BERMUDA

WILLS ACT 1988

1988 : 6

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[preamble and words of enactment omitted]

Short title

1 This Act may be cited as the Wills Act 1988.

Interpretation

2 (1) In this Act, unless the context otherwise requires—

"child born in wedlock" means a child whose parents were married to each other when the child was conceived or born or between those times and "child not born in wedlock" means any other child;

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

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

"will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, and any other testamentary disposition.

(2) For the purposes of this Act a child whose father and mother marry each other after his birth or an adopted child shall be deemed to be a child born in wedlock.

(3) In any will "child" includes every child whether or not born in wedlock unless in the context a contrary intention appears.

[Section 2 subsection (2) amended by 2002:36 Sch para 29(a) effective 19 January 2004]

Establishing paternity of child not born in wedlock

3 For the purposes of this Act *prima facie* evidence of paternity in respect of a child not born in wedlock is established in this section or in accordance with section 4; and in respect of this section it is established if—

(a) the name of the father was entered in the General Register of Births pursuant to section 9(2) of the Registration (Births and Deaths) Act 1949 [*title 28 item 1*];

(b) the father by a sworn affidavit in which the child not born in wedlock is described with sufficient particularity to identify the child and which was deposited within thirty days of its making in the office of the Registrar-General acknowledged himself to be the father of the child; or

(c) the father of the child is identified and is adjudged by a court having jurisdiction as the father.

[Section 3 para (c) substituted by 2002:36 Sch para 29(b) effective 19 January 2004]

Application to Supreme Court for declaration that applicant is the child of the deceased

4 (1) Where the putative father of a child dies, the child is entitled to make a claim against the father's estate but no claim shall be made after the expiry of the notice to send particulars of claims against the estate or after the expiry of three months after the grant of probate or letters of administration, whichever is the longer period.

(2) Where the estate representative rejects a child's claim made pursuant to subsection (1) on the ground that he is not a child of the deceased, the child may apply to the Supreme Court for a declaration that he is the child of the deceased, and such

application shall be made within 28 days commencing on the day he receives notification of the rejection.

(3) Where on an application for a declaration under subsection (2) the truth of the proposition to be declared is proved to the satisfaction of the Supreme Court, the Court shall make that declaration unless to do so would manifestly be contrary to public policy.

(4) Any declaration made under this section would be binding on Her Majesty and all other persons.

(5) Any application for a declaration under this section shall be in the form prescribed by rules of Court.

(6) Rules of Court may make provision—

(a) as to the information required to be given by any applicant for a declaration under this section;

(b) as to the persons who are to be parties to proceedings on an application under this section.

(7) The Court hearing an application under this section may direct that the whole or any part of the proceedings shall be heard *in camera*, and an application for a direction under this subsection shall be heard *in camera* unless the Court otherwise directs.

[Section 4(1) and (2) amended by 1991:22 effective 18 June 1991]

PART I

WILLS

Property disposable by will

5 (1) Subject to this Act, every person may dispose, by will executed in accordance with this Act, of all real estate and all personal estate owned by him at the time of his death.

(2) For the removal of doubt, it is hereby declared that (without prejudice to the rights and interests of an estate representative) any person may dispose of real estate by will notwithstanding that by reason of being not born in wedlock or otherwise he did not leave an heir or next-of-kin surviving him.

Capacity to make a will

6 To be valid, a will shall be made by a person who—

(a) is aged eighteen years or over; and

(b) is of sound disposing mind.

[Section 6 para (a) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Formalities for execution and holograph wills

7 (1) Subject to section 8, no will is valid unless it is—

(a) in writing and is entirely in the handwriting of the testator himself and signed at the foot or end thereof by the testator (to be proved by the oath of two or more persons well acquainted with his handwriting) in accordance with subsection (2)(a); or

(b) in writing and signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, in accordance with subsection (2).

(2) The signature of the testator or other person mentioned in subsection (1) is effective if—

(a) so far as its position is concerned it satisfies subsection (3);

(b) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(c) each witness either—

(i) attests and signs the will; or

(ii) acknowledges his signature,

in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation is necessary nor is publication of the will necessary.

(3) So far as regards the position of the signature of the testator, or of the person signing for him—

(a) a will is valid if the signature is so placed at, after, following, under, beside or opposite the end of the will that it is apparent on the face of the will that the testator intended to give effect, by the signature, to the writing signed as his will;

(b) no will is affected by the circumstances that—

(i) the signature does not follow, or is not immediately after, the foot or end of the will; or

(ii) a blank space intervenes between the concluding word of the will and the signature; or

(iii) the signature is placed among the words of the testimonium clause or of the clause of attestation or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows or is after, under or beside the names or one of the names of the subscribing witnesses; or

(iv) the signature is on a side, page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or

(v) there appears to be sufficient space to contain the signature on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written,

and the enumeration of the above circumstances does not restrict the generality of this subsection; but no signature under this section operates to give effect to any disposition or direction which is underneath or follows it, nor does it give effect to any disposition or direction inserted after the signature is made.

(4) No person is a competent witness to the execution of a will if he attests the will in any manner other than by signing his name in his own handwriting.

(5) Subsection (1)(a) applies to any will whether made before or after 24 March 1988, but does not apply to a will in respect of which, before 24 March 1988, probate has been granted.

[Section 7 amended by 1991:22 effective 18 June 1991]

Wills with foreign element

8 (1) The Premier may make regulations which shall be subject to the affirmative resolution procedure governing the validity and recognition of wills and other testamentary dispositions with a foreign element or executed on board a vessel or aircraft or which, for any other reason, may not comply with the law of Bermuda.

(2) In making regulations under subsection (1), the Premier may have regard to any convention providing a uniform law on the form of an international will or otherwise dealing with the conflict of laws relating to testamentary dispositions.

Testamentary execution of power

9 (1) No appointment made by will, in the exercise of any power, is valid unless it is executed in accordance with section 7 or 8.

(2) Subsection (1) applies notwithstanding anything to the contrary in the instrument creating the power.

(3) A will executed in accordance with section 7 or 8 is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding that the instrument creating the power expressly requires that a will made in exercise of such power should be executed with some additional or other form of execution or formality.

Incompetency of witness

10 Subject to section 7(3), if any person who attests the execution of a will becomes, at any time afterwards, incompetent as a witness to prove the execution, the will is not invalid on that account.

Gift to witness

11 (1) Subject to subsection (2), if a person who attests the execution of a will is a person to whom or to whose wife or husband any interest is given by the will (whether by way of gift or by way of exercise of a power of appointment, but other than and except charges and directions for the payment of debts), the gift or appointment is void, so far as it concerns such an attesting witness or the wife or husband of the witness or any person claiming under the witness or wife or husband; but the attesting witness is competent as a witness to prove the execution, or to prove the validity or invalidity of the will, notwithstanding the gift or appointment mentioned in the will.

(2) Attestation of a will by a person to whom or to whose wife or husband there is given or made any such disposition as is described in subsection (1) shall be disregarded if the will is duly executed without his attestation and without that of any other such person.

(3) This section applies to the will of any person dying after 23 March 1988, whether executed before, on or after 24 March 1988.

Attestation by creditor

12 If a will charges any property with any debt, and—

(a) any creditor whose debt is so charged; or

(b) the wife or husband of any such creditor referred to in paragraph (a),

attests the execution, such an attesting witness is competent, notwithstanding the charge, as a witness to prove the execution, or to prove the validity or invalidity of the will.

Attestation by executor

13 No person is incompetent, on account of his being an executor of a will, as a witness to prove the execution, or to prove the validity or invalidity of the will.

Revocation by marriage

14 (1) Subject to subsections (2) to (4), a will is revoked by the testator's marriage.

(2) A disposition in a will in exercise of a power of appointment shall take effect notwithstanding the testator's subsequent marriage unless the real or personal estate so appointed would in default of appointment pass to his estate representatives.

(3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will shall not be revoked by his marriage to that person.

(4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a disposition in the will should not be revoked by his marriage to that person,—

(a) that disposition shall take effect notwithstanding the marriage; and

(b) any other disposition in the will shall take effect also, unless it appears from the will that the testator intended the disposition to be revoked by the marriage.

Effect of divorce or annulment of marriage

14A (1) Where, after a testator has made a will, a decree of the Supreme Court dissolves or annuls his marriage, or his marriage is dissolved and the divorce is entitled to recognition in Bermuda under the Recognition of Divorces and Legal Separations Act 1977, then—

(a) provisions of the will appointing the testator's former spouse as executor or trustee or conferring a power of appointment on the former spouse shall take effect as if the former spouse had died on the date on which the marriage is dissolved or annulled; and

(b) any property which, or interest in which, is devised or bequeathed to the former spouse shall pass as if the former spouse had died on that date,

except in so far as a contrary intention is expressed in the will.

(2) Subsection (1)(b) is without prejudice to any right of a former spouse who has not remarried to apply for financial provision under Part III of the Succession Act 1974.

[Section 14A inserted by 1998:17 effective 1 August 1998]

Alteration in circumstances

15 No will is revoked by any presumption of an intention on the ground of an alteration in circumstances.

Revocation generally

16 No will, or any part thereof, is revocable otherwise than—

(a) in accordance with section 14; or

(b) by another will; or

(c) by some writing, declaring an intention to revoke the will, executed in the manner in which a will is required to be executed; or

(d) by the testator, or some person in his presence and by his direction, burning, tearing or otherwise destroying the will, with the intention of revoking it.

Alteration after execution

17 No obliteration, interlineation or other alteration made in any will, after its execution, is valid, or has any effect so far as the words or effect of the will before the alteration are not apparent, unless the alteration is executed in the manner in which a will is required to be executed; but the will, with the alteration as part of it, is duly executed if the signature of the testator and the subscription of the witnesses are made in the margin, or on some other part of the will opposite or near 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 other part of the will.

Revival of revoked will

18 (1) No will, or any part thereof, which has been revoked, is revived otherwise than by—

(a) re-execution of the revoked will; or

(b) a codicil showing an intention to revive the revoked will.

(2) Where any will, which has been, first, partly revoked, and later wholly revoked, is revived, the revival does not extend to the part revoked before the revocation of the whole will unless an intention to revive that part is shown.

Subsequent conveyance or acts

19 No conveyance or other act, made or done subsequently to the execution of a will, of or relating to any real or personal estate referred to in the will (except an act which revokes the will in accordance with section 14 or 16), prevents the operation of the will with respect to the estate or interest in that real or personal estate of which the testator has power to dispose by will at the time of his death.

Will speaks from death

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

Lapsed and void devises

21 Unless a contrary intention appears from the will, if a devise fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of being contrary to law or otherwise, any real estate or interest comprised or intended to be comprised in that devise is deemed to be included in the residuary devise (if any) contained in the will.

General devise

22 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 so as to include the leasehold estates of the testator or any of them to which such description extends as well as freehold estates, unless a contrary intention appears by the will.

General gift

23 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 so as to include any real estate, or any real estate to which such description extends, as the case may be, which he may have power to appoint in any manner he may think proper, and operates 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 so as to include any personal estate, or any personal estate to which such

description extends, as the case may be, which he may have power to appoint in any manner he may think proper, and operates as an execution of such power, unless a contrary intention appears by the will.

Devise of real estate without words of limitation

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

Construction; "die without issue" and similar

25 In any devise or bequest of real or personal estate the expressions "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 indefinite failure of issue, unless a contrary intention appears by the will, by reason of such person having a 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:

Provided that this Act does not extend to cases where such words as aforesaid import if no issue described in a preceding gift are born, or if there is no issue who live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Devise to trustees or executors

26 Where any real estate is devised to any trustee or executor, such 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 such 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.

Devise to trustee without express limitation

27 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 such person, then the devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust are satisfied.

Devise of estate tail

28 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 such entail and any such issue are living at the time of the death of the testator, then

the devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will.

Gift to child who predeceases testator leaving issue alive at date of testator's death does not lapse

29 (1) Where—

(a) a will contains a devise or bequest to a child or remoter descendant of the testator; and

(b) the intended beneficiary dies before the testator, leaving issue; and

(c) issue of the intended beneficiary are living at the testator's death,

then, unless a contrary intention appears by the will, the devise or bequest shall take effect as a devise or bequest to the issue living at the testator's death.

(2) Issue shall take under this section through all degrees, according to their stock (per stirpes) in equal shares if more than one, any gift or share which their parent would have taken and so that no issue shall take whose parent is living at the testator's death and so capable of taking.

(3) This section shall have effect as if—

(a) the reference to a child or remoter descendant of the testator includes a reference to every child or remoter descendant whether or not born in wedlock; and

(b) the reference to the issue of the intended beneficiary includes a reference to any such issue whether or not born in wedlock.

(4) For the purposes of this section a person conceived before the testator's death and born living thereafter is to be taken to have been living at the testator's death.

(5) This section applies to any will whether made before or after 24 March 1988, but does not apply to a will in respect of which, before 24 March 1988, probate has been granted.

[Section 29(5) substituted by 1991:22 effective 18 June 1991]

Devise of real estate to more than one person

30 (1) Where real estate is devised to more than one person as co-owners without any words to indicate that a joint tenancy subsists between such persons the devise shall be construed as the devise of a tenancy in common.

(2) Subsection (1) shall not extend to any will made before 1 April 1974.

PART II

RECTIFICATION AND INTERPRETATION OF WILLS

Rectification

31 (1) If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence—

(a) of a clerical error; or

(b) of a failure to understand his instructions,

it may order that the will shall be rectified so as to carry out his intentions.

(2) An application for an order under this section shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out.

(3) This section shall not render the estate representatives of a deceased person liable—

(a) for having conveyed or distributed real or personal estate of the deceased or any part thereof in accordance with section 53(1) and (2) of the Administration of Estates Act 1974 [*title 26 item 12*]; or

(b) for having conveyed or distributed real or personal estate of the deceased or any part thereof after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that they ought to have taken into account the possibility that the court might permit the making of an application for an order under this section after the end of that period.

(4) Subsection (3) shall not prejudice any power to recover, by reason of the making of an order under this section, any part of the real or personal estate so conveyed or distributed.

(5) In considering for the purposes of this section when representation with respect to the estate of a deceased person was first taken out, a grant limited to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(6) Nothing in this section affects the will of a testator who dies before or on 2 July 1986.

Interpretation of wills; evidence general rules

32 (1) This section applies to a will—

(a) in so far as any part of it is meaningless:

(b) in so far as the language used in any part of it is ambiguous on the face of it;

(c) in so far as evidence, other than evidence of the testator's intentions, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.

(2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.

(3) Nothing in this section affects the will of a testator who dies before 24 March 1988.

Gifts to spouses; presumption

33 (1) Except where a contrary intention is shown it shall be presumed that if a testator devises or bequeaths real or personal estate to his spouse in terms which in themselves give an absolute interest to the spouse, but by the same instrument purports to give his issue an interest in the same estate, the gift to the spouse is absolute notwithstanding the purported gift to the issue.

(2) Nothing in this section affects the will of a testator who dies before 24 March 1988.

PART III

WILLS OF MEMBERS OF H.M. FORCES

Wills of members of HM Forces; mariners and seafarers

34 Any member of Her Majesty's Forces being in actual naval, military or air force service, or any mariner or seafarer being at sea, may dispose of his personal estate as he might have done before the making of this Act.

[Section 34 amended by 2012 : 30 s. 27 effective 30 June 2014]

Saving for petty officers and other ranks in Royal Navy and Royal Marines

35 This Act shall not prejudice or affect any of the provisions contained in the Act of the Parliament of the United Kingdom entitled "An act to amend and consolidate the Laws relating to the pay of the Royal Navy", respecting the wills of petty officers and seafarers in the Royal Navy and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other moneys payable in respect of services in the Royal Navy.

[Section 35 amended by 2012 : 30 s. 27 effective 30 June 2014]

PART IV

WILLS EXECUTED OUTSIDE BERMUDA

Definitions for Part IV

36 (1) In this Part—

"internal law" in relation to any territory or state means the law which would apply in a case where no question of the law in force in any other territory or state arose;

"state" means a territory or group of territories having its own law of nationality;

"will" includes any testamentary instrument or act, and "testator" shall be construed accordingly.

(2) Where under this Part the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows—

(a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

(b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time, and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

(3) In determining for the purposes of this Part whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

Wills executed outside Bermuda; general rule for formal validity

37 A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national.

Additional rules

38 (1) Without prejudice to section 37, the following shall be treated as properly executed—

(a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to the registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;

(c) a will so far as it revokes a will which under this Part would be treated as properly executed or revokes a provision which under this Part would be

treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

(d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

Certain requirements to be treated as formal

39 Where (whether in pursuance of this Part or not) a law in force outside Bermuda falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Change of domicile of testator; construction not altered

40 The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

Application of Part IV

41 This Part does not apply to a will of a testator who died before 1 January 1965 and applies to a will of a testator who dies after that date whether the will was executed before or after that date.

PART V

GENERAL

Application of Act

42 (1) Except where otherwise expressly provided, this Act applies to wills made before or after 24 March 1988, where the testator dies six months after the commencement thereof.

(2) Every will which is re-executed, republished or revived by codicil is, for the purposes of this Act, made at the time of the re-execution, republication or revival.

Repeals

43 *[omitted]*

[Assent Date: 24 March 1988]

[*Amended by:*

1991 : 22
1998 : 17
2001 : 20
2002 : 36
2012 : 30]