IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 112

Originating Application No 1057 of 2024

Between

Cheng Tze Tzuen (Zhong Zhixuan)

… *Claimant*

And

Dang Lan Anh

… *Defendant*

GROUNDS OF DECISION

[Probate and Administration — Intestate succession]

[Family Law — Void marriage — Whether marriage entered before 1 October 2016 can be void for being a marriage of convenience]

Cheng Tze Tzuen
v
Dang Lan Anh

[2025] SGHC 112

General Division of the High Court— Originating Application No 1057 of 2024
Valerie Thean J
24 January, 26 February, 14 March 2025

1 July 2025

Valerie Thean J:

Introduction

1 In 2016, s 11A of the Women's Charter 1961 (2020 Rev Ed) ("WC") was introduced to render void any marriages of convenience solemnised on or after 1 October 2016. These grounds of decision concern a marriage of convenience contracted prior to the effective date of the statute. After the demise of his father, a son of a party to such a marriage sought declaratory relief in order to claim a larger share in his father's estate.

Background

2 Mr Cheng Meng Koon ("the deceased") and Ms Dang Lan Anh ("the Defendant"), a Vietnamese national, married on 26 January 2011. This was the

deceased's second marriage after a divorce with his first wife.[1] Mr Cheng Tze Tzuen ("the Claimant") is his son from his first marriage.

3 Notwithstanding the marriage, the deceased made no mention of the Defendant to his family. Neither did he make any provision for her, to the knowledge of his family members.[2] Prior to this marriage, he had been deep in debt. His financial troubles appeared to have been resolved around the time of his marriage.[3] He continued to live with his sister, with whom he owned a Housing and Development Board ("HDB") flat, first as a joint tenant, and later as a tenant in common with a 14% share.[4] It is the need to deal with this 14% share has given rise to this application. It was explained by the Claimant's uncle that the 14% share was calculated on the basis that the deceased's sister would hold six shares or 86% of the HDB flat for her five siblings and a nephew, while the deceased would hold one share, being 14%, for the Claimant.[5]

4 The deceased passed away on 8 January 2012.[6] The family became aware of the marriage upon receipt of a letter dated 2 March 2012 from the Insolvency and Public Trustee's Office (the "IPTO"), which informed them that the Defendant, as the deceased's wife, was entitled to a portion of his Central Provident Fund ("CPF") money.[7] As the family had no information on the Defendant, IPTO followed on to give notice in the Straits Times under s 29 of

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1 Cheng Tze Tzuen's affidavit dated 14 October 2024 ("CTT's affidavit") at para 7.

2 CTT's affidavit at pp 48–49.

3 CTT's affidavit at p 57.

4 CTT's affidavit at para 27 and p 49.

5 CTT's affidavit at p 76.

6 CTT's affidavit at para 6.

7 CTT's affidavit at pp 16, 57 and 77.

the Trustees Act 1967 (2020 Rev Ed) and to seek information on the Defendant and her whereabouts. No information was thereby obtained.[8]

5 More recently, the family was informed by the Immigration and Checkpoints Authority (the "ICA") on 16 July 2024 that the Defendant had been deported for immigration offences in 2011.[9] The Claimant's uncle was also informed by the police that the Defendant had been arrested for vice activities prior to her deportation in June 2011.[10]

The Claimant's application

6 On 14 October 2024, the Claimant applied for the following declarations in HC/OA 1057/2024 ("OA 1057"):

(a) A declaration that the marriage between the deceased and the Defendant is void, as it was a sham marriage or marriage of convenience; and

(b) A declaration that the deceased's assets are to be distributed amongst the deceased's immediate family members according to the prevailing laws, rules and regulations to the exclusion of the Defendant.

7 The application was served by substituted service, and the Defendant did not enter an appearance.

8 The premise of the Claimant's application was that the marriage was a sham and was entered into for the purpose of avoiding immigration laws in

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8 CTT's affidavit at para 42.

9 CTT's affidavit at p 90.

10 CTT's affidavit at p 77.

exchange for gratification. Such marriages have been referred to variously in previous decisions. For simplicity, I refer to them in these grounds as marriages of convenience, being marriages that exhibit the characteristics of a proscribed marriage under s 11A of the WC (putting aside the operative date of the provision). While s 11A of the WC rendered such marriages of convenience void after 1 October 2016, the Claimant argued that the court could declare such marriages, even if solemnised prior to 1 October 2016, void. While I was prepared to accept the factual premise that the marriage had been one of convenience on the available affidavit evidence and in the absence of any evidence to the contrary, I was not similarly sanguine about the legal premise of the application. Time was therefore given for further research and submission.

9 On 14 February 2025, the Claimant responded in a letter to ask, without further research or submission, for additional orders in relation to the grant of the letters of administration and the distribution of the estate (the "Letter"), as follows:

> (a) That the Claimant be entitled to apply for the Grant of the Letters of Administration over the estate of the deceased on the footing that the Defendant is excluded from the administration and/or application for the Grant of Letters of Administration, without the need for a Renunciation and Consent from the Defendant;
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> (b) That any administration bond, if required, be dispensed with;
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> (c) That the Claimant be at liberty to distribute, deal and/or administer the estate of the deceased on the footing that the Defendant is excluded from the distribution and to distribute the estate to the remaining beneficiary; and

(d) That the administrator of the estate of the deceased be empowered to receive any of the deceased's CPF monies and/or other assets as held by the IPTO, the CPF Board and/or other relevant authorities, including any share of the Defendant, and to deal with and/or distribute the same on the footing that the Defendant is excluded from the distribution and to distribute the estate to the remaining beneficiary.

10 On 26 February 2025, time was requested and granted when I explained to counsel that the declaratory relief and orders sought in the application were misconceived, and that suitable relief should be sought at the Family Justice Courts ("FJC"). On 14 March 2025 I made no order on the application. The Claimant has appealed against my decision, and I furnish my grounds of decision.

Section 11A of the Women's Charter

11 I first deal with the legal sustainability of the declaration sought by the Claimant that the marriage is void. As I explain below, I disagreed with the Claimant that the requested declaration should be granted. Nevertheless, I did not dismiss the application outright, but made no order because, as I shall explain in the second part of these Grounds of Decision, in respect of the estate, which was the subject of the application, the proper course for the Claimant is to seek letters of administration and directions at the FJC.

The legal context

12 Section 11A of the WC, which provides for the nullity of marriages of convenience, applies to marriages solemnised on or after 1 October 2016, and reads as follows:

> **Avoidance of marriages of convenience**
>
> **11A.**—(1) A marriage *solemnised on or after 1 October 2016*, whether in Singapore or elsewhere, is void if —
>
> > (*a*) a party to the marriage contracts or otherwise enters into the marriage knowing or having reason to believe that the purpose of the marriage is to assist the party or the other party to the marriage to obtain an immigration advantage; and
> >
> > (*b*) any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage.
>
> (2) However, a marriage is not void under subsection (1) if it is proved that both parties to the marriage believed on reasonable grounds, when contracting or entering into the marriage, that the marriage would result in a genuine marital relationship.
>
> (3) A marriage *solemnised on or after 1 October 2016* is deemed to be void under subsection (1) if either party to the marriage is convicted of an offence under section 57C(1) of the Immigration Act 1959 in respect of the marriage.
>
> (4) In this section, "gratification" and "immigration advantage" have the meanings given by section 57C(6) of the Immigration Act 1959.
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> [emphasis added]

13 In *Tan Ah Thee and another (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v Lim Soo Foong* [2009] 3 SLR(R) 957 ("*Tan Ah Thee"*) at [56], the High Court took the position that the private motives of parties to a marriage would not undermine the validity of the marriage. *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737 ("*Toh Seok Kheng*"), decided prior to the amendment to the WC, followed the reasoning of *Tan Ah Thee* and held that the court could not annul a marriage because it was entered into for (what some might consider) improper motives, or in which spouses continue to live as though they were unmarried (at [12]). *Soon Ah See and another v Diao Yanmei* [2016] 5 SLR 693 ("*Soon Ah See*"), decided after the passage of the 2016 amendments but before they came into force, followed

the same approach on the validity of the marriage. The Claimant, however, relied on the more recent cases of *Gian Bee Choo and others v Meng Xianhui* [2019] 5 SLR 812 ("*Gian Bee Choo*")[11] and *Kee Cheong Keng v Dinh Thi Thu Hien* [2025] SGHCF 15 ("*Kee Cheong Keng*").

14 I am respectfully of the view that the position articulated in the earlier cases remain relevant, and that it would be incorrect, in the light of Parliament's clear expression that s 11A ought to apply to marriages contracted after 1 October 2016, to regard as void such marriages contracted prior to the effective date of the statute. I explain below.

Why marriages of convenience were upheld

15 The views expressed in the earlier cases of *Tan Ah Thee*, *Toh Seok Kheng*, and *Soon Ah See* may be summarised as follows.

(1) Exclusive grounds under Section 105 of the Women's Charter

16 First, s 105 of the WC provides for the exclusive grounds for a marriage to be void. The operative words of the section expressly stipulates that marriages shall be "void on the following grounds only": *Tan Ah Thee* at [54]–[55]; *Toh Seok Kheng* at [12].

17 Section 105 of the WC at the time stated:

> **Grounds on which marriage is void**
>
> **105.**—A marriage which takes place after 1st June 1981 is void *on the following grounds* only:
>
> (*a*) that it is not a valid marriage by virtue of sections 3(4), 5, 9, 10, 11, 12 and 22; …

[11] Claimant's Skeletal Submissions ("CWS") at paras 54–67.

[emphasis added]

18 These grounds did not include annulling the marriage on the basis of intentions or motives that some may consider improper or on the basis that parties would continue with their respective lives as though they were unmarried: *Toh Seok Kheng* at [12]. The judges therefore held that there was no statutory basis for the court to declare a sham marriage void.

19 In *Soon Ah See* at [35], the plaintiff relied on ss 17, 22 and 105 of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC 2009"), read together, to argue that an intention to enter a marriage of convenience was a lawful impediment that ought to properly be declared. This argument was rejected by the court: *Soon Ah See* at [39]. The court found that the WC did not prescribe a sham marriage to be void, and since the law should desist from identifying proper motives of marriage, the grounds under s 105 of the WC should be tightly construed: *Soon Ah See* at [40]–[43]). Even though penal consequences may be visited on those involved in marriages of convenience, it did not *ipso facto* mean that such marriages would be void: *Soon Ah See* at [45]. The existence of s 11A of the WC was also brought to the attention of the court, but the court was satisfied that the law as it stood, prior to the introduction and operation of s 11A of the WC, did not nullify sham marriages: *Soon Ah See* at [48].

(2) System of registration of marriage to be given due effect

20 Second, the system of registration of marriages must be given due effect. So long as the formalities were properly observed, parties ought to be free to marry, despite any mental reservations or private arrangements. The system of law regulating marriage in Singapore would be impaired if the parties' intentions in entering into a marriage were relevant to the validity of the marriage. This would gravely diminish the value of the system of registration

of marriages: *Tan Ah Thee* at [57]; *Toh Seok Kheng* at [13]; *Soon Ah See* at [42], all citing the Court of Appeal decision of *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90 at [33].

(3) Public policy should not be determined by judicial fiat

21 Third, any public policy in favour of preventing an abuse of marriage as an institution should not be determined by judicial fiat: *Toh Seok Kheng* at [14]–[15]. The articulation, delineation and enactment of such public policy is the proper remit of Parliament, and it is not for the courts to determine what is an actionable abuse. In the absence of specific laws prescribing that sham marriages are void, there would be no basis to do so.

Why marriages of convenience were declared to be void

22 The courts in *Gian Bee Choo* and *Kee Cheong Keng* took the position that a marriage of convenience is void under the provisions of the WC, independent of the operation of s 11A. Whilst accepting that s 105 of the WC provided for the exclusive grounds upon which a marriage is void, the court in *Gian Bee Choo* came to the conclusion that s 105 nonetheless does accommodate the position that a marriage of convenience is void: *Gian Bee Choo* at [101]; *Kee Cheong Keng* at [9]. Three provisions of the WC were used:

(a) The starting point was s 105 of the WC 2009, which stated that a marriage shall be void for, *inter alia*, being an invalid marriage by virtue of s 22 of the WC 2009: *Gian Bee Choo* at [130].

(b) Section 22 of the WC 2009 stipulated that a marriage was void unless solemnised on the authority of a valid marriage licence issued by the Registrar of Marriages ("the Registrar"). A valid marriage licence meant a marriage licence issued by the Registrar when correctly satisfied

that all requirements under s 17(2) of the WC 2009 were met: *Gian Bee Choo* at [131]. If the Registrar was not correctly satisfied that the requirements are met, there would be no valid licence, and the marriage shall be void.

(c) Section 17(2)(*d*) of the WC 2009 prescribed that the Registrar shall not issue a marriage licence unless satisfied by statutory declaration made by each of the parties that there is no lawful impediment to the proposed marriage: *Gian Bee Choo* at [131]. An intention to enter into a marriage of convenience constitutes a lawful impediment to the proposed marriage that ought to be declared: *Gian Bee Choo* at [137]. A failure to declare such an intention would amount to a wrongful declaration, invalidating the marriage licence and thereby rendering the marriage void under s 105 of the WC 2009: *Gian Bee Choo* at [146].

23 The crux of the court's reasoning was that an intention to enter into a marriage of convenience constituted a lawful impediment that ought to have been declared, such that a failure to do so would invalidate the marriage licence and therein the marriage. Three reasons were given, which are as follows.

(1) General public policy against marriages of convenience

24 First, a general public policy against marriages of convenience has always existed: *Gian Bee Choo* at [139]. Sham marriages were prosecuted under the law even before the enactment of s 57C of the Immigration Act 1959 (2020 Rev Ed) ("Immigration Act") in 2012, which created a new substantive offence targeting sham marriages: *Gian Bee Choo* at [139(a)].

25 The values and purposes embodied in the WC to provide for monogamous marriages further supported this public policy. A monogamous marriage was defined under s 2 of the Interpretation Act 1965 (2020 Rev Ed) to be "a marriage which is recognised by the law of the place where it is contracted as a voluntary union between one man and one woman to the exclusion of all others during the continuance of the marriage": *Gian Bee Choo* at [139(b)(i)]. Section 46(1) of the WC 2009 also "sets out society's aspirations of how marriage partners should behave" and "enshrines a legal expectation that husband and wives are to take their marriage seriously as a permanent union which should be safeguarded": *Gian Bee Choo* at [139(b)(ii)], citing *UKM v Attorney-General* [2019] 3 SLR 874 ("*UKM*") at [189]. A sham marriage would run contrary to these values and undermine the sanctity of marriage.

26 Moreover, the recognition of a marriage of convenience may expose the State's institutions and benefits to exploitation and would be unjust to the beneficiaries: *Kee Cheong Keng* at [10]. Public policy requires the court to intervene so that the "spouse" of a sham marriage would not inherit the other party's assets.

(2) Breach of penal provisions

27 Second, a marriage of convenience would have been *prima facie* in breach of penal provisions even in 2007, when the marriage in that case was solemnised: *Gian Bee Choo* at [140]. Sham marriages had been prosecuted under s 5 of the Prevention of Corruption Act 1960 (2020 Rev Ed) and s 57(1)(*k*) of the Immigration Act: *Gian Bee Choo* at [109]–[114].

(3) Fraud on the Registrar

28 Third, the Registrar would not have solemnised and issued the marriage licence, had the Registrar been aware that the parties had intended to enter into a marriage of convenience: *Gian Bee Choo* at [141]. This amounted to the perpetuation of a fraud and deception on the Registrar. The parties would have leveraged on the institution of marriage for a fraudulent purpose, which should not be condoned.

Analysis

29 When s 11A of the WC was introduced, s 105 of the WC was also amended, to add a new subsection (*aa*) after subsection (*a*):

> (*aa*) where the marriage was solemnised on or after 1 October 2016, that it is not a valid marriage by virtue of section 11A.

Specific mention is made, as it is in s 11A of the WC, of marriages solemnised after 1 October 2016 which are not valid under s 11A of the WC.

30 In my judgment, the reasoning of *Tan Ah Thee* remains pertinent. Section 105 of the WC does not accommodate grounds not specified as reasons to regard a marriage as void. Nor does s 11A of the WC accommodate a breadth of application to a period prior to its commencement date. Both sections are clear in specifying the grounds for their engagement. It is in this context that the courts in *Gian Bee Choo* and *Kee Cheong Keng* held that a failure to declare an intention to enter a marriage of convenience would invalidate the marriage certificate and render the marriage void. I respectfully disagree that a marriage certificate would be invalidated by a failure to declare an intention to enter a marriage of convenience. In my respectful view, this approach would amount to stipulating a new ground under s 105 of the WC or extending the applicable

time period specified in ss 11A and 105(*aa*) of the WC. It is, in essence, writing words into the statute. The principle that the expression of a specific item excludes another item not expressed (*expressio unius est exclusio alterius*) is a helpful guide in the present case. The express prescription of an operative date in ss 11A and 105(*aa*) of the WC should imply an exclusion of marriages of convenience solemnised before 1 October 2016 from the ambit of s 105 of the WC.

31 The Court in *Gian Bee Choo* (at [89]) also accepted that s 11A of the WC does not have retrospective effect. Instead, the approach of *Gian Bee Choo* and *Kee Cheong Keng*, in making intention relevant to lawful impediment, rested on policy. While I accept the proposition in the two cases that there has been a policy stance expressed in certain other statutes against marriages of convenience (see [24]–[25] above), the scope of the policy in respect of the validity of marriages and its application in the context of the WC has been specified by the words of ss 11A and 105(*aa*) of the WC. The criminalisation of marriages of convenience (see [27] above) only operates to impose penal consequences on the parties to the marriage. A distinction must be drawn between *legal consequences* and the *validity* of an act. It does not follow that committing a crime or fraud on the Registrar *ipso facto* constitutes a lawful impediment or a circumstance that prevents parties from marrying, the failure of which to declare would nullify the act upon which the crime is based. Penal provisions and accompanying consequences, without more, would not have any effect on the validity of the marriage. Specific provision, for example, is made in s 11 of the WC for the status of bigamous marriages notwithstanding that a party contracting a bigamous marriage is guilty of the offence of marrying again during the lifetime of the spouse under s 6A of the WC. In the event of any

exploitation (see [26] above), it will be for Parliament to balance such exploitation against other valid concerns and to amend the statute.

32 Marriage, because of its significance, brings with it changes in a person's status. Creating new grounds for affecting the status of marriage must be approached with caution, as the institution of marriage could otherwise be gravely diminished. Of relevance is P Coomaraswamy J's guidance in *Ng Bee Hoon v Tan Heok Boon* [1992] 1 SLR(R) 335 at [49], which was cited with approval by the Court of Appeal in *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90 at [33] and referred to in the earlier cases of *Tan Ah Thee* at [57]; *Toh Seok Kheng* at [13]; and *Soon Ah See* at [42]:

> In my view, if a man and a woman (who are not barred from marrying each other) exchange consents to marry with due formality before a person lawfully authorised to solemnise a marriage under the Charter, intending to acquire the status of married persons, it is immaterial that they intend the marriage to take effect in some limited way or that one or both of them have been mistaken about, or unaware of, some of the incidents of the status which they have created. To hold otherwise would impair the effect of the whole system of law regulating marriages in Singapore, and greatly diminish the value of the system of marriages on which so much depends. Marriage status is … of great public concern. It is intolerable for the law on marriage to be played with by people who saw fit to go to the Registry and subsequently, after some change of mind, affirm that it is not a marriage in the full sense because they did not so regard it.

33 In my view, on the question whether marriages of convenience solemnised prior to the effective date are void, while there may be a wider public policy against marriages of convenience that has always existed, Parliament has made clear the applicable time period for which such marriages are to be considered void. Because Parliament has made clear its intention, and not left the court with any discretion to declare a marriage void other than on the grounds stipulated in s 105 of the WC, it is not open to me to consider whether

public policy can be taken into account in determining whether to declare the deceased's marriage with the Defendant void.

34 In this context, I draw a distinction between the situation at hand with that of *UKM*, where the Court of Appeal found that the relevant statutory provision, s 3(1) of the Adoption of Children Act (Cap 4, 2012 Rev Ed) ("ACA"), conferred on the court a general discretion to determine whether to make an adoption order (at [89]). Appreciated against the scheme and legislative history of the ACA, the general discretion of s 3(1) had the purpose of enabling the court to consider any public policy which might be relevant to any aspect of the institution of adoption (at [97]). The statutory discretion in s 3(1) of the ACA was the applicable basis for taking public policy into account (at [102]). That basis is inapplicable here. I mention *UKM* here because it is relevant in a separate but related aspect of this case, which I deal with below, at [46].

35 I was therefore of the respectful view that the application to grant a declaration that the marriage was void ought not to be granted.

The appropriate relief

36 That was not the end of the matter, however. Although the application for the requested declaration was misconceived, the Claimant ought to seek relief at the FJC and take up a discussion with IPTO. The appropriate course was therefore to make no order on the application and I explain separately in relation to the estate and non-estate assets.

Estate assets

37 In the present case, the estate in issue was the deceased's 14% share in the HDB flat co-owned with his sister. There are potentially two issues relevant, first, obtaining letters of administration, and thereafter, distribution of the estate.

Obtaining letters of administration

38 By the Letter, the Claimant sought orders for the Claimant to be entitled to apply for the grant of letters of administration to the exclusion of the Defendant and for any administration bond to be dispensed with: see the first and second orders sought in the Letter at [9] above. This was not an appropriate order for the General Division of the High Court to make, as there is an established procedure for the application of letters of administration at the FJC: see P 6 r 3 of the Family Justice (Probate and Other Matters) Rules 2024 ("Probate Rules"). The appropriate course would be for the Claimant to first seek letters of administration at the FJC, in order to administer his father's estate.

39 A difficulty counsel would have faced if he took the proper course is that the Defendant (as the spouse) would have priority to the letters of administration *vis-à-vis* the Claimant (as the child), the entitlement to which is prescribed by s 18 of the Probate and Administration Act 1934 (2020 Rev Ed) ("PAA"). Entitlement to the letters of administration is based on priority of entitlement to the estate under s 7 of the Intestate Succession Act 1967 (2020 Rev Ed) ("ISA"): see *Toh Seok Kheng* at [23]–[24]; G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018) ("*Raman on Probate"*) at paras 7.31–7.32. Pursuant to s 7, rules 2 and 3 of the ISA, a spouse is entitled to one-half of the estate while the remainder shall be

distributed by equal portions *per stirpes* to and amongst the children of the person dying intestate.

40 Therefore, by the Letter, counsel for the Claimant was seeking to circumvent the need to obtain the Defendant's renunciation. That was not the appropriate method. Under s 2 read with s 22 of the Family Justice Act 2014 (2020 Rev Ed), probate proceedings under the PAA constitute family proceedings and therefore fall under the jurisdiction of the FJC. In a case such as the present, the Claimant may cause a citation to be issued to the Defendant, pursuant to P 6 rr 38 and 39 of the Probate Rules: see s 4(1) of the PAA. The failure of the Defendant to file a notice of intention to contest or not contest in response to the citation would be deemed to be a renunciation of the prior right to letters of administration: s 4(2) of the PAA. This would have the effect of precluding any Defendant so renouncing from applying thereafter for the letters of administration: s 5(1) of the PAA. The Claimant, as the next person entitled to the letters of administration, would then be able to apply to the FJC for the letters of administration.

Distribution of the estate

41 The distribution of the estate is another matter. Under the ISA, the Defendant would be entitled to half of the deceased's estate. If the Claimant obtained letters of administration, he would then stand as a trustee of the estate and be concerned with the problems of distribution of the administered estate among the persons entitled: *Ong Wui Teck (personal representative of the estate of Chew Chen Chin, deceased) v Ong Wui Swoon and another and another appeal* [2019] SGCA 61 at [64]. The trustee would have a duty to distribute trust property to the persons beneficially and indefeasibly entitled to it:

Halsbury's Laws of Singapore vol 9 (LexisNexis Singapore, 2024) at para 110.792.

42 The Claimant sought, by his prayer for the second declaration (set out above at [6(b)]), to exclude the Defendant from entitlement to the estate. Again, this was not appropriate. In the event that he obtains letters of administration, as trustee, he may come to his own considered assessment as to the Defendant's entitlement and distribute the estate accordingly. A court order may be preferred for various reasons. If so, it would be appropriate to commence an administration action *qua* trustee under O 32 of the Rules of Court 2021 ("ROC 2021"), which stipulates a procedure for the court to provide guidance as to the administration of trusts. This is incorporated into the Probate Rules by virtue of P 1 r 2 of the Probate Rules. Order 32 r 2(1) allows personal representatives to seek the directions of the court as to the administration of an estate without placing administration entirely in the hands of the court: see *Halsbury's Laws of Singapore* vol 4 (LexisNexis Singapore, 2024) at para 50.236. This process is meant to "provide guidance to personal representatives in the performance of their duties or protection of beneficiaries and creditors against the action of personal representatives": see *British and Malayan Trustees Ltd v Ameen Ali Salim Talib and others* [2025] 3 SLR 16 at [37].

43 In my view, such an administration action may be brought at the FJC for the court to provide guidance as to the appropriate entitlements to the estate in light of the factual circumstances surrounding the marriage.

44 I come, in this context, to the Claimant's reliance on the guidance of the Court of Appeal in *UDA v UDB* [2018] 1 SLR 1015 at [28] that third party proceedings for a declaration that a marriage between two other persons is void do not constitute matrimonial proceedings and will not fall under Part X of the

WC. Part X deals with divorce, judicial separation and nullity of marriage. This does not apply to the issue of whether the FJC, in the exercise of its *probate* jurisdiction, may make a relevant factual finding. In the present case, the Claimant sought to argue that the marriage was void. A void marriage is void *ab initio* as a legal nullity and does *not* require *any decree of court* nullifying it. Lord Greene's explanation in the English Court of Appeal decision of *De Reneville v De Reneville* [1948] P 100 (at 111), as cited with approval by the Court of Appeal in *ADP v ADQ* [2012] 2 SLR 143 at [50], reads:

> … [A] void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it *without the necessity of any decree annulling it*; a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.
>
> [emphasis added].

45 Relatedly, the following English cases are examples where courts considered the circumstances of a marriage in the exercise of its probate jurisdiction.

(a) In *Vardy v Smith* [1932] 148 LT 124, the issue before the English Court of Appeal was whether the plaintiff or defendant was entitled to the letters of administration as the lawful widow of the deceased. The deceased had obtained a divorce with the plaintiff in a foreign court and subsequently married the defendant. The plaintiff argued that the latter marriage was invalid as jurisdictional flaws and irregularities in procedure invalidated the preceding divorce. The court ultimately declined to find that the preceding divorce was invalidated and held that the defendant was entitled to the letters of administration (at 127).

(b) In *In the Estate of Park, decd* [1954] P 112, the issue before the English Court of Appeal was whether the deceased had the capacity to enter into the marriage and whether the marriage was valid, so as to determine whether a will executed before the marriage ceremony was properly revoked by the marriage. The court considered and upheld the finding of the judge below that the deceased had had the capacity to enter into the marriage (at 127, 135 and 137–138). The will was therefore properly revoked by the marriage.

(c) In *In re Seaford, decd* [1968] P 53, the issue before the English Court of Appeal was whether the marriage was still subsisting at the time of the husband's death on 6 July 1965, such that the wife would be entitled to the letters of administration. The husband had passed away in the early hours of the morning, while a decree nisi of divorce was made absolute later the same day. The court considered the issue and found that the decree was a nullity as the husband had passed away before the decree was made absolute (at 69E, 72G and 73G). The wife was therefore entitled to the letters of administration.

46 Therefore, the issue as to whether the marriage is void could have been properly considered in the context of estate administration. In the present case, as the application for a declaration was before me, I have considered and respectfully declined to grant the declaration sought for the reasons explained above at [29]-[36]. Nevertheless, it is open to the Claimant to argue that, in respect of FJC probate issues, this leaves open the issue as to *whether, in considering the specific issue of inheritance rights,* and in the exercise of the Court's *discretion* in the same context, the *UKM* analysis would lead to an outcome in the Claimant's favour. There could be a basis for taking public policy considerations into account in the exercise of that discretion, with

application of the *UKM* two-stage analytical framework. This could be relevant to two further issues: the application of the ISA, and whether a distribution order thereafter would be useful.

47 Under the ISA s7, Rule 2 provides that if the Defendant, as the surviving wife, was alive at the time of his death, she would have been entitled to 50% of the deceased's estate. The administrator has a duty to ascertain whether she was alive at the time of the deceased death, and if so, whether she is alive or to locate the beneficiaries of her estate. What if he is unable to ascertain whether the spouse is alive? The Rules do not stipulate. Rule 3 specifies distribution to the deceased's issue "[s]ubject to the rights of the surviving spouse, if any". While Rule 9 is stated to apply "in default of distribution under Rules 1 to 8", this serves to entitle the Government to the whole of the estate, implying that Rule 9 applies only where Rules 1 to 8 has wholly, and not partially, failed. Such a reading is consistent with s 27(1)(*a*) of the Civil Law Act 1909 (2020 Rev Ed) which refers to the right accruing to Government where persons "who have died intestate *without* next-of-kin" (emphasis added). *Raman on Probate* at para 11.47, states to the same effect: "[o]nly where there are no next of kin or heirs within the ambit of the laws on intestacy would the government be entitled to take the assets as *bona vacantia*".

48 On a separate note but relevant to this context, the Court of Appeal has referred to the use of Benjamin orders, "a direction to the trustees enabling them to distribute the trust property on an assumption of fact that there is no such other beneficiary or claimant", first established in the case of *In re Benjamin* [1902] 1 Ch 723 ("*Benjamin*"): *Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA and others* [2020] 1 SLR 950 ("*Ernest Ferdinand*") at [52]. This is applicable "[w]here a trustee is to distribute trust property, but is faced with a practical difficulty in establishing the existence of

other possible beneficiaries or claimants": *Ernest Ferdinand* at [52]. Notably, a Benjamin order does not vary or destroy beneficial interests but merely enables trust property to be distributed according to the practical probabilities. A beneficiary would still be entitled to his or her share of the estate and would still be able to pursue such remedies as is available to them, even though the trustee may be protected: see *Ernest Ferdinand* at [52]; Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) at para 39–031.

49 Most commonly, a Benjamin order's operation has been premised on the assumption that there is no such beneficiary *at the time of the deceased's death*, on the footing that an individual had predeceased the deceased, and therefore *did not qualify* as a beneficiary entitled to the estate: see, *eg, Benjamin*; *Re Green's Will Trusts* [1985] 3 All ER 455; *NSW Trustee and Guardian (Estate of Peter Urso*) [2013] NSWSC 903. It is on such a footing that the estate can be distributed to the other beneficiaries, as opposed to continuing to be held for a particular individual. Notwithstanding, a Benjamin order has also been applied more liberally to situations where the beneficiary may still be alive but simply could not be found due to impracticalities in locating the individual: see, *eg*, *Application of Harnett and Cutts* [2016] NSWSC 427 ("*Harnett and Cutts*"). In *Harnett and Cutts*, there were indications that the missing beneficiary was still alive between 2011 to 2013, some years after the death of the testator in 1996: at [22]. However, despite the conduct of all reasonable searches, the missing beneficiary could not be found. The Supreme Court of New South Wales concluded that it would be unnecessarily expensive and time-consuming to expect the executors to undertake further searches given the modest size of the estate, the 18 years during which the missing beneficiary could not be found, and the old age of the executors (who were also remaining beneficiaries): at

[23]. It was on that basis that the court granted the Benjamin order for the executors to be at liberty to distribute the share of the estate set aside for the missing beneficiary: at [24].

50 Pertinently, Rule 3 of s 7 of the ISA deals with a deceased's issue "[s]ubject to the rights of the surviving spouse, if any". In the event that a Benjamin order is given, it would not vary or destroy beneficial interests but merely enables trust property to be distributed according to the practical probabilities. A beneficiary would remain entitled to his or her share of the estate and would still be able to pursue such remedies as is available to them, even though the trustee may be protected. Of course, the issue of any relevant searches or orders to be made would be the province of the FJC, as the matter was not properly before me.

51 The Claimant sought distribution orders modelled after the Benjamin order in the Letter: see the third and fourth orders at [9] above. No submissions were made to explain the basis for the request at the General Division of the High Court. Moreover, a Benjamin order must be sought by the administrator of the deceased's estate, and the Claimant had not yet obtained letters of administration. As I have explained, both the issue of the correct administrator, and what directions he may seek, are within the remit of the FJC.

CPF money

52 CPF money does not form part of a deceased's estate and, where no CPF nomination is made, is managed by the CPF Board or the Public Trustee (the "PT") pursuant to prevailing intestacy laws: see s 25A of the Central Provident Fund Act 1953 (2020 Rev Ed).

53 The Claimant sought an order regarding CPF money by letter (see above, at [9]. There was no basis for this. In 2012, in the context of distributing the deceased's CPF in accordance with the ISA, the PT was unable to locate the Defendant. The Claimant adduced no evidence as to what view the PT took on the funds after the advertisement was made, or whether the funds were held as unclaimed funds pursuant to s 21 of the Public Trustee Act 1915 (2020 Rev Ed) ("PTA"); nor was there evidence of any recent effort to liaise with the PT or the CPF Board.

Conclusion

54 For the above reasons, the application was misconceived. The Claimant should pursue available statutory procedures at the FJC in respect of the deceased's estate and with the PT or the CPF Board for CPF money issues. I therefore made no order on the application.

Valerie Thean J
Judge of the High Court

Ong Xin Ying Samantha (WNLEX LLC) for the claimant;
The defendant absent and unrepresented.