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Imperfectly Made Gifts

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*The best gifts come from the heart,
not the store.*

Sarah Dessen

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A properly made gift is one that the law will uphold as valid when challenged.

Unlike real estate, most movable (objects) do not have a title deed. Any intended change in ownership requires a purposeful, clear and complete act. Increasingly, executors look to the High Court in Singapore to decide if a gift had been made by the deceased testator. A gift made imperfectly will not go to the donee. It will form part of the deceased's estate and will be distributed by the executor.

The heartfelt gift fails.

A few months ago, an article of mine highlighted the High Court case *Teo Song Kheng v Teo Poh Hoon* [2020] SGHC 47 where a gift of jewelry in a mother's safe deposit box was held to have been imperfectly made. Click [here](#) for a read.

In March 2022 and, on appeal, in February 2023, the General Division of the High Court (Family Division) and the Appellate Division of the High Court, respectively, decided that a gift of

US\$1.5 million from a mother to a daughter was imperfectly made; *WDS v WDT* [2022] SGHC 12 and *WDT v WDS* [2023] SGHC (A) 7. In wanting to make a gift of money, a mother turned to her lawyer to draft the document and guide her in the process. In the meantime, while waiting for the lawyer to revert, the mother signed a letter drafted by a friend (“the letter”) which contained instructions to both her lawyers and bankers to execute all necessary fund transfers “now” for the gift of the money to the donee. The letter was then handed to the same friend, who kept it right up to the time the mother passed away. After which she handed the letter to the donee.

Incidentally, the day after the letter had been signed by the mother, the mother's lawyer sent a draft deed of gift for the mother's approval. Unfortunately, the mother passed away before this deed was executed. Because there was a high chance that the deed would be challenged by the other children, the lawyer advised, and the mother accepted that she had to undergo a mental capacity assessment before the deed was executed. This was a process the mother was familiar with because it was the second time she was making a gift of money to the donee. Before the assessment was done, the mother passed away.

The executor of the mother's estate sought the Court's determination of the alleged gift.

The Law

Previously, in *Teo's case*, the Judge listed 3 elements to be fulfilled for a valid gift to be made during a donor's lifetime:

- The donor's (subjective) intention to relinquish the object at the time of gifting;
- Certainty as to the subject matter of the gift; **and**
- The delivery or parting with possession of the object from the donor to recipient.

In the *WDS v WDT*, both the executor and donee agreed that the deceased had intended to make a gift. Also, it was not disputed by them that there was no delivery of the money to the donee. Accordingly, **all 3 elements** had not been fulfilled.

However, the donee relied on an English case, *Rose v Inland Revenue Commissioners* [1952] Ch 499 where it was held that **a gift will be regarded as complete if the donor has done all that is necessary and, in her power, to effect the gift.**

The Courts' Decision

On the facts, the mother was found not to have done all that is necessary.

- The deed of gift had not been signed.
- The bank account/s for the money was not specified.

- The mother did not give her lawyer or her banker the letter. Instead, it was given to her friend with no instructions to convey the letter to the lawyer or banker.
- Even if the friend was regarded as being the mother's agent to pass the letter to the lawyer and banker or, for that matter, the donee, the mother had not instructed the friend to do this. And so, the friend had not done so.
- The assessment as to the mother's mental capacity was not done, this having been accepted by the mother as being a necessary step before the execution of the deed of gift to ensure the validity of the gift in the face of a challenge.

Key Takeaway

In wanting to make a gift properly, **have a lawyer draw up the deed of gift.**

In October 2022, in *Thamby Kannu Parvathi v Geetha d/o Subramaniam (administratrix of the estate of Subramaniam Govindasamy, deceased) and Mogan (administrator of the estate of Subramaniam Govindasamy, deceased)* [2022] SGHC 273, the High Court looked at a Gift Document drawn up by the donee. Aptly, the Judge said it was "unwise" of Geetha to have prepared the Gift Document. And, "The court further pointed out to Geetha that had a lawyer been consulted, the parties would not be before the court as lawyers would ensure that the purported gift was valid."

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Perfection has to do with the end product but excellence has to do with the process.

Jerry Moran

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About the Author



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