



THE STATUTES OF THE REPUBLIC OF SINGAPORE

WILLS ACT 1838

2020 REVISED EDITION

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Wills Act 1838

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An Act to declare the law relating to wills.

[8 October 1838]

Short title

1. This Act is the Wills Act 1838.

Interpretation

2. In this Act, unless the context otherwise requires —

“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;

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

“real estate” shall extend to messuages, lands, rents and hereditaments, whether corporeal, incorporeal or personal, and to any undivided share thereof and to any estate, right or interest, other than a chattel interest, therein;

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

“will” includes a testament and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will and testament and any other testamentary disposition.

[7/97]

Property disposable by will

3.—(1) Subject to the provisions of this Act, every person may devise, bequeath or dispose of by his will, executed in the manner required under this Act, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death.

(2) The power given under subsection (1) shall extend to —

- (a) all estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, whether the same shall be a corporeal or an incorporeal hereditament, and whether the same shall be freehold or of any other tenure;
- (b) 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;
- (c) all rights of entry for conditions broken and other rights of entry; and
- (d) such of the same estates, interests and rights respectively and other real and personal estates 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.

Will of infant invalid

4. No will made by any person under 21 years of age shall be valid.

Rules as to formal validity

5.—(1) This section shall take effect notwithstanding any other provisions of this Act.

(2) A will shall be treated as properly executed if its execution conformed to the internal law in force —

- (a) in the territory where it was executed;

- (b) in the territory where the testator was domiciled at the time —
 - (i) when the will was executed; or
 - (ii) of his death;
 - (c) in the territory where the testator habitually resided at either of the times referred to in paragraph (b); or
 - (d) in the state of which the testator was a national at either of the times referred to in paragraph (b).
- (3) Without prejudice to subsection (2), the following shall be treated as properly executed:
- (a) a will executed on board a vessel or an 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 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 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 Act would be treated as properly executed or revokes a provision which under this Act 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 treated as properly executed;
 - (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.
- (4) 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.

(5) In determining for the purposes of this section 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.

(6) Where a law in force outside Singapore 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.

(7) 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.

(8) Where under this section 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 2 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.

(9) This section shall not apply to a will of a testator who died before 26 June 1992 and shall apply to a will of a testator who dies after that date whether the will was executed before or after that date.

Mode of execution

6.—(1) No will shall be valid unless it is in writing and executed in the manner mentioned in subsection (2).

(2) Every will shall be 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 shall be made or acknowledged by the testator as the signature to his will or codicil in the presence of 2 or more witnesses present at the same time, and those witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

(3) Every will shall, as far only as regards the position of the signature of the testator, or of the person signing for him as mentioned in subsection (2), be deemed to be valid under this section if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance —

- (a) that the signature shall not follow or be immediately after the foot or end of the will;
- (b) that a blank space shall intervene between the concluding word of the will and the signature;
- (c) that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses;
- (d) that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature; or
- (e) that there shall appear 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.

(4) The enumeration of the circumstances under subsection (3) shall not restrict the generality of that subsection; 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 shall be made.

Execution of appointment by will

7.—(1) No appointment made by will, in exercise of any power, shall be valid, unless the will is executed in the manner required by this Act.

(2) Every will executed in the manner required by this Act shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of that power should be executed with some additional or other form of execution or solemnity.

Publication of will not necessary

8. Every will executed in the manner required by this Act shall be valid without any other publication thereof.

Will not to be invalidated by reason of incompetency of attesting witness

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

Gifts to attesting witness or to wife or husband of attesting witness to be void

10.—(1) If any person attests 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, shall be 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 that person, or any person claiming under that person or wife or husband, be utterly null and void.

(2) The attesting witness referred to in subsection (1) 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.

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

(4) Subsection (3) shall apply to the will of any person dying after 29 May 1992, whether executed before or after 29 May 1992.

Creditor attesting a will charging estate with debts to be admitted a witness

11. In case by any will any real or personal estate shall be charged with any debt, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest 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.

Executor not incompetent to be witness

12. 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 to prove the validity or invalidity thereof.

Will to be revoked by marriage except in certain cases

13.—(1) 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 such appointment pass to his or her heir, executor or administrator or the person entitled under the Intestate Succession Act 1967.

(2) Notwithstanding subsection (1), where a will made on or after 29 August 1938 is expressed to be made in contemplation of a marriage, the will shall not be revoked by the solemnisation of the marriage contemplated; and this subsection shall apply notwithstanding that the marriage contemplated may be the first, second or subsequent marriage of a person lawfully practising polygamy.

No will to be revoked by presumption from altered circumstances

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

Revocation of will or codicil

15. No will or codicil, or any part thereof, shall be revoked otherwise than —

- (a) as provided in section 13;
- (b) by another will or codicil executed in the manner by this Act required;
- (c) by some writing declaring an intention to revoke it, and executed in the manner in which a will is by this Act required to be executed; or
- (d) by the burning, tearing, or otherwise destroying the will by the testator, or by some person in his presence and by his direction, with the intention of revoking it.

Effect of obliteration, interlineation or alteration

16.—(1) 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 such alteration shall not be apparent, unless the alteration shall be executed in the like manner as by this Act is required for the execution of the will.

(2) A will referred to in subsection (1), with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be 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 other part of the will.

Revival of revoked will

17.—(1) No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner required by this Act and showing an intention to revive the will or codicil.

(2) When any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, the revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

Subsequent conveyance or other acts not to prevent operation of will

18. 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 shall be revoked as aforesaid, shall prevent the operation of the will with respect to the estate or interest in the real or personal estate as the testator shall have power to dispose of by will at the time of his death.

Will to be construed to speak from death of testator

19. 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 had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Residuary devises to include estates comprised in lapsed and void devises

20. Unless a contrary intention appears by the will, such real estate and interest therein as is comprised or intended to be comprised in any devise in the will contained, 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.

General gift of realty and of personality to include property over which testator has general power of appointment

21.—(1) 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 that description shall extend, 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 that power, unless a contrary intention shall appear by the will.

(2) A bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which that description shall extend, 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 that power, unless a contrary intention shall appear by the will.

Devise without words of limitation

22. Where any real estate shall be 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 shall appear by the will.

Construction of words importing want or failure of issue

23.—(1) In any devise or bequest of real or personal estate, the words “die without issue” or “die without leaving 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 that person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will.

(2) This Act shall not extend to cases where those words referred to in subsection (1) import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Devise of real estate to trustee or executor

24. Where any real estate shall be 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, shall thereby be given to him expressly or by implication.

Devise of real estate to trustee without limitation

25. Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by the trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or the beneficial interest shall be 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 had power to dispose of by will in the real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

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

26. Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of that person shall die in the lifetime of the testator leaving issue, and any such issue of that person shall be living at the time of the death of the testator, that 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 a contrary intention shall appear by the will.

Saving as to wills of soldiers and mariners

27.—(1) Notwithstanding anything in this Act, 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 before the making of this Act and may do so even though under 21 years of age.

Validity of testamentary dispositions of real property made by soldiers and sailors

(2) A testamentary disposition of any real estate made by a person to whom this section applies, and who dies after 29 August 1938 shall, notwithstanding that the person making the disposition was at the time of making it under 21 years of age or that the disposition has not been made in such manner or form as was on 29 August 1938 required by law, be valid in any case where the person making the disposition was of such age and the disposition has been made in such manner and form that if the disposition had been a disposition of personal estate made by that person it would have been valid.

Power to appoint testamentary guardians

(3) Where any person dies after 29 August 1938 having made a will which is, or which, if it had been a disposition of property, would have been rendered valid by this section, any appointment contained in that will of any person as guardian of the infant children of the testator shall be of full force and effect.

Section to extend to naval, marine and air forces

(4) This section shall extend to any member of any naval or marine forces not only when he is at sea but also when he is so circumstanced that if he were a soldier he would be in actual military service within the meaning of this section.

(5) For the purposes of this section, “soldier” includes a member of an air force.

Rectification of will

28.—(1) A court may order that a will be rectified so as to carry out the testator’s intentions, if the court is satisfied that, as a consequence of either or both of the following, the will is so expressed that the will fails to carry out the testator’s intentions:

(a) a clerical error;

(b) a failure to understand the testator’s instructions.

[16/2016]

(2) Except with the permission of a court, an application for an order under subsection (1) must be made no later than 6 months after the date on which a grant authorising the administration of the testator’s estate is first made.

[16/2016]

(3) Where the personal representatives of the testator distribute, after the end of the period of 6 months referred to in subsection (2), any part of the testator’s estate —

- (a) this section does not render the personal representatives liable for making that distribution on the ground that they ought to have taken into account the possibility that a court may permit the making of an application for an order under subsection (1) after the end of that period; but
- (b) this subsection does not affect any power to recover, by reason of the making of an order under subsection (1), any part of the testator's estate that is so distributed.

[16/2016]

(4) The following grants are to be disregarded when considering, for the purposes of this section, when a grant authorising the administration of the testator's estate is first made:

- (a) a grant limited to settled land or to trust property;
- (b) any other grant that does not permit the distribution of the testator's estate;
- (c) a grant limited to a part only of the testator's estate, unless a grant limited to the remainder of the testator's estate has previously been made or is made at the same time.

[16/2016]

(5) For the purposes of this section, where a grant consists of any probate, or letters of administration with the will annexed, sealed under section 47(1) of the Probate and Administration Act 1934, the grant is deemed to be made on the date of sealing of the probate or letters of administration with the will annexed.

[16/2016]

(6) The Family Justice Rules Committee constituted under section 46(1) of the Family Justice Act 2014 may make Family Justice Rules —

- (a) to regulate and prescribe the procedure and practice to be followed in any application for an order under subsection (1); and
- (b) to provide for any matter relating to any such procedure or practice.

[16/2016]

(7) In this section —

“court” means the General Division of the High Court or a Family Court;

“grant” means any of the following:

- (a) any probate granted by the General Division of the High Court or a Family Court, or granted before 1 January 2015 by a District Court;
- (b) any letters of administration with the will annexed granted by the General Division of the High Court or a Family Court, or granted before 1 January 2015 by a District Court;
- (c) any probate, or letters of administration with the will annexed, sealed under section 47(1) of the Probate and Administration Act 1934;

“letters of administration with the will annexed” and “probate” have the same meanings as in section 2 of the Probate and Administration Act 1934.

[16/2016; 40/2019]

LEGISLATIVE HISTORY

WILLS ACT 1838

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

1. Indian Act XXV of 1838 — The Wills Act, 1838

Commencement : 8 October 1838

2. 1920 Revised Edition — Ordinance No. 3 (Wills)

Operation : 28 November 1921

3. Ordinance 26 of 1921 — Statute Laws (Revised Edition) Operation Ordinance, 1921

(Amendments made by section 3(a) read with Schedule B to the above Ordinance)

Bill : G.N. No. 1854/1921

First and Second Readings : 22 November 1921

Notice of Amendments : 22 November 1921

Third Reading : 22 November 1921

Commencement : 28 November 1921 (section 3(a) read with Schedule B)

4. 1926 Revised Edition — Ordinance No. 3 (Wills)

Operation : 1 August 1926

5. 1936 Revised Edition — Wills Ordinance (Chapter 53)

Operation : 1 September 1936

6. Ordinance 21 of 1938 — Wills (Amendment) Ordinance, 1938

Bill : G.N. No. 1301/1938

First Reading : 13 June 1938

Second and Third Readings : 29 August 1938

Commencement : 15 September 1938

7. Ordinance 22 of 1949 — Wills (Amendment) Ordinance, 1949

Bill : G.N. No. S 185/1949

First Reading : 17 May 1949

Second and Third Readings : 21 June 1949

- Commencement : 29 June 1949
- 8. 1955 Revised Edition — Wills Ordinance (Chapter 35)**
- Operation : 1 July 1956
- 9. 1970 Revised Edition — Wills Act (Chapter 41)**
- Operation : 1 March 1971
- 10. Act 2 of 1986 — Statute Law Revision Act 1986**
(Amendments made by section 2 read with the First Schedule to the above Act)
- Bill : 12/1985
- First Reading : 31 October 1985
- Second and Third Readings : 10 January 1986
- Commencement : 31 January 1986 (section 2 read with the First Schedule)
- 11. 1985 Revised Edition — Wills Act (Chapter 352)**
- Operation : 30 March 1987
- 12. Act 24 of 1992 — Wills (Amendment) Act 1992**
- Bill : 11/1992
- First Reading : 27 February 1992
- Second and Third Readings : 29 May 1992
- Commencement : 26 June 1992
- 13. 1996 Revised Edition — Wills Act (Chapter 352)**
- Operation : 27 December 1996
- 14. Act 7 of 1997 — Statutes (Miscellaneous Amendments) Act 1997**
(Amendments made by section 6 read with item (13) of the First Schedule to the above Act)
- Bill : 6/1997
- First Reading : 11 July 1997
- Second and Third Readings : 25 August 1997
- Commencement : 1 October 1997 (section 6 read with item (13) of the First Schedule)

15. Act 16 of 2016 — Statutes (Miscellaneous Amendments) Act 2016
(Amendments made by section 50 of the above Act)

Bill	:	15/2016
First Reading	:	14 April 2016
Second and Third Readings	:	9 May 2016
Commencement	:	1 December 2016 (section 50)

16. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019
(Amendments made by section 28(1) read with item 164 of the Schedule to the above Act)

Bill	:	32/2019
First Reading	:	7 October 2019
Second Reading	:	5 November 2019
Notice of Amendments	:	5 November 2019
Third Reading	:	5 November 2019
Commencement	:	2 January 2021 (section 28(1) read with item 164 of the Schedule)

Abbreviations

C.P.	Council Paper
G.N. No. S (N.S.)	Government Notification Number Singapore (New Series)
G.N. No.	Government Notification Number
G.N. No. S	Government Notification Number Singapore
G.N. Sp. No. S	Government Notification Special Number Singapore
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian Subsidiary Legislation)
M. Act	Malayan Act/Malaysia Act
M. Ordinance	Malayan Ordinance
Parl.	Parliament
S.S.G.G. (E) No.	Straits Settlements Government Gazette (Extraordinary) Number
S.S.G.G. No.	Straits Settlements Government Gazette Number