

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER XVII

WILLS ORDINANCE

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An Ordinance relating to wills.

Ordinance Nos.
2 of 1966.
3 of 1982.

[22nd February, 1967]

PART I—PRELIMINARY

1. This ordinance may be cited as the Wills Ordinance.

Short title.

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

Interpretation.

“bequest” and its grammatical derivations and cognate expressions includes all dispositions by will or codicil of any property, of whatsoever nature or description, and has the same meaning as “devise”;

“codicil” means an instrument made in relation to a will, and explaining, altering or adding to its contents, and shall be deemed to form part of the will;

“devise” and its grammatical derivations and cognate expressions includes all dispositions by will or codicil of any property, of whatsoever nature or description, and has the same meaning as “bequest”;

“property” includes both real and personal property;

“will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death, and includes a testament and a codicil and an appointment by will or by writing in the nature of a will in exercise of a power.

PART II—WILLS AND CODICILS

3. Except as hereinafter provided in this ordinance, every person of sound mind may devise, bequeath or dispose of by will or codicil executed in the manner hereinafter required, all the property which he or she owns or to which he or she is entitled at the time of his death.

Person capable of making a will or codicil.

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

Will or codicil of infant invalid.

5.—(1) No will or codicil shall be valid unless it is in writing and executed in the manner hereinafter required.

Mode of execution.

(2) (a) The testator shall sign or affix his or her mark to the will or codicil or it shall be signed by some other person in the presence and by the direction of the testator.

(b) The signature or mark of the testator, or the signature of the person signing for the testator, shall be so placed that it shall appear that it was intended

thereby to give effect to the whole of the writing as a will or codicil.

- (c) The will or codicil shall be attested by two or more witnesses present at the same time, each of whom has seen the testator sign or affix his or her mark to the will or codicil or has seen some other person sign the will or codicil, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his or her signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will or codicil in the presence of the testator, but no form of attestation shall be necessary.

Execution of appointment by will or codicil.

6.—(1) No appointment made by will or codicil in exercise of any power shall be valid, unless the same is executed in the manner hereinbefore required.

(2) Every will or codicil 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 that it shall have been expressly required that a will or codicil made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Publication of will or codicil not necessary.

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

Will or codicil not to be invalidated by reason of incompetency of attesting witness.

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

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

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

or codicil.

10.In case by any will or codicil any property shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will or codicil, such creditor, notwithstanding such charge, shall be admitted as a witness to prove the execution of such will or codicil, or to prove the validity or invalidity thereof.

Creditor attesting a will or codicil charging estate with debts shall be admitted as a witness.

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

Executor not incompetent to be a witness.

12.Every will or codicil made by a man or woman shall be revoked by his or her marriage, except a will or codicil made in exercise of a power of appointment, when the property thereby appointed would not, in default of such appointment, pass to his or her executor or administrator or the person entitled in case of intestacy:

Will or codicil to be revoked by marriage except in certain cases.

Provided that a will expressed to be made in contemplation of a marriage shall, notwithstanding anything in this section or any other rule or law to the contrary, not be revoked by the solemnization of the marriage contemplated.

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

No will or codicil to be revoked by presumption from altered circumstances.

14.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 or codicil is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in the presence and by the direction of the testator, with the intention of revoking the same.

Revocation of will or codicil.

15.No obliteration, interlineation or other alteration made in any will or codicil after the execution thereof shall be valid or have any effect so far as the words or effect of the will or codicil before such obliteration, interlineation or other alteration shall not be apparent, unless such obliteration, interlineation or other alteration shall be executed in like manner as hereinbefore is required for the execution of the will or codicil, but the will or codicil, with such obliteration, interlineation or other alteration as part thereof, shall be deemed to be duly executed if the signature of the testator

Effect of obliteration, interlineation or alteration in will or codicil.

and the subscription of the witnesses be made in the margin or some other part of the will or codicil opposite or near to such obliteration, interlineation or other alteration or at the foot or end of or opposite or near to such obliteration, interlineation or other alteration, or at the foot or end of or opposite to a memorandum referring to such obliteration, interlineation or other alteration and written at the end or some other part of the will or codicil.

Revival of revoked will or codicil.

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

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

Subsequent transfer or assignment or other acts not to prevent operation of will or codicil.

17. No transfer or assignment or other act made or done subsequently to the execution of a will or codicil of or relating to any property therein comprised, except an act by which such will or codicil shall be revoked as aforesaid, shall prevent the operation of the will or codicil with respect to such right, share or interest in such property as the testator shall have power to dispose of by will or codicil at the time of his or her death.

Will or codicil shall be construed to speak from the death of the testator.

18. Every will or codicil shall 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 unless a contrary intention shall appear by the will or codicil.

Residuary devise or bequest shall include property comprised in lapsed and void devises and bequests.

19. Unless a contrary intention appears by the will or codicil, such property as is comprised or intended to be comprised in any devise or bequest in such will or codicil contained, which fails or is void by reason of the death of the devisee or legatee in the lifetime of the testator or by reason of such devise or bequest being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise or bequest, if any, contained in such will or codicil.

General devise or bequest of estate or property shall include property over which the testator has general power of appointment.

20. A general devise or bequest of the estate or property of the testator described in a general manner, shall be construed to include any property to which such description shall extend, 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 shall appear by the will or codicil.

21. Where property is devised or bequeathed to any person, he or she is entitled to the whole interest of the testator therein, unless it appears from the will or codicil that only a restricted interest was intended for him or her.

Devise or bequest without words of limitation.

PART III—PRIVILEGED WILLS

22. Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged or any mariner being at sea, may, if he or she has attained the age of eighteen years, dispose of his or her property by a will made in the manner provided in section 23. Such wills are called privileged wills.

Privileged wills.

23.—(1) Privileged wills may be in writing, or may be made by word of mouth.

Mode of making and rules for executing privileged wills.

(2) The execution of privileged wills shall be governed by the following rules—

- (a) The will may be written wholly by the testator with his or her own hand. In such case it need not be signed or attested.
- (b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.
- (c) If the instrument purporting to be a will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his or her will if it is shown that it was written by the testator's directions or that he or she recognized it as such will.
- (d) If it appears on the face of the instrument that execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that the non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.
- (e) If the soldier, airman or mariner has written instructions for the preparation of a will, but has died before it could be prepared and executed, such instructions shall be considered to constitute that will.
- (f) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of a will, and they have been reduced into writing in his or her lifetime, but he or she has

died before the instrument could be prepared and executed, such instructions shall be considered to constitute such will although they may not have been reduced into writing in the presence of the testator nor read over to the testator.

- (g) The soldier, airman or mariner may make a will by word of mouth by declaring his or her intention before two witnesses present at the same time.
- (h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.