

Drafting settlement agreements

14 September 2017

Outline

- Nature of cases/Types of agreements
- Feasibility of agreements
- Limitations of enforcement mechanism
- Ensuring compliance with agreements
- Drafting exercises

Nature of cases/Types of agreements

- Nature of cases mediated in State Courts
 - Civil claims
 - Tort/contract/defamation/employment/MCST/estate claims etc
 - Magistrate's Complaints
 - POHA
 - Civil actions for harassment under Protection from Harassment Act
 - Community disputes
 - Community Disputes Resolution Act
 - Small Claims Tribunal
 - Small value consumer claims

Feasibility of agreements

- When there is settlement, mediator should
 - Ensure that the settlement terms are workable :
**reality testing*
 - Ensure that all issues have been covered
 - Always ascertain from parties if there are areas/issues that are not covered or discussed in the agreement before recording & finalising it
 - Confirm the terms
 - Parties must know what they are agreeing to
 - Be mindful of how the settlement agreement works within the enforcement mechanism ie. terms must be robust and enforceable

Effects of settlement

- A court-mediated settlement is binding on parties and must be carried out according to its terms
 - *Jonathan Lock Han Chng v Goh Jessiline* [2007] SGCA 56; [2008] 2 SLR (R) 455

Limitations of Enforcement Mechanism

- Criminal & POHA
 - Settlement = withdrawal of complaint
 - Note: complaint cannot be resurrected or refiled
 - Non-availability of default clauses
 - Non-specificity of undertaking
 - Lack of oversight on compliance
 - Practical difficulties in monitoring

Limitations of Enforcement Mechanism

- Civil
 - Recourse to default clauses
 - Should mediator alert the parties on the need for a default clause
 - Nature of default clause
 - Eg. ‘...in default of any instalment payment, the outstanding amount shall immediately become due and payable and the Pf shall be entitled to enter judgment for the said amount’

Non-compliance with settlement agreement

- Any failure to comply with settlement terms by any party entitles the other party to enforce the settlement agreement as a court order
 - *Jonathan Lock*



Discussion Topics

Q: Should a mediator help parties draft the settlement agreement?

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9



Discussion Topics

Q: What steps can the mediator take to ensure that the settlement agreement is workable?

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10

Discussion Topics

Q: What is the extent of the mediator's involvement in ensuring compliance ?

Drafting Exercise

Exercise 1 :

In the course of an argument at the workplace, B shouted vulgarities at A. A wants B to apologise and visit A's mother with a hamper. B accepts. What do you do ?



Drafting Exercise

Exercise 2 :

R agrees to pay C a sum of \$200 for medical expenses. R has no money. Discuss.



Drafting Exercise

Exercise 3 :

Socialite Coco was an popular social blogger hugely endorsed by sponsorship. Socialite Chanel, being less popular, was resentful and jealous. A keyboard war of words ensued on social media. Each alleged the other to be leading a permissive lifestyle and having 'fake' body parts. The vitriol extended to their families. Coco suffered a dent in her popularity and a consequential pull-out by her sponsors. The dispute escalated from the blogosphere into the courtroom. After a successful mediation, both ladies agreed to a ceasefire on the social postings. Each respective party demanded a show of contrition and sincerity from the other. In addition, Coco wants to be compensated for her loss of endorsements. How do you structure the agreement ?

*Drafting Exercise 3 : SAMPLE***IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE**

DC 999/2017

Between

Coco
(NRIC No. _____)

...Plaintiff

And

Chanel
(NRIC No. _____)

...Defendant

SETTLEMENT AGREEMENT

By consent and in full and final settlement of both claim and counterclaim, both parties hereby agree as follows —

1. Both parties shall apologise to each other in the presence of the mediator for the distress and anxiety which resulted from their postings on the internet;
2. Both parties shall within 7 days from today, undertake to remove each and every of the statements, blogs, photographs, articles, comments, posted on the internet concerning each other and their respective family members;
3. Both parties shall hereafter, whether by herself or through any other person, refrain from ever again posting any statement, blog, photograph, article, comment, whatsoever, whether on the internet or otherwise, concerning each other and their respective family members;

Chanel
(NRIC No. _____)

...Defendant

SETTLEMENT AGREEMENT

By consent and in full and final settlement of both claim and counterclaim, both parties hereby agree as follows —

1. Both parties shall apologise to each other in the presence of the mediator for the distress and anxiety which resulted from their postings on the internet;
2. Both parties shall within 7 days from today, undertake to remove each and every of the statements, blogs, photographs, articles, comments, posted on the internet concerning each other and their respective family members;
3. Both parties shall hereafter, whether by herself or through any other person, refrain from ever again posting any statement, blog, photograph, article, comment, whatsoever, whether on the internet or otherwise, concerning each other and their respective family members;
4. Both parties shall not voluntarily engage in any more correspondence or contact with each other, whether directly or indirectly;
5. The Defendant shall pay to the Plaintiff the sum of \$20,000 by 4 monthly instalments of \$5000 each, to her UOB A/C No. ~~XXX~~, with effect from the middle of the month (15 September 2017) and thereafter in the middle of each subsequent month till 15 December 2017. In the event of a default, the outstanding amount shall become due and payable forthwith.
6. Each party shall bear its own costs.

Signed on 14 September 2017

Coco (NRIC No. _____)_____
Chanel (NRIC No. _____)

Drafting Exercise

Exercise 4 :

D agrees to pay P \$35,000 in 7 monthly instalments of \$5000 each by way of 7 post-dated cheques by the end of the month. While you respect the parties on what they had agreed upon, without being judgemental and interfering, are there any concerns that the mediator may have ? Discuss.

Drafting Exercise 4. : SAMPLE

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

MC/MC XXX/2017

Between

AAA
(NRIC No. _____)
And

..Plaintiff

BBB
(NRIC No. _____)

.....Defendant

SETTLEMENT AGREEMENT ON 14 SEPTEMBER 2017

By consent and in full and final settlement of the Plaintiff's claim, the parties hereby agree as follows:

1. The Defendant shall pay to the Plaintiff the sum of \$35,000 ("the debt") by 7 monthly instalments of \$5000 each, commencing on 30 September 2017 and thereafter on the last day of each subsequent month until full payment is made.
2. The Defendant shall deliver to the Plaintiff by 21 September 2017, 7 post-dated cheques in favour of the Plaintiff for the aforesaid instalment payments.
3. If the Defendant should default in the payment of any instalment, the

BBB (NRIC No. _____)	_____ Defendant
SETTLEMENT AGREEMENT ON 14 SEPTEMBER 2017	
By consent and in full and final settlement of the Plaintiff's claim, the parties hereby agree as follows:	
<ol style="list-style-type: none"> 1. The Defendant shall pay to the Plaintiff the sum of \$35,000 ("the debt") by 7 monthly instalments of \$5000 each, commencing on 30 September 2017 and thereafter on the last day of each subsequent month until full payment is made. 2. The Defendant shall deliver to the Plaintiff by 21 September 2017, 7 post-dated cheques in favour of the Plaintiff for the aforesaid instalment payments. 3. If the Defendant should default in the payment of any instalment, the debt less any payment or payments made shall immediately become due and payable. 4. The Plaintiff shall file the Notice of Discontinuance for MC/MC XXX/2017 within 7 days of receipt of the post-dated cheques from Defendant. 5. Each party shall bear its own costs. 	
Signed on the 14 th day of September 2017 by:	
_____ AAA (NRIC No. _____)	_____ BBB (NRIC No. _____)

Drafting Exercise

Exercise 5 :

After mediation, the neighbours Mdm Su and Mdm Sah agreed to keep the peace along the corridor. Mdm Su wants Mdm Sah and her family to keep the noise level from the karaoke down and not to sing for more than 3 hours after 9pm. Mdm Sah wants Mdm Su and her family to stop passing snide remarks when they walk past the latter's unit. Similarly, Mdm Su wants Mdm Sah to stop badmouthing her and her family to others in the neighbourhood.

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

PHA-111-2017 & PHA-222-2017

SETTLEMENT AGREEMENT

Upon the parties having come to an amicable settlement after mediation by the Court, BY CONSENT

Mdm Su (NRIC No. _____) - Complainant

And

Mdm Sah (NRIC No. _____) - Respondent

hereby agree as follows:

1. Both parties shall use their best endeavours to maintain the peace and harmony between them as neighbours.]
2. Mdm Sah shall undertake to ensure that she and her family refrain from singing karaoke beyond 9 pm for more than 3 hours.
3. Both parties undertake to refrain from engaging in any form of activity or communication that would cause distress, anxiety or harassment to each other and their respective families; and
4. Both parties undertake to ensure that they and their respective families do not make any remarks of a derogatory, disparaging or insulting nature with reference to each other's family, whether to third persons, or otherwise.
5. Should the parties or their family members need to communicate with each other, they shall conduct themselves civilly and respectfully towards each other, in the spirit of cooperation and of keeping the peace between them.
6. Both parties shall keep the terms of this settlement private and confidential and shall not communicate anything concerning the mediation or terms of settlement to any other person whether orally or in writing or via any social media, except that if asked by anyone about the case, they may only reveal the fact that it has been amicably settled and no more.

Upon the parties having come to an amicable settlement after mediation by the Court, BY CONSENT

Mdm Su (NRIC No. _____) - Complainant

And

Mdm Sah (NRIC No. _____) - Respondent

hereby agree as follows:

1. Both parties shall use their best endeavours to maintain the peace and harmony between them as neighbours.
2. Mdm Sah shall undertake to ensure that she and her family refrain from singing karaoke beyond 9 pm for more than 3 hours.
3. Both parties undertake to refrain from engaging in any form of activity or communication that would cause distress, anxiety or harassment to each other and their respective families; and
4. Both parties undertake to ensure that they and their respective families do not make any remarks of a derogatory, disparaging or insulting nature with reference to each other's family, whether to third persons, or otherwise.
5. Should the parties or their family members need to communicate with each other, they shall conduct themselves civilly and respectfully towards each other, in the spirit of cooperation and of keeping the peace between them.
6. Both parties shall keep the terms of this settlement private and confidential and shall not communicate anything concerning the mediation or terms of settlement to any other person whether orally or in writing or via any social media, except that if asked by anyone about the case, they may only reveal the fact that it has been amicably settled and no more.
7. This Agreement is in full and final settlement of all criminal and civil claims arising from the incidents in Magistrate's Complaints **PHA-111-2017 & PHA-222-2017**, and both parties undertake to honour and abide by the terms of this Agreement.

Signed on this 14th day of September 2017 by:



Thank You

