

## **OUTLINE**

No	Item	Answer	Explanation	Relevant Provision(s)
1	Why did the plaintiff bring the case?			
2	What is the nature of relationship between the disputing parties? (Who are they)			
3	Was the defendant in a position to dominate the will of the plaintiff?			
4	Was there a real or apparent authority?			
5	Was there a fiduciary relationship?			
6	Was there an affected mental capacity?			
7	Did the defendant use his dominating position?			
8	Was there an unfair advantage obtained by the defendant?			
9	Was the claim of Undue Influence successful? Why/Why not?			
10	What was the remedy given by court?			

**Case:** *Inche Noriah v Shaik Allie bin Omar* [1929] AC 127

**Tutorial:** Section 3, Wednesday 4-5pm

### **Name of Group Members:**

1. Umy Marshita Binti Mohamed Azhar (1818016)
2. Nur Iman Taqiah Binti Mohamad Mazlan (1813400)
3. Adam Haikal (1816761)

No	Item	Answer	Explanation	Relevant Provision(s)
1	Why did the plaintiff bring the case?	Brought a case claiming that a deed of gift should be set aside.	On the ground that the impugned deed of gift, conferring all rights to the appellant's property, executed in the respondent's favour was procured by his undue influence.	Irrelevant.
2	What is the nature of relationship between the disputing parties? (Who are they)	This case illustrates the relationship between an aunt (appellant) and her nephew (respondent) by marriage.	The relationship is between an aunt and her nephew who lives with her. The respondent moved in with the appellant after the death of his mother. He stayed with the appellant when her daughter passed away and even collected rent on behalf of her.	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>s 16(1) Contracts Act 1950</b>
3	Was the defendant in a position to dominate the will of the plaintiff?	Yes.	The disputing parties are in a fiduciary relationship. The Privy Council accepted the trial judge's observation: "The appellant relied on the respondent to manage most her affairs as she was a feeble old woman, unable to leave the house, relying entirely upon the respondent even for her food and clothes. She also left the management of her affairs to him, so she had no knowledge of her own affairs or as to the value of her properties, and that she was completely in the respondent's hands."	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>ss 16(1), 16(2) Contracts Act 1950</b>

4	Was there a real or apparent authority?	No.	Irrelevant.	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>s 16(2)(a) Contracts Act 1950</b>
5	Was there a fiduciary relationship?	Yes.	The Appellant's great reliance on the Respondent due to her old age and illiteracy rendering her helpless, unable to manage her own needs and affairs. After the death of her daughter, the appellant rarely ever left the house, relying solely on the respondent for everything, including the management of her property and basic life necessities. This places the respondent in a position to dominate the will of the appellant.	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>s 16(2)(a) + Illustration (a) Contracts Act 1950</b>
6	Was there an affected mental capacity?	Yes.	The Appellant was of great age and wholly illiterate, a feeble old woman who completely relied on the Respondent to manage all her affairs, including her domestic affairs. The Appellant's inability to manage and acknowledge her own affairs depicts her failure of an independent reasoning.	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>s 16(2)(b) + Illustration (b) Contracts Act 1950</b>
7	Did the defendant use his dominating position?	No.	In this case, no actual undue influence was proven. Instead, it was agreed that a presumption of undue influence had already arisen due to the peculiarity of the relationship between the appellant and respondent.	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>s 16(1) Contracts Act 1950</b>

8	Was there an unfair advantage obtained by the defendant?	Yes	The respondent, by the appellant's execution of the deed of gift in dispute, had gained complete beneficiary power of nearly all of the appellant's properties. The appellant, however, was only left with an annual income of ~\$30. This supplements the existence of the respondent's position to dominate the appellant's will in (5).	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>s 16(1) Contracts Act 1950</b>
9	Was the claim of Undue Influence successful? Why/Why not?	Yes	As evident in (5),(6) and (8), the relationship between the parties and the unfair advantage obtained by the respondent was enough to establish a presumption of undue influence. In this case the appellant sought to rebut the presumption by proving that the defendant had sought independent legal advice. However, the court decided that such legal advice must have been in contemplation of all relevant factors (the magnitude and gravity of the decision). Since this was not the case, the court found the presumption of undue influence un rebutted.	No relevant Singaporean/English provisions.  Relevant Malaysian provision: <b>ss 16(1), 16(2)(a), 16(3)(a), Contracts Act 1950</b>
10	What was the remedy given by court?	Appeal allowed.	Upon deciding that the presumption of undue was sustained and unshaken by the respondent, the court allowed the appeal, set aside the deed of gift, affirming the trial judge's decision and ordered the respondent to bear the cost of the appeal and the costs of the action before this appeal. As the matter in dispute was not a contract in the strict sense, the question of rescission or voidability never arose.	Irrelevant.