1996 Will on instructions from Muriel on behalf of Mdm Goh. On the evening of 21 August 1996, she had met with Mdm Goh, W, Dr Goh and Muriel at Greenleaf Place. While Muriel was in another room, MO read the 1996 Will line by line to Mdm Goh, who nodded and appeared to understand what was being said. According to MO, Mdm Goh appeared to be a capable testatrix and read the 1996 Will on her own. Under cross-examination, MO maintained that the amendments suggested in the Second Fax were instructions from Mdm Goh, albeit given by Muriel. MO added that it was her usual practice to ask a testator if the testator understood the terms of the will, and that she would not have signed off as a witness if this step was not taken. However, she did not see the need to question Mdm Goh further in this case because of her impression that Mdm Goh was a shrewd businesswoman who could understand the 1996 Will.

28 Dr Goh's testimony may be summarised as follows. He was requested by Muriel to pay a social visit to Mdm Goh at Greenleaf Place on 18 August 1996 because of Mdm Goh's deteriorating health. He could not give details of what had been discussed there beyond Mdm Goh's health and family matters in general. He testified that Mdm Goh, Muriel or MO had mentioned making a will at the end of the conversation but he did not know what was to be in the will as the subject was not discussed in his presence. Subsequently, Dr Goh received a call and was asked by Muriel to visit Mdm Goh again because her will was ready. He had assumed that he was to be a witness to the signing of the will. He confirmed that he was present with W when MO was reading the 1996 Will line by line to Mdm Goh on the evening of 21 August 1996 at Greenleaf Place. Dr Goh also testified that Mdm Goh appeared to be behaving normally, showed no signs of drowsiness and signed on every page of the 1996 Will after reading it herself. Dr Goh admitted that he was casually chatting with W while the 1996 Will was being read, and further stated that he only realised that he was named as an executor on that day when he read the 1996 Will for the first time.

29 W corroborated the evidence of MO and of Dr Goh that Mdm Goh had appeared to be a capable testatrix who understood the contents of the 1996 Will. Like MO, W stated that her usual practice would have been to ask questions to satisfy herself that the testatrix knew what she was signing. However, W also admitted that she could not recall when she had first read the 1996 Will or if any questions were asked during its signing.

***The other witnesses***

30 Various other witnesses were called to establish Mdm Goh's state of mind at the material time. Mdm Goh's maid San San testified that Mdm Goh suffered from delusions in early 1996 – she accused San San of sleeping with the late Dr Chee and Paul. Mdm Goh's private nurse, Sarah Jessica Leong, testified that she noticed Mdm Goh behaving strangely from the time she was employed in 1998. Dr Chuah Chin Teck ("Dr Chuah") testified that he had accompanied Mdm Goh on a flight to the USA in April 1998 and had observed that she was disoriented and had put utensils and even the serving tray into her bag. Muriel, on her part, called Ping Swee's daughter, Anthea Chee, who was on the flight with Dr Chuah and Mdm Goh, to testify that Mdm Goh's behaviour then was not out of the ordinary.

**The Judge's evaluation of the evidence presented below**

31 In summary, the Judge accepted the evidence of the medical experts called by Caroline and the evidence of the other witnesses who had testified that Mdm Goh suffered from delusions around the material time. In particular, she accepted the evidence of Prof Kua and Dr Ong who had testified that Mdm Goh was suffering from dementia in August 1996 and noted that their findings were consistent with the results of the CT scan, various tests and the doctors' own clinical observations through their interaction with Mdm Goh throughout the same period. The Judge rejected the opinions of Dr Tan and Dr KS Lee (see the Judgment at [141]–[142]), holding that Dr KS Lee's conclusion that Mdm Goh's CT scan results were normal was shown to be erroneous by Dr Yeh, whose opinion also discredited Dr Tan's opinion which was based on second hand reports (see [22] above). The Judge also dismissed Dr Isaac's evidence that Mdm Goh was alert as immaterial on the ground that he was not treating Mdm Goh for dementia but merely checking if it was safe for her to be discharged from hospital after her fall. The Judge accepted that Mdm Goh's fall which caused an injury to her head was one of the factors that indicated Mdm Goh's lack of testamentary capacity. The Judge also accepted the evidence of Maureen, Alexander, San San, Dr Chuah and Sarah Jessica Leong that Mdm Goh was disoriented or delusional. However, she did not accept the evidence of Anthea Chee on Mdm Goh's behaviour on the plane as she was only seven years old then (see the Judgment at [201]).

32 The Judge also found as a fact that Mdm Goh had no knowledge and did not approve of the contents of the 1996 Will. She concluded that there were circumstances surrounding the execution of the 1996 Will which aroused suspicion as to whether it expressed the true intentions of Mdm Goh, *eg*, (a) Caroline was Mdm Goh's favourite child to whom she had always intended to bequeath her residuary estate, and yet she was excluded from the 1996 Will; (b) Muriel had hastily procured the drafting and execution of the 1996 Will under which she became one of the beneficiaries when previously she was left out; (c) the terms of the 1996 Will mirrored the terms proposed by Muriel in the 25 June 1994 letter; (d) MO could recall the signing of the 1996 Will on 21 August 1996 but not the meeting on 18 August 1996 or the signing of the 1996 POA at her place on 8 December 1996; (e) Dr Goh's testimony that Mdm Goh had signed every page of the 1996 Will when this was not the case; (f) neither MO nor Dr Goh could recall their conversation with Mdm Goh on 18 August 1996 during which the instructions for the 1996 Will were alleged (by Muriel) to have been given (see the Judgment at [156]–[160]).

33 With respect to the evidence of MO and Muriel on how and who gave instructions for the preparation of the 1996 Will, the Judge found that there were serious discrepancies in their evidence. Muriel's evidence was that MO had given advice to Mdm Goh on how to distribute her assets in a "fair" manner, and that Mdm Goh had instructed MO to draft the 1996 Will after having discussed the terms with her. But, MO's evidence was that she could not recall the meeting with Mdm Goh on 18 August 1996. MO also did not make attendance notes either during or after the meeting. Their evidence showed that it was Muriel who had consulted MO on the provisions to include in the 1996 Will, and that Mdm Goh had nothing to do with those instructions. Furthermore, Dr Goh who was named as an executor was not told about it and he only found out when he read the 1996 Will, just before its execution by Mdm Goh.

34 The Judge also considered the events subsequent to the signing of the 1996 Will, such as Muriel's failure to attend the reading of the 1989 Will and the statements she had made during the reading of the 1996 Will to reinforce her finding that the 1996 Will was invalid.

35 In the light of her findings of facts as summarised above, the Judge held that Muriel failed to prove that (a) Mdm Goh had testamentary capacity when she signed the 1996 Will; and (b) Mdm Goh knew or approved of the contents of the 1996 Will when she signed it.

**The issues on appeal**

36 On appeal, Muriel challenged both findings of the Judge, namely, that Mdm Goh had no testamentary capacity and that she did not know or understand the terms of the 1996 Will when she signed it. Before we deal with her arguments on these two issues, it is desirable that we set out the relevant principles of law in relation to testamentary capacity.

**The law on testamentary capacity**

37 The relevant principles are established. For a will to be found valid, the testator must (a) have the mental capacity to make a will; (b) have knowledge and approval of the contents of the will; and (c) be free from undue influence or the effects of fraud. The leading authority in this area of the law is the decision in *Banks v Goodfellow* (1870) LR 5 QB 549 ("*Banks*") which has been followed by our courts. The essential requisites of testamentary capacity were recently restated in *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 ("*George Abraham*") at [29] as follows:

(a) the testator understands the nature of the act and what its consequences are;

(b) he knows the extent of his property of which he is disposing;

(c) he knows who his beneficiaries are and can appreciate their claims to his property; and

(d) he is free from an abnormal state of mind (*eg*, delusions) that might distort feelings or judgments relevant to making the will.

38 The Judge has helpfully restated the law that in applying the test in *Banks*, the court must look at the totality of the evidence as a whole, comprising of both factual (including evidence of friends and relatives who had the opportunity to observe the testator) and medical components. The court should generally accord equal importance and weight to both types of evidence, so long as both the factual and medical witnesses had the opportunity to observe the testator at the material time.

39 It is important to bear in mind that whether the testator had the mental capacity to understand the nature of a will and its consequences is only one element of testamentary capacity and this element is not necessarily determined by the existence of some form of mental impairment. In *Banks* at 566, Cockburn LJ said that though a testator's mental power may be reduced by physical infirmity or the decay of advancing age to below the ordinary standard, he might still retain sufficient intelligence to understand and appreciate the testamentary act.

40 The propounder of the will bears the burden of proving that the testator possessed testamentary capacity. This will *prima facie* be established by the due execution of the will in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability. An indication of testamentary capacity would be the rationality of the will having regard to its terms and the identities of the beneficiaries (see also *George Abraham* at [33]–[36] and [67]). The party challenging the will may rebut this presumption by adducing evidence to the contrary, such as evidence that the testator was suffering from a mental illness that was serious enough for the court to find that the testator lacked testamentary capacity.

41 The court must then consider the evidence as a whole. If a testator is shown to have suffered from an *incapacitating* mental illness prior to the execution of the will that resulted in a loss of testamentary capacity, then it may be presumed that the testator *continued* to lack testamentary capacity up till the time of the will's execution. This proposition, however, does not fundamentally

alter the propounder's burden of showing that such illness had not affected the testator's testamentary capacity at the time of the execution of the will. Instead, the inquiry will turn to whether a lack of testamentary capacity could be inferred from the existence of the mental illness and whether, despite the illness, the testator was lucid at the execution of the will, although the severity of the illness may influence the threshold of proof required. As stated in *George Abraham* at [39]:

> In my view, the presumption referred to in para (b) of the above quote can only arise in a case where the serious mental illness is sufficient to cause testamentary incapacity. It is only in such a case that a continuation of the mental illness results in a continuation of the lack of testamentary capacity. In other words, the lack of testamentary capacity must first exist before it can continue. The presumption in that passage from *Theobald on Wills* refers to the continuance of an incapacitating serious illness. For example, if on Day 10 the testator has no testamentary capacity and he makes a will on Day 15, the presumption arises that the illness has continued with his inherent lack of testamentary capacity. The statement does not mean that, because a testator has a serious illness, it must follow that he lacks, or is presumed to lack, testamentary capacity. After all, he may have lucid intervals. That condition has to be shown as inferable from his mental illness. When analysed in this way, the presumption adds nothing to the burden of proof which is placed on the propounder of the will. When faced with an allegation that the testator was seriously ill when he made the will, the propounder has to show that the illness had not affected the testator's testamentary capacity. That is why *Theobald on Wills* goes on to state that the person propounding the will may rebut the presumption by establishing that the testator made the will during a lucid interval or after recovery from the illness. In my view, the more serious the illness prior to the making of the will is, the higher should be the threshold of proof, and, conversely, the less serious the illness, the lower the threshold of proof. ...

42 This inquiry remains a judicial function. Medical evidence will often be necessary to establish the mental capacity of the testator, but not surprisingly, medical evidence is often conflicting (as was the case in the present proceedings and in *George Abraham*). However, the existence of a serious mental illness at the material time does not completely address the issue of testamentary capacity, a related but distinct question which includes the other requisites. It is ultimately for the court to decide whether the testator had testamentary capacity at the relevant time on the evidence before the court, including the opinions of medical experts and non-medical testimony on the behaviour of the testator before, during or after the execution of the will. Abdicating this fact-finding role to the experts would be contrary to the judicial function (see *George Abraham* at [36] and [64]–[65]). In this regard, two cases involving mental competency as an element in determining the testamentary capacity of a testator suffering from dementia may be mentioned. In *Norris v Tuppen* [1999] VSC 228 (unreported), Ashley J commented at [335]–[336]:

> Expert (medical) evidence may be important in determining competency. But it does not decide the issue, any more than does the mere fact of the age of the testatrix when the will was made, or the opinions of the attesting witnesses that the testatrix was competent.
>
> The presence of dementia does not necessarily tell against a testatrix having competency. Dementia may manifest itself in imperfect recollection, yet leave intact the awareness and ability to which I have referred.

Despite these comments, Ashley J found on the evidence that the testatrix lacked testamentary capacity because she exhibited many misconceptions and misrepresentations of events, which agreed with the medical evidence of her mental incapacity arising from dementia.

43 In *Cattermole v Prisk* [2006] 1 FLR 693 ("*Cattermole v Prisk*"), Norris J reached the conclusion (at [75]) that a testatrix who was suffering from "some memory loss and from the early stages of dementia" nevertheless possessed mental capacity. In that case, a widow revoked an existing will which provided a number of legacies to her family, and made a new will bequeathing most of her estate to a man who had become her companion and caregiver. Subsequently, the widow made a further gift to the man shortly before she died. Despite the widow suffering from some memory loss and early stage dementia, Norris J held that she had testamentary capacity when she made the new will because of the witnesses' evidence that she could communicate coherently and was able to search for and accurately find information. The further gift, however, was made when the widow lacked mental capacity and was therefore set aside.

44 In the present case, the Judge correctly held that common law principles applied. However, it may be noted that similar principles have presently been enacted in the Mental Capacity Act (Cap 177A, 2010 Rev Ed) which came into force on 1 March 2010. In particular, s 4 provides as follows:

> **Persons who lack capacity**
>
> 4. —(1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
>
> (2) It does not matter whether the impairment or disturbance is permanent or temporary.
>
> (3) A lack of capacity cannot be established merely by reference to —
>
> (a) a person's age or appearance; or
>
> (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.

The definition of the expression 'unable to make a decision' is elaborated upon in s 5:

> **Inability to make decisions**
>
> 5. —(1) For the purposes of section 4, a person is unable to make a decision for himself if he is unable —
>
> (a) to understand the information relevant to the decision;
>
> (b) to retain that information;
>
> (c) to use or weigh that information as part of the process of making the decision; or
>
> (d) to communicate his decision (whether by talking, using sign language or any other means).
>
> (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of —

(a) deciding one way or another; or

(b) failing to make the decision.

45 The wording of s 4(1) makes it clear that the determinative issue is whether the person is able to make a decision for himself notwithstanding that he may be suffering from an impairment of or disturbance in the functioning of his mind. The medical condition establishing the impairment or disturbance would not by itself conclude the matter. Instead, the statutory regime envisages another step in the inquiry which asks: does this medical condition have the effect of preventing the person from making a decision? In this aspect, the principles enunciated in the new statutory regime are consistent with the common law principles set out above.

46 Once testamentary capacity has been established, a rebuttable presumption arises that the testator knew and approved of the contents of the will at the time of execution. While the legal burden of proof lies at all times with the propounder of the will, the evidential burden of proof shifts in ordinary circumstances to the opponent of the will to rebut this presumption. However, it is necessary to note that under established law, the presumption does not arise where there were circumstances surrounding the execution of the will which would raise a well-grounded suspicion that the will (or some provision in it) did not express the mind of the testator (see generally *Barry v Butlin* (1838) 12 ER 1089 ("*Butlin*") at 1090; *R Mahendran and another v R Arumuganathan* [1999] 2 SLR(R) 166 ("*Mahendran*") at [15]; *Tan Teck Khong v Tan Pian Meng* [2002] 2 SLR(R) 490 at [162]). The circumstances to be considered include only those "attending, or are at least relevant to, the preparation and execution of the will itself" (see *W. Scott Fulton, Isabella D. Fulton and Margaret Fulton v Charles Batty Andrew and Thomas Wilson* (1874–1875) LR 7 HL 448 ("*Fulton*") at 471). In *Mahendran*, this court stated at [129] that any circumstance which had nothing to do with the preparation and execution of the will were to be disregarded. However, it may be noted that in the case of *In the Estate of Musgrove* [1927] P 264, Lawrence LJ said at 286 that although the circumstances to be considered would generally comprise contemporaneous events, they might also include events subsequent to the execution of the will. In the present case, the Judge was of the view that all forms of suspicious circumstances ought to be considered. We agreed with the Judge. In the present case the conduct of Muriel in connection with the respective readings of the 1989 Will and the 1996 Will gave the impression, which the Judge took into account, that she herself did not believe that the 1996 Will represented the actual state of mind of Mdm Goh in relation to the disposition of her properties, especially her half-share in the Holland Road House.

47 We agreed with the Judge's observation (see the Judgment at [136]) that there is no magical formula (comprising a certain fixed number of factors or criteria) to ascertain whether the circumstances surrounding a Will are suspicious. The degree of suspicion will certainly vary with the circumstances of the case. In the final analysis, the actual determination as to whether the circumstances are suspicious enough so as to shift the burden of adducing affirmative evidence of the testator's knowledge and approval of the contents of the will to the propounder is largely dependent on the factual matrix of the case itself.

48 One oft-cited example of suspicious circumstances is where a will was prepared by a person who takes a substantial benefit under it, or who has procured its execution, such as by suggesting

the terms to the testator or instructing a solicitor to draft the will which is then executed by the testator alone (see John G. Ross Martyn, Stuart Bridge & Mika Oldham, *Theobald on Wills* (Sweet & Maxwell, 16th Ed, 2001) at p 35). In such suspicious circumstances where no presumption arises, the propounder of the will must produce affirmative evidence of the testator's knowledge and approval. The court will typically look for evidence that the testamentary instrument was read over by, or to, the testator, or evidence that the testator gave instructions for the drafting of the will and that the will was drafted in accordance with those instructions (see *Butlin* at 483–485). The court may require further evidence if the circumstances so require (see *Fulton* at 469). Thus, in *Mahendran* at [26], the Court of Appeal held that evidence that a will was read and explained to a testatrix with the requisite mental capacity gave rise to the "natural and proper inference" that the testatrix understood and approved of the contents of the will before she signed it. Similar evidence was accepted by the Hong Kong Court of First Instance in *Ip Wai Hung v Yip Man Chiu and others* [2007] HKCU 2108 (unreported) to establish that a testator who did not suffer from any mental diseases had knowledge of a will read over to him and had approved it. Returning to the case of *Cattermole v Prisk*, although there were suspicious circumstances surrounding its execution, Norris J found (at [76]) that the widow knew and approved of the will because she alone gave instructions for it without the aid of notes and spoke about the terms to her banker.

49 Further, where the testator is mentally impaired, the suspicious circumstances are reinforced, and the propounder must also show that the testator was competent to make the will. Accordingly, the irrationality or unusual contents of the will may go towards raising suspicious circumstances. However, the court should not be concerned with the fairness or equity of the will *per se* if the evidence shows, on a balance of probabilities, that it represented the testator's intentions. Chadwick LJ warned in *Fuller v Strum* [2002] 1 WLR 1097 at 1118H–1119B that:

> ...The question is not whether the court approves of the circumstances in which the document was executed or of its contents. The question is whether the court is satisfied that the contents do truly represent the testator's testamentary intentions. That is not, of course, to suggest that the circumstances of execution or the contents may not, in the particular case, be of the greatest materiality in reaching a conclusion whether or not the testator did know and approve of the contents of the document – and did intend that they should have testamentary effect. But their importance is evidential. There is no overriding requirement of morality....

With these principles in mind, we turn to the Judge's decision on the testamentary capacity of Mdm Goh.

**Testamentary capacity of Mdm Goh**

50 On the totality of the evidence, the Judge preferred the opinions of Caroline's experts that Mdm Goh did not have testamentary capacity to make the 1996 Will, to the opinion of Dr Tan, even though he had testified that he was able to "conclude with a degree of medical certainty that at the time [Mdm Goh] made her [1996] Will … she possessed testamentary capacity to do so". Dr Tan had never examined Mdm Goh when she was alive and his opinion was given on the basis of Dr KS Lee's opinion that Mdm Goh's CT scan results were normal when they were not. We did not find it necessary to re-examine the medical evidence to determine whether the Judge's finding was correct. It is an established principle that an appellate court should be slow to disturb the lower court's findings of fact. Nonetheless, we had some doubts about the correctness of the Judge's determination of Mdm Goh's lack of testamentary capacity at the material time based only on the medical evidence adduced by Caroline's medical experts. We have stressed above that the existence of some medical condition affecting a testator's mental capacity was not equivalent to a loss of testamentary capacity. The Judge found that Mdm Goh was suffering from dementia or a cognitive

impairment (although she made no finding that it was due to or related to Alzheimer's disease). However, Mdm Goh's condition clearly varied in severity and fluctuated over time. Dementia is a progressive illness, which might not have affected Mdm Goh's mental faculties to the extent that she lacked testamentary capacity at an early stage of her illness. She could have had moments of lucidity during which she would have possessed testamentary capacity to execute a will. Indeed, after 1996, she recovered sufficiently to give and revoke powers of attorney concerning her affairs to Muriel and Caroline, and neither of them had challenged these transactions. These events showed that she (like the testatrix in *Cattermole v Prisk* who had moments of lucidity) might well have been lucid on 21 August 1996.

51 The Judge had placed great weight on the evidence of the medical doctors who had personally treated Mdm Goh. However, we did not think that these medical opinions were sufficient to show that Mdm Goh did not have testamentary capacity at the material time. First, the opinions were based on clinical notes and tests conducted either before or after 21 August 1996; there were no contemporaneous clinical observations. The clinical notes nearest in time were made by Prof KO Lee, who had briefly examined Mdm Goh on 19 August 1996, but these notes consisted mainly of a record of Mdm Goh's recent fall and the CT scan. Second, the opinions of Prof Kua and Dr Ong were also of limited assistance for the same reason. Third, such retrospective opinions would be of great assistance to the court if Mdm Goh had a history of being unable to understand what was communicated to her, but that was not the case here. In short, none of these doctors had made a contemporaneous diagnosis that Mdm Goh's medical condition would have incapacitated her testamentary competence at the making of the 1996 Will. We accepted that they were not asked this question. But based on the evidence before the court, we were unable to draw the conclusion that because Mdm Goh was suffering from dementia (which caused her to be forgetful) she did not have testamentary capacity at the material time.

52 However, even though the medical evidence adduced by Caroline was not sufficient to prove that Mdm Goh lacked testamentary capacity, this did not mean that she had such capacity. Muriel, as the propounder of the 1996 Will, had the burden of showing that Mdm Goh *had* testamentary capacity at the material time and the medical evidence adduced by her was even weaker than the medical evidence provided by Caroline's witnesses. To discharge that burden, Muriel had to adduce other non-medical evidence to show what the medical evidence did not show. While Muriel did adduce other contemporaneous evidence in the form of eyewitness testimonies of what had happened during the signing of the 1996 Will to try to show that Mdm Goh had testamentary capacity, this evidence was rejected by the Judge. We found no reason to depart from the Judge's conclusion that Muriel had not discharged her burden of proof.

**Did Mdm Goh understand and approve the contents of the 1996 Will?**

53 We turn now to consider the more important element of whether Mdm Goh had understood and approved of the contents of the 1996 Will. We accepted the Judge's findings that the circumstances surrounding the drafting and execution of the 1996 Will, coupled with its contents, were highly suspicious. Muriel's pleaded case that Mdm Goh had given instructions to MO on the preparation and drafting of the 1996 Will was not supported by MO's testimony. It was clear from the evidence that it was Muriel and not Mdm Goh who instructed MO on the terms of the 1996 Will, and that MO had prepared it without having spoken to Mdm Goh on its contents. The 1996 Will was the product of *their discussion on the terms*, and not Mdm Goh's intentions as Muriel had claimed. The provisions of the 1996 Will reflected Muriel's earlier suggestions that Mdm Goh's assets should be distributed fairly among the children and not left to Caroline alone, contrary to Mdm Goh's intention that Caroline was to inherit the bulk of her estate.

54 Nonetheless, the pivotal role played by Muriel in the preparation of the 1996 Will or the fact that the 1996 Will contained unusual terms would not in themselves, invalidate it if it could be shown that Mdm Goh had in fact understood and approved its contents. Ultimately, Mdm Goh was free to accept and approve of Muriel's proposals on how her estate should be distributed. The critical question was whether Mdm Goh understood and approved those proposals. In our view, this was where Muriel also failed to discharge the burden on her to prove this element.

55 The evidence required to establish that Mdm Goh knew and approved the contents of the 1996 Will necessarily depended on what steps were taken to ensure that she was apprised of its contents and the circumstances under which the 1996 Will was signed. Counsel for Muriel was correct in arguing that the Judge's finding that Mdm Goh suffered from early stage dementia, in itself, did not determine the issue of testamentary capacity, but that her mental infirmity was obviously germane to her comprehension of the 1996 Will at the time she signed it. In *Cattermole v Prisk*, the court expressed (at [76]) that it was impressed by the fact that the testatrix, who, like Mdm Goh, was likely to be suffering from early stage dementia, had personally given instructions for the drafting of the will and had discussed its terms with her banker. Whereas the reading of a will to a testator suffering from some degree of mental incapacity might allow a facade or even a *prima facie* impression of testamentary understanding, any doubt arising from the circumstances surrounding its execution would likely be dispelled where it is shown that the testator gave the instructions and discussed the terms of a will with the drafter. Muriel's assertions that Mdm Goh had given such instructions and MO's inability to confirm them meant that she had to adduce other evidence to establish that Mdm Goh had the requisite knowledge and had approved of its contents.

56 In this respect, our view of the evidence adduced by Muriel was that it was thin to the extent of invisibility. Counsel for Muriel relied extensively on MO's testimony that she had read the 1996 Will line by line to Mdm Goh who had nodded in agreement, and that the other witnesses had not recalled anything amiss with the execution generally. As mentioned above (at [48]), under ordinary circumstances the reading of a will to a testator not suffering from any mental infirmity would be sufficient evidence of his understanding or knowledge of the contents, but that general principle would not apply to a situation where the testator might not have full understanding due to the onset of dementia. In this case, Dr Ong had cautioned that given her mental state, Mdm Goh could have *appeared* to understand the contents of the 1996 Will when it was read to her, but this did not necessarily indicate actual understanding. The Judge accepted Dr Ong's caution in this respect, and there was no reason for us to disagree with that finding.

57 But the Judge also considered the evidence of Muriel's witnesses that Mdm Goh had understood the contents of the 1996 Will before signing. She rejected the evidence as highly unsatisfactory. We agreed with the Judge on her findings, particularly with respect to MO's testimony. MO's testimony was critical. She was the best person to give a complete account of what had happened in relation to the preparation and the signing of the 1996 Will. However, MO's testimony was difficult to believe. She did not take any attendance notes about her meeting with Mdm Goh on the two occasions concerned (and for which no explanation was offered). She could not recall the conversation she had with Muriel as recorded in the Second Fax which was sent on the morning of 21 August 1996, scant hours before Mdm Goh signed the 1996 Will. All these failures in recollection of critical events surrounding the execution of the 1996 Will suggested that Mdm Goh had merely signed what was placed in front of her. Furthermore, she admitted that she did not explain the terms of the 1996 Will to Mdm Goh. Consequently, the Judge found that her evidence on Mdm Goh's competency in understanding the terms of the 1996 Will lacked credibility. W's testimony was equally unsatisfactory. W had merely said that it was also her practice to read a will line by line to a testator. Dr Goh's evidence also lacked credibility. He claimed to have seen Mdm Goh initial every page of the 1996 Will, but this claim was untrue.

58 Accordingly, we agreed with the Judge's finding that Muriel had failed to prove that Mdm Goh had understood the terms of the 1996 Will before she signed it. The evidence did not show that it had been properly, if at all, explained to her. Reading a will line by line to a testator is not conclusive evidence that the testator understood each line, especially when she, as was the case with Mdm Goh, suffered from some degree of mental infirmity. In the present case, it should be borne in mind that the 1996 Will was no ordinary will. Its provisions were quite unusual, if not extraordinary for a will. The material provisions may be summarised as follows:

(a) Caroline and Paul were recorded to have bought a half-share of the Holland Road House at a "discounted price of $2.5 million in 1995". They were given the option to purchase, within one year of Mdm Goh's death, her half-share of the Holland Road House at the prevailing market price as determined by two independent valuers of international repute. If the option was not exercised, the Holland Road House was to be sold "in the market".

(b) Paul was to fully indemnify Mdm Goh's estate for any liability incurred in the mortgage executed jointly between Caroline, Paul and Mdm Goh for the purchase of the Holland Road House. He was further expected to pay off the amount of the purchase loan from his own funds.

(c) The residuary estate was to be held on trust for Alexander, Maureen, Ping Kong, Ping Swee and Muriel in equal shares.

59 It can be seen that the 1996 Will read more like an exercise in justifying a settlement of past unequal treatment or an equalisation of inheritance, rather than just the making of a will that a normal testator would normally do. The provisions certainly had the imprint of Muriel who had proposed such an arrangement to Alexander in the 25 June 1994 letter when Mdm Goh was still alive. Given her mental infirmity at the material time, we had serious doubts about Mdm Goh's capacity to understand the complex provisions in the 1996 Will, even if it had been read to her line by line, especially when, as admitted by MO, no explanation on what the lines meant was given to Mdm Goh. In the circumstances, we had no difficulty in agreeing with the Judge that Muriel had failed to prove on a balance of probabilities that Mdm Goh had understood the contents of the 1996 Will before she signed it.

60 In our view, this case demonstrates that solicitors who undertake the task of preparing wills and/or witnessing the execution of wills must take the necessary precautions or steps in order to fulfil their duties to their clients. The precautions are not complicated nor are they time consuming. In any case, as solicitors, they must do what is required, however complicated or difficult the task may be. The central task is to ensure that the terms of the will reflect the wishes of the testator. How this is done depends on the circumstances of each case. In every case, the solicitor should be cautious about taking instructions from any person who is to be named as a beneficiary in the will. If a testator is known to be suffering from any mental infirmity, a doctor should be called to certify her mental capacity before she is allowed to sign the will to ensure that such a testator fully understands the will. In the case of a person with mental infirmities like Mdm Goh, it should have included attending on Mdm Goh personally to take instructions from her, providing her with and explaining a draft of the will to her, and if there is any doubt as to her mental capacity, to advise that a psychiatrist (or some other qualified medical practitioner) attend on her to assess her mental capacity. Furthermore, the solicitor should ask the appropriate questions to ascertain the testator's capacity to understand the contents of the will. The testator should be asked as simple a question as whether he or she is making a will for the first time or whether he or she had made a will previously. In the latter case, the solicitor should ask whether the testator knows that he or she is revoking the existing will. These questions may be formulaic, but they are necessary to avoid cases such as this. Finally, as a matter

of good professional practice, if not professional prudence, the solicitor should make a contemporary written record of his or her attendances on the testator so that he or she would be able to recall exactly what had transpired during the meeting or meetings.

61 We would also reiterate the observations made recently in *Low Ah Cheow and others v Ng Hock Guan* [2009] 3 SLR(R) 1079:

> 73 The preparation of a will involves serious professional responsibilities, which solicitors must uncompromisingly observe and discharge. Regrettably, it seems to us that, all too often nowadays, solicitors appear to consider the preparation of a will to be no more than a routine exercise in form filling. This is *wrong*. Before preparing a will, the solicitor concerned ought to have a thorough discussion with the testator on all the possible legal issues and potential complications that might arise in the implementation of the terms of the will. The solicitor ought to painstakingly and accurately document his discussions with and his instructions from the testator. He should also confirm with the testator, prior to the execution of the will, that the contents of the will as drafted accurately express the latter's intention. A translation, if required, must be thoroughly and competently done. Half measures or the cutting of corners in the discharge of these serious professional responsibilities will not do.
>
> 74 In our view, the solicitor concerned should also conscientiously seek to avoid being in any situation where a potential conflict of interest may appear to exist. If the solicitor might be perceived as anything less than a completely independent adviser to the testator, he ought not, as a matter of good practice, to be involved in the explanation, the interpretation and the execution of the will. In particular, exceptional restraint and care are called for if the solicitor concerned has a pre-existing relationship and/or past dealings with the sole beneficiary under a will, and all the more so if the will has been prepared urgently and executed in unusual circumstances with that sole beneficiary's active involvement. When such a case occurs, the solicitor involved must be prepared to have his conduct microscopically scrutinised and, perhaps, even his motives called into question.
>
> [emphasis in original]

62 With Singapore's aging population and the increased life expectancy of Singaporeans, aged members of our community not infrequently experience resultant loss in memory or mental capacity. In these circumstances, it is desirable that members of the legal profession play a part in reducing the opportunities for litigation over testamentary dispositions by testators who are suffering from dementia, Alzheimer's disease and the whole range of mental illnesses that are associated with old age. If solicitors do their part, it will reduce, if not eliminate, all the borderline cases where doctors are asked to give their best opinions on the mental condition of someone they might not even have attended to, based on medical records which often are not helpful for the purpose at hand. When psychiatrists err, judges will also err if they rely on their evidence. The judicial process is not the best mechanism to determine the testamentary capacity of a testator, and solicitors who draw up wills bear a special responsibility to the testator and the legitimate beneficiaries not to have their handiwork picked over by psychiatrists acting on imperfect information in a court of law.

63 In the present case, we express no opinion on the motive of Muriel in getting Mdm Goh to sign the 1996 Will in the manner in which it was done. We can understand what she did and why she did what she thought was right for the other members of the family, but there is a legal way to do such things, and she went about it the wrong way.

**Conclusion**

64 For the reasons above, we dismissed the appeal with costs of the appeal to be borne by the appellant. We did not, however, find it necessary to disturb the Judge's order of costs for the trial below or to order costs to the interveners.