## Article Information

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# Its all Burmese to me

**In this recent case the Supreme Court of South Australia considered whether a document of testamentary nature written in the Burmese language could be a Will under Part 3 of the Wills Act 1936 (SA) (the Act).**

*Kyaw Nyunt (Deceased)* [2015] SASC 14

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**Facts**

Kyaw Nyunt (deceased) died on 26 November 2013, leaving personal property in South Australia. The deceased and his wife (the applicant) were both born in Myanmar. They had been married for more than 15 years and had two children aged 11 and 12. The family moved to Australia in 2010.

On 7 December 2011, during a trip to Myanmar, the deceased and the applicant executed a document of testamentary nature, written in the Burmese language (the document). An English translation of the document was provided to the Court.

The document on translation was described as an "Agreement on Family Arrangement". There were two parties to the document, the deceased and the applicant and it was signed in the presence of two witnesses.

Initially, the applicant sought a grant of probate of the document pursuant to Part 3 of the Act which at section 25B provides that:

*A Will is to be treated as properly executed for all purposes if its execution conformed to the internal law in force in the place where it was executed, or in the place where, at the time of its execution or of the testator's death, he or she was domiciled or had his or her habitual residence, or in a country of which, at either of those times, he or she was a national.*

The applicant subsequently accepted that the document did not appoint an executor, and even if it could be considered a Will, it would be wholly ineffective in disposing of the deceased's Australian assets. Accordingly, the applicant sought a grant of letters of administration on the basis that the deceased died intestate.

The applicant also sought to be exempted from the requirement that she transfer the interests of the deceased's children (who were minors) to the Public Trustee pursuant to section 67 of the *Administration and Probate Act 1919* (SA) (the Probate Act).

**Outcome and Principles**

The Court found that, on the state of the evidence, the applicant did not discharge the burden of proving that the document was to be regarded as a Will for the purposes of Part 3 of the Act.
Justice Gray confirmed that, "the practice of the Court where a Will is inoperative is not to prove the Will, but to issue letters of administration without the inoperative Will being annexed. The failed Will is recorded in the grant of letters of administration and recited in the oath of administration."

The Court ordered a grant of letters of administration of the deceased's estate be made to the applicant and that a

dispensation order be made pursuant to section 67 of the Probate Act.
The Court was satisfied that deceased's children would be properly protected by the proposed dispensation order. Given the applicant's business experience, the relatively modest size of the children's interests and the Public Trustees power to readily monitor the applicant's compliance with her duties as administrator, the Court was also satisfied that it was beneficial to the children to grant the dispensation order.