WILLS ACT

CHAPTER 9:01

Act
L.I. 3 of 1872
Amended by
L.I.5 of 1917
19 of 1939
12 of 1990

Current Authorised Pages

Pages (inclusive)	*Authorised by L.R.O.*
1-13	*1/1991*

Note
on
Subsidiary Legislation

This Chapter contains no Subsidiary Legislation.

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30. The words "die without issue," or "die without leaving issue," shall mean die without issue living at the death.
31. No devise to trustees or executors, except for a term, shall pass a chattel interest.
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CHAPTER 9:01

WILLS ACT

AN ACT respecting the testamentary disposition of property.

1961. Ed.
Cap. 215.
3 of 1872.

[6th August 1872]

Commencement.

1. This Act may be cited as the –

WILLS ACT.

Short title.

2. In this Act –

Interpretation.

"personal estate", includes leasehold estates and other chattels real, and also to moneys, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods and all other property whatsoever which by law devolves upon an executor or administrator and to any share or interest therein;

"real estate" includes the messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein;

"will" includes a testament and a codicil, and an appointment by will or by writing in the nature of a will in the exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child by virtue of any Act, and to any other testamentary disposition.

PART I

POWER OF DEVISING, ETC.

All property may be disposed of by will.

3. Every person may devise, bequeath or dispose of by his will, executed in the manner hereinafter required, all real estate and all personal estate to which he is entitled either at law or in equity, at the time of his death and which, if not so devised, bequeathed or disposed

Estates *pur autre vie.*

Contingent interest.

Rights of entry.

Property acquired after execution of will.

of, would devolve upon the heir-at-law of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator, and also to estates *pur autre vie,* whether there is or is not any special occupant thereof, and whether the same is freehold or of any other tenure, and whether the same is a corporeal or incorporeal hereditament, and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may, or may not, be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights respectively and other real and personal estate as the testator may be entitled to at the time of his death notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Estate *pur autre vie.*

4. If no disposition by will is made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir if it comes to him by reason of special occupancy as assets by descent as in the case of freehold land in fee simple; and, in case there is no special occupant of any estate *pur autre vie,* whether freehold or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and, if the same comes to the executor or administration either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Father may dispose of custody of children during minority.

Powers of guardians.

5. The father of any child under the age of eighteen years and not married at his decease, whether then born or *in ventre sa mere,* may dispose by will of the custody and tuition of the child for such time as the child remains under the age of eighteen years, or any less time, and the person to whom the custody of the child is so disposed shall have the same powers, rights and remedies in relation to the person and property of the child as a guardian by statute or a guardian in common socage in England.

No will of person under age valid.

6. No will made by any person under the age of eighteen years shall be valid.

* **7.** No will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

Nor of *feme convert* except such as might be made before passing of this Act.

PART II

MODE OF MAKING WILLS

8. No will shall be valid unless it is in writing and executed in the manner hereinafter mentioned, that is to say, it is signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and the signature is made or acknowledged by the testator in the presence to two or more witnesses present at the same time, and the witnesses attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Will shall be in writing and signed by testator in presence of two witnesses at one time.

9. Nothing contained in this Act shall affect the rights of any person claiming under any will or document made before 1st January 1873.

Rights of person under will made before 1873 not affected.

10. Every will shall, so far only as regards the position of the signature of the testator or of the person signing for him, be deemed valid within the enactment in section 8 as explained by this section, if the signature is so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or comes immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause or of the clause of attestation or follows or comes after or under the clause of attestation, or either with or without a blank space intervening, or follows or comes after, under, or beside the names, or one of the names, of the subscribing witnesses, or by the circumstance that the signature is on a side or page or other portion of the paper or papers containing the will, whereon no clause or paragraph

When signature to will shall be deemed valid.

*This section (originally section 8 of L.I Act No 5 of 1872) appears to be modified by the Married Woman's Property Act Ch 35:60.

or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space, on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written, to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment, but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature is made.

Appointment by will to be executed like other wills and to be valid although other required solemnities are not observed.

11. No appointment made by will in exercise of any power shall be valid unless the same is executed in the manner hereinbefore required; and every will executed in the manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding it had been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Soldiers' and mariners' wills. [12 of 1990].

12. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done by the law of England on 2nd November 1978.

Publication not requisite.

13. Every will executed in the manner hereinbefore required shall be valid without any other publication thereof.

Will not to be void on account of incompetency of attesting witness.

14. If any person who attests the execution of a will is at the time of the execution thereof or at any time afterwards, incompetent to be admitted a witness to prove the execution thereof, the will shall not on that account be invalid.

Gifts to attesting witness void.

15. If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting, any real or personal estate other than and except charges and directions for the payment of any debt or debts is thereby given or made, the devise, legacy, estate, interest, gift or appointment shall, so far only as concerns the person attesting the execution of the will or the wife or husband of the person or any person claiming under the person or wife or husband, be utterly null and void; and the person so attesting shall be admitted as a witness to prove the execution of the will or to prove the validity or invalidity thereof,

notwithstanding the devise, legacy, estate, interest, gift or appointment mentioned in the will.

16. In case, by any will, any real or personal estate is charged with any debt, and any creditor or the wife or husband of any creditor whose debt is so charged attests the execution of the will, the creditor, notwithstanding the charge, shall be admitted a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Creditor attesting to be admitted a witness.

17. No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of the will, or a witness to prove the validity or invalidity thereof.

Executor to be admitted a witness.

18. When any person dies after 31st December 1872, having by his will or any codicil thereto, whether made before or after the passing of this Act appointed an executor, the executor shall be deemed in equity to be a trustee for the person (if any) who would be entitled to the estate under the Statute of Distributions in respect of any residue not expressly disposed of, unless it appears by the will or any codicil thereto that the person so appointed executor was intended to take the residue beneficially; but nothing in this section shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled in cases where there is not any person who would be entitled to the testator's estate under the Statute of Distributions in respect of any residue not expressly disposed of.

Executor deemed trustee of undisposed residue.

***19.** Every will made by a man, or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of the appointment, pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin under the Statute of Distributions; but no clinical marriage solemnized in Dominica on and after 9th April 1910 shall operate to revoke or render invalid the will of any person contracting such marriage.

Will revoked by marriage.

Clinical marriage not to revoke will.

20. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

No will revoked by presumption.

*See Chap. 9:03

No will revoked except by another will or writing duly executed or by destruction.

21. No will or codicil or any part thereof shall be revoked otherwise than as aforesaid, or by another will or codicil executed in the manner hereinbefore required, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

No alteration in will shall have effect unless executed as a will.

22. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before the alteration is not apparent, unless the alteration is executed in like manner as hereinbefore is required for the execution of the will; but the will with the alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to the alteration, or at the foot or end of, or opposite to, a memorandum referring to the alteration and written at the end or some part of the will.

No will revoked to be revived except by re-execution or codicil duly executed.

23. No will or codicil or any part thereof which is in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required and shewing an intention to revive the same; and, when any will or codicil which is partly revoked and afterwards wholly revoked is revived, the revival shall not extend to so much thereof as had been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

Devise not rendered inoperative by subsequent conveyance or act.

24. No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which the will is revoked as aforesaid shall prevent the operation of the will with respect to such estate or interest in the real or personal estate as the testator has power to dispose of by will at the time of his death.

Will to speak from death of testator.

25. Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it has been executed immediately before the death of the testator, unless a contrary intention appears by the will.

26. Unless a contrary intention appears by the will, the real estate or interest therein as is comprised or intended to be comprised in any devise contained in the will which fails or is void by reason of the death of the devisee in the lifetime of the testator, or by reason of the devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in the will.

A residuary devise shall include estate comprised in lapsed and void devises.

27. A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person, mentioned in his will or otherwise described in a general manner, and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, or his leasehold estates or any of them to which the description extends, as the case may be, as well as freehold estates, unless a contrary intention appears by the will.

A general devise of testator's land shall include leasehold as well as freehold lands.

28. A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which the description extends, (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will; and, in like manner, a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which the description extends (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will.

A general gift shall include estates over which testator has general power of appointment.

29. Where any real estate is devised to any person without any words of limitation, the devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in the real estate, unless a contrary intention appears by the will.

A devise without words of limitation shall pass the fee.

30. In any devise or bequest of real or personal estate, the words "die without issue" or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death, of such person, and not an

The words "die without issue," or "die without leaving issue," shall mean die without issue living at the death.

indefinite failure of his issue, unless a contrary intention appears by the will by reason of such person having prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift is born, or if there is no issue who lives to attain the age, or otherwise answer the description, required for obtaining a vested estate by a preceding gift to such issue.

No devise to trustee or executors, except for a term, shall pass a chattel interest.

31. Where any real estate is devised to any trustee or executor, the devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in the real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, is thereby given to him expressly or by implication.

Trustees under unlimited devise, where trust may endure beyond life of person beneficially entitled for life, to take the fee.

32. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by the trustee, and the beneficial interest in the real estate or in the surplus rents and profits thereof is not given to any person for life or such beneficial interest is given to any person for life but the purposes of the trust may continue beyond the life of that person, the devise shall be construed to vest in the trustee the fee simple, or other the whole legal estate which the testator has power to dispose of by will in the real estate, and not an estate determinable when the purposes of the trust are satisfied.

Devises of estates tail shall not lapse.

33. Where any person, to whom any real estate is devised for an estate tail, or an estate in quasi entail, dies in the lifetime of the testator leaving issue who would be inheritable under the entail, and any such issue is living at the time of death of the testator, the devise shall not lapse but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention appears by the will.

Gifts to children, or other issue, who leave issue living at testator's death, shall not lapse.

34. Where any person being a child or other issue of the testator, to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator leaving issue, and any issue of that person is living at the time of the death of the testator, the devise or bequest shall not lapse but shall take effect as if the death of that person had happened immediately after the death of the testator, unless the contrary intention appears by the will.

Act not to extend to wills made before 1873.

35. This Act shall not extend to any will made before 1st January 1873, and every will, re-executed, or republished or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, republished or revived, and this Act shall not extend to any estate *pur autre vie* of any person who dies before 1st January 1873.