

CHAPTER 59

WILLS

WILLS ACT

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AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO WILLS

Act No. 1 of 1972

[3rd March, 1972]

PART I—PRELIMINARY

Short title

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

Interpretation

2. In this Act unless the contrary intention appears—
 - “country” means any place or territory or group of places or territories having its or their own law of nationality or citizenship;
 - “disposition” includes a gift, devise, bequest or an appointment of property contained in a will; and “dispose of” has a corresponding meaning;
 - “internal law” in relation to any country or place means the law that would apply in a case where no question of the law in force in any other country or place arose;
 - “property” includes real and personal property or any interest therein and any thing or chose in action;
 - “will” includes a codicil and every other testamentary disposition.

Application

3. This Act applies to all wills executed or made after it comes into operation except where the contrary is expressed in this Act.

PART II—CAPACITY TO MAKE A WILL

Capacity generally

4. Subject to the provisions of Part V, every person not less than eighteen years of age has capacity to make a will.

Property may be disposed of by will

5. Every person having by this Act capacity to make a will may by a will executed or made in manner required by this Act dispose of all his property and of all property which in exercise of a power of appointment he is entitled or able to

dispose of by his will and may also by his will appoint a guardian of his infant children.

PART III—THE EXECUTION AND MAKING OF WILLS

Execution generally

6. Subject to the provisions of Part V, a will is not valid unless it is in writing and executed in the following manner:—

- (a) it is signed by the testator or by some person in his presence and by his direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his will;
- (b) such signature is made or acknowledged by the testator in the presence of at least two witnesses present at the same time; and
- (c) the witnesses attest and subscribe the will in the presence of the testator, but no form of attestation is necessary.

Publication unnecessary

7. Publication is not necessary for the validity of a will.

Appointments exercised by will

8.—(1) An appointment made by will in exercise of a power is not valid unless the will is executed or made in manner required by this Act.

(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.

9. A person named as executor of a will is not on that account incompetent to be admitted as a witness to prove the execution of the will or the validity or invalidity thereof.

10. Where by a will property is charged with payment of a debt, a creditor whose debt is so charged or the husband or wife of such creditor is not on that account incompetent to be admitted to prove the execution of the will or the validity or invalidity thereof.

Person to whom disposition made not incompetent as witness but disposition void

11. A disposition, other than a charge for payment of a debt, made in a will to a person who or whose husband or wife is a witness to the will, is void but the witness is not, on that account, incompetent to be admitted to prove the execution of the will or the validity or invalidity thereof.

Alterations in wills

12. Except so far as the words or effect of a will before an alteration are not apparent, an alteration made in a will after the execution thereof is invalid unless it is duly executed in the manner required by section 6 by the signatures of the testator and the witnesses, either in the margin or opposite or near the alteration in such manner as to indicate the intention of the testator that the will as altered was

to take effect, or to a memorandum written on the will and referring to the alteration and in either case the will as so altered shall be deemed to have been duly executed.

PART IV—REVOCATION OF WILLS

Subsequent marriage

13. A will is revoked by the subsequent marriage of the testator except a will made in exercise of a power of appointment when the property thereby appointed would not, in default of such appointment, pass to his executor, administrator or the person entitled in case of intestacy.

Provided that a will expressed to be made in contemplation of a marriage is not revoked by the solemnisation of the marriage contemplated.

Will not revoked by presumption

14. A will is not revoked by any presumption of an intention on the ground of an alteration in circumstances.

When will revoked

15. Subject to the provisions of Part V, a will or codicil or any part thereof is not revoked otherwise than—

- (a) by marriage, as provided by this Act;
- (b) by another will or codicil executed in manner provided by this Act;
- (c) by some writing declaring an intention to revoke the will, codicil or part thereof and executed in the manner in which a will is required by this Act to be executed; or
- (d) by the testator or some person in his presence and by his direction, with the intention of revoking the will, codicil or part, burning, tearing or otherwise destroying the will, codicil or part.

How revoked will revived

16.—(1) Subject to the provisions of Part V, a will or codicil or any part thereof that has been in any manner revoked is not revived otherwise than by the re-execution thereof or by a codicil executed in manner required by this Act and showing an intention to revive the will, codicil or part.

(2) When any will or codicil that has been partly revoked and afterwards wholly revoked is revived, the revival does not, unless the contrary intention appears by the will, extend to so much of the will or codicil as was revoked before it was wholly revoked.

PART V—PRIVILEGED WILLS

Persons entitled to make privileged wills

17. The following persons irrespective of age have capacity to make a will and also to revoke a will with or without making a new will:—

- (a) any person, whether as a member or not, serving with any of Her Majesty's Forces or any allied forces while in actual military, naval or air service during a war declared or undeclared or other armed conflict in which members of such forces are engaged;
- (b) any person who is a mariner or seaman serving at sea.

Making of a privileged will

18. A will made by a person to whom the provisions of section 17 applies need not be executed in the manner required by section 6 but may be made, without any formality, by any form of words, whether written or spoken, if it is clear that he thereby intended to dispose of his property after his death.

Revocation of privileged will

19. Any person who has made a will at a time when this Part applied to him may, after this Part ceases to apply to him and while still under the age of eighteen years, revoke such will by any manner of revocation provided in this Act other than by the making of another will.

PART VI—FORMAL VALIDITY OF WILLS

Application and effect of this Part

20.—(1) This Part does not apply to a will of a testator who died before the date of commencement of this Act, but does apply to a will of a testator who dies after that date whether the will was executed before or after that date.

(2) The provisions of this Part shall take effect notwithstanding any other provisions of this Act.

General rule as to formal validity

21. A will shall be treated as properly executed 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 was domiciled or had his habitual residence, or in a country of which, at either of those times, he was a citizen or national.

Additional rules

22. Without prejudice to the provisions of section 21, the following wills 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 place with which, having regard to its 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 real property, if its execution conformed to the internal law in force in the place 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.

Ascertainment of system of internal law

23.—(1) Where under this Part the internal law in force in any country is to be applied in the case of a will, but there are in force in that country 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 country 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 at the time of execution of the will in any other case.
- (2) 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 of the will, but this does 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.
- (3) Where a law in force outside Fiji falls, whether in pursuance of this Part or not, 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 requirement of form only.

PART VII—THE CONSTRUCTION OF WILLS

Change of domicile

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

When a devise not to be rendered inoperative

25. A transfer or other act, other than an act by which the will is revoked as provided in this Act, made or done subsequently to the execution of a will of or relating to any property therein comprised, does not prevent the operation of the will with respect to such estate or interest in that property as the testator had power to dispose of by will at the time of his death.

General rules of construction

26. Unless the contrary intention appears by the will—

- (a) a will is to be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator;
- (b) property which is the subject of a disposition which is void or fails to take effect is to be included in any residuary disposition contained in the will;
- (c) whether or not the testator owns freehold land a general devise of land or of land at a particular place includes leasehold land;
- (d) a general disposition of all the testator's property or of all his property of a particular kind includes property over which he had a power of appointment exercisable by will and operates as an execution of the power;

- (e) a disposition of property without words of limitation whether to a person beneficially or as executor or trustee is to be construed as passing the whole estate or interest of the testator therein.

Statutory substitutional gift

27.—(1) Unless a contrary intention appears by the will, where any person is a child or other issue of the testator to whom (whether as a named or designated person or as a member of a class) any property is devised or bequeathed or appointed in terms which would enable that person to take the property for any estate or interest not determinable at or before the death of that person if that person survived the testator (whether before or after the testator makes the will) shall die in the lifetime of the testator leaving any child or children living at the time of the death of the testator, the devise or bequest or appointment takes effect as if the will had contained a substitutional gift devising or bequeathing or appointing the property to such of the children of that person as are living at the time of the testator's death and if more than one in equal shares.

(2) Without limiting the manner in which a testator may show an intention to negative the operation of the provisions of subsection (1), it is hereby declared that that subsection does not apply—

(a) to a devise or bequest or appointment to any person that is in any way expressed to be conditional on the person being alive at or after the time of the death of the testator or any time or event which in the events that happen is subsequent to the time of the death of the testator; or

(b) to a devise or bequest or appointment to a person that is in any way expressed to be conditional on the fulfilment by that person of any other contingency and that contingency has not been fulfilled before the time of the testator's death.

(3) This section does not apply to—

(a) any specific legacy or specific appointment of any chattels; or

(b) any devise or bequest or appointment to any person as one of two or more joint tenants.

(4) In this section—

“appointment” means an appointment made by will in exercise of a general power of appointment; and also means an appointment made by will in exercise of a special power of appointment in every child in whose favour this section would operate is an object of the power; and the terms “appointed” and “appointing” have corresponding meanings; “chattels” does not include money or securities for money; “child”—

(a) in relation to a testator, means any child (whether legitimate or illegitimate) of the testator;

(b) in relation to any person to whom any property is devised or bequeathed or appointed as mentioned in this section, means a legitimate child of that person; and also, in relation to any woman, includes any illegitimate child of that woman;

“issue” in relation to a testator, means any issue (whether legitimate or illegitimate in any generation) of the testator.

(5) For the purposes of this section, an illegitimate relationship between a father and his child shall not be recognized unless there is proof that the paternity of the father has been admitted by or established against the father while both the father and child were living.

PART VIII—ADMINISTRATION OF ASSETS

Charges on property to be paid primarily out of property charged

28.—(1) Where by his will a testator disposes of an interest in property which at the time of his death is charged with the payment of money whether by way of mortgage, charge, lien or otherwise and the testator has not by the will or by a deed or other document signified a contrary or other intention, the interest so charged is primarily liable for payment of the money secured by the charge, and every part of such interest shall bear a proportionate part of the charge on the whole.

(2) Such contrary or other intention is not deemed to be signified—

(a) by a general direction for the payment of the debts, or of all the debts, of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts on any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of the person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the testator's estate or otherwise.

Rate of interest on pecuniary legacies

29. The rate of interest payable on pecuniary legacies is five per cent per annum unless some other rate is directed by the will or by a judgment or order of the court directing an account of legacies and such interest shall commence to run from the expiration of twelve months from the date of death of the testator:

Provided that in the case of a pecuniary legacy amounting to satisfaction of a debt such interest shall commence to run from the date of death.

Contingent or future gifts carry intermediate income

30. A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property upon trust for a person whose interest is contingent or executory, carries the intermediate income of that property from the date of death of the testator, except so far as the income may be otherwise expressly disposed of.

Clarification

31. For the purpose of avoiding doubt, it is hereby declared that, where there is no express provision to the contrary in this Act, any provision or rule of law existing and relating to wills at the commencement of this Act shall remain in force.

Controlled by Ministry of the Attorney-General