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## Question(a)

The formality requirements that should be met in order for the will to be valid are set forth in s. 5(1) and s. 5(2) of the Wills Ordinance Cap. 30.

s. 5(1) of WO prescribes the following requirements:

- a will must be completed in written form, signed by the testator or by other person who is in presence with the testator and is directed by him/her.
- testator`s signature must imply his/her intention to give effect to the will.
- the signature shall be made in the presence of at least 2 witnesses who either attest or acknowledge testator`s signature. (Wills Ordinance, Cap. 30)

The will is considered valid regardless of the fact if it is handwritten or typed.

The testator shall be required to use his usual signature to sign the will. If the testator due to some reason cannot write, his thumb print or a simple cross will be considered as a valid signature. The precedent law, supplemented by the statutory requirements, establishes under certain circumstances the validity of incomplete signature as well as printed signature (Re Chalcraft, 1948). The main idea behind these rules is that the court when deciding on the question of the validity of the will, must be concerned about the form of the signature to the extent that it should indicate reasonable intentions of the testator, not whether the signature has usual or normal form.

(Greenwood and Shing, 19)

The will may still be deemed valid even if the provisions of s5(1) were not followed (requirements of testator`s and witness(es) signature(section 6)).

This rule applies to mariners, seaman at sea or any other person involved in actual military, naval or air forces. These persons are subject to the

Privileged wills rule of s6 WO.

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When the testator signs or acknowledges the signature at least two independent witnesses must be present. The main responsibility of the witnesses is to observe the testator writing his signature. There is no need for the witnesses to be aware of the contents of the will. During the execution of the will the witnesses must be competent, i. e. not influenced by any drug substances, not to be blind or too young. As required by the law, witnesses are asked to sign the will after the testator makes the signature. . (Greenwood and Shing, 20)At the same time attestation clause is not an obligatory requirement according to s5(1) but it may be a useful practice during the formation of the will.

The second paragraph of the section prescribes the scope of application of the Informal Will : if the court acknowledges that there is a solid reason to believe that the will embodies the testamentary intention of the deceased, the will shall be deemed duly executed even if the abovementioned provisions s5(1) were not followed.

### **Question(b)**

1. According to rule 19, Cap 10A of Non-contentious probate rules, the person or persons entitled to a grant of probate are determined in the following order:

- the executor:
- any residuary legatee or devisee holding in trust for any other person.
- any residuary legatee or devisee for life
- the ultimate residuary legatee or devisee.

With regard to the given situation the priority for grant application will be

determined as follows: firstly, sole executor EE, secondly FF as residuary legatee or devisee holding in trust and in the third place RR as the ultimate residuary legatee or devisee.

2. In case FF dies before EE applying for the grant, RR will become a second person after EE who is eligible to apply for the grant of probate. Only if the executor (EE) either dies or renounces his responsibilities as the executor of the will according to r. 29 of PAO, then RR will be eligible to execute the will.

3. Pursuant to the section 29 of Probate and Administration Ordinance, an executioner who was appointed by the testator may renounce his right to take out a grant. The renunciation of the right may be expressed either orally during the hearing of any petition or probate action by the executor himself or by a representing counsel, or in writing signed by the executor and attested either by a solicitor or by the person to whom an affidavit may be sworn.(Probate and Administration Ordinance, s29). The contents of renunciation contain the formal declaration by the executor that he/she did not intermeddle with the estate of the deceased and that he/she renounces all his rights related to the execution of the will.

The Renunciation of Probate that was sent by EE to RR does not fully comply with formality requirements that are set forth in the abovementioned provision. One of the essential requirements is that the will and the signature of the person renouncing the probate must be properly attested which was not done in the following case. In that situation RR may ask EE to renounce his rights according to the provisions of s29 of PAO or to issue a citation against EE pursuant to the r. 46 of NCPR also known as the citation to accept or refuse the grant. This citation is used when there is a need to confirm

whether the person who has the higher priority in grant application will apply for the grant or not.

### **Question(c)**

1. The following provision in the will represents an example of conditional gifts or to be more specific - gifts of residue. Such gifts are usually granted to the legatee under certain conditions, commonly age or survivorship conditions. (Greenwood and Shing, 32) In our case, we see a clear example of survivorship condition - the legatee must survive the testator for a period of one month. However, AA being the beneficiary under the will, died before the testator which means that the gift to AA lapsed. As provided in the will, if the AA fails to survive the testator then all the residuary estate is given to VV.

2. The situation in the following case does not seem to cause any contradictions. Testator established the rule that the residuary estate shall be absolutely given to BB, only in case BB survives the testator for a period of more than a month. Obviously, the requirement was not met as the BB died two weeks after the testator`s demise, the fact that caused the lapse of the gift to BB. Due to these circumstances, under the will, WW becomes the legatee of the residuary estate.

3. s14 of WO provides that a will shall be revoked by the testator`s marriage if, however, it appears from the will that the testator expected to be married to a particular person and that the testator intended that the will shall not be revoked by marriage. It does not appear from the will that the testator either expected to marry a particular person or in any other form intended that the

will shall not be revoked upon marriage. Therefore, the will shall be revoked upon the marriage to DD.

4. In another example of conditional gift the testator indicated in the will that he shall give all his residuary estate to EE unless, for any reason or reasons, such estate lapses. EE later divorced the testator and as prescribed by the s. 15, Cap 30 of Wills Ordinance, that particular fact constituted the “ reason” due to which the gift subsequently lapsed. Thus, it is fair to assume that according to the will and the intention of the testator that the residuary gift is to be given to YY.

### **Question(d)**

Suffix ‘ a’ indicates the forms that are used for death after the Abolition of Estate Duty.( forms W1. 1a, W1. 2a, W. 1. 3a, W1. 4a)

Suffix “ b” indicates the forms that are used for death before the Abolition of Estate Duty (forms W1. 1b, W1. 2b, W1. 3b, W. 1. 4b)

### **Application for Probate**

W1. 1a

In this form, the executor appointed according to the testator`s will, solemnly affirms, inter alia, the fact of the death of the testator, indicates the place and time of the death as well as the time when the will was executed. The executor affirms his/her commitment to faithful administration of all responsibilities that have been vested on him according to the will. This form is used by the executor who was appointed by the testator in his will, and serves as an initial application for a grant of probate.

## **W1. 1b**

This application form has the same function as W1. 1a Affirmation or Affidavit by Executor (Executor's Application), but in addition to the abovementioned information it may also contain the statement by the executioner that he/she provided appropriate authorities with complete and comprehensive account of all deceased`s property as well as stated the estimated value of the latter. This form is used by the executor who was appointed by the testator in his will, and serves as an initial application for a grant of probate.

## **Application for Grant with Will annexed (deceased made a will but appointed no executor)**

### **W1. 2a**

This application is submitted by the lawful attorney of the executor. The purpose of that application is to receive letters of administration in case when the executor resides outside Hong Kong. (Pursuant to r. 30 NCPR)

### **W1. 2b**

The form has the same practical purpose as 1. 2a but additionally it may also contain the statement by the executioner that he/she provided appropriate authorities with complete and comprehensive account of all deceased`s property and title thereto. (Pursuant to r. 30 NCPR)

## **W1. 2**

This form authorizes an attorney to obtain letters of administration of the deceased`s estate in case when the executor resides outside of Hong Kong (pursuant to the Rule 30 of the Non-Contentious Probate Rules (Cap. 10A))

**W1. 3a**

The following form is submitted for the letters of administration of the estate of the Deceased. It is applied by the residuary legatee or devisee named in the will in case the executioner either dies or renounces his right for the will's execution.

**W 1. 3b**

The form has the same practical purpose as W 1. 3a but additionally it may also contain the statement by the residuary legatee or devisee that he/she provided appropriate authorities with complete and comprehensive account of all deceased's property and title thereto.

**W1. 4a**

The form is used by the residuary legatee or devisee to apply for the letters of administration in case no executor was appointed by the will.

**W 1. 4b**

The form has the same practical purpose as W1. 4a but additionally it may also contain the statement by the residuary legatee or devisee that he/she provided appropriate authorities with complete and comprehensive account of all deceased's property and title thereto.

**Renunciation (pursuant to s29 of PAO, renunciation made in writing)****W2. 1**

The form is used in case the appointed executor is willing to renounce all



his/her rights and title for probate and execution of the will of the deceased person.

## **W 2.2**

The form is used in case the residuary legatee or devisee is willing to renounce all his/her rights and title to letters of administration (with will annexed) of the deceased`s estate.

## **Works Cited**

1. Wills Ordinance, Cap. 30, effective 1970
2. Greenwood, Shing “ Law of Succession and Probate Practice”, HKU School of Professional and Continuing Education.
3. Re Chalcraft, 1948
4. Non-Contentious Probate Rules, (Cap 10A), effective 1971
5. Probate and Administration Ordinance (Cap 10), effective 1971
6. Hong Kong Judiciary, Probate Forms (Application with Will) [http://www.judiciary.gov.hk/en/crt\\_services/forms/probate\\_formw.htm](http://www.judiciary.gov.hk/en/crt_services/forms/probate_formw.htm)