

BELIZE

WILLS ACT
CHAPTER 203

REVISED EDITION 2020

SHOWING THE SUBSTANTIVE LAWS AS AT
31ST DECEMBER, 2020

This is a revised edition of the Substantive Laws, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Chapter 3 of the Substantive Laws of Belize, Revised Edition 2020.



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CHAPTER 203

WILLS

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CHAPTER 203

WILLS

Ch. 195,
R.L., 1958.
CAP. 165,
R.E. 1980-1990.
3 of 1978.

[8th August, 1953]

PART I

Preliminary, Wills, their Execution and Effect

Short title.

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

Interpretation.

2. In this Part, unless the context otherwise requires,

"personal estate" includes leasehold estates and other chattels real, and also monies, shares of government and other funds, securities for money not being real estates, debts, choses in action, rights, credits, goods and all other property whatever, except real estate, which at common law devolves upon the executor or administrator, and to any share or interest therein;

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

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

Power to dispose of all kinds of property.

3.-(1) A person may devise, bequeath or dispose of by his will, executed in manner hereinafter required, all real estate and all

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personal estate to which he is entitled, either at law or in equity, at the time of his death, the residue of which if not so devised, bequeathed or disposed of would be distributable in the manner, or be held on the trusts, mentioned in any Act relating to the administration of the estates of deceased persons.

(2) The power hereby given shall extend also,

(a) to estates *pur autre vie*, whether there is or is not any special occupant thereof, and whether it is freehold or of any other tenure, or is a corporeal or an incorporeal hereditament;

(b) to an absolute or contingent, executory or other future interest in any real or personal estate, or is in possession, remainder or reversion, whether the testator is or is not ascertained as the person or one of the persons in whom it respectively may become vested, and whether he is entitled thereto under the instrument by which it respectively was created, or under any disposition thereof by deed or will;

(c) to all rights of entry for conditions broken and other rights of entry; and

(d) to such of the same estates, interests and rights respectively, and other real and personal estate as the testator is entitled to at the time of his death, notwithstanding that he has become entitled to it subsequently to the execution of his will.

(3) This section shall, without prejudice to the rights and interests of a personal representative, authorise, and be deemed always to have authorised, any person to dispose of real property or chattels real by will, notwithstanding that by reason

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of illegitimacy or otherwise he did not leave next-of-kin surviving him.

Time from which will takes effect.

4. 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 appears by the will.

Competency of testator.
3 of 1978.

5. Subject to any Act relating to infants, no will made by any person under the age of eighteen shall be valid.

Testamentary capacity of married woman.

6. Every married woman shall be capable of making a will, codicil or other testamentary disposition as fully and effectually as if she were a *feme sole*.

Every will to be in writing and duly executed.

7.-(1) No will shall be valid unless it is in writing, and executed in manner hereinafter mentioned, that is to say,

(a) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction;

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

(c) such witnesses shall attest and subscribe the will in the presence of the testator.

(2) No form of attestation shall be necessary.

Rules as to signature.

8.-(1) Every such will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid, if the signature is so placed at, or after, or following, or under, or beside, or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will.

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(2) No such will shall be affected by the circumstances that,

(a) the signature does not follow or be immediately after the foot or end of the will;

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

(c) 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, or under, or beside the names or one of the names of the subscribing witnesses;

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

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

(3) The enumeration of the above circumstances shall not restrict the generality of the above enactment.

(4) No signature under this section shall be operative to give effect to,

(a) any disposition or direction which is underneath or which follows that signature;

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(b) any disposition or direction inserted after the signature is made.

Application of rules on certain cases.

9. Section 8 of this Act, shall extend and be applied to every will already made where administration or probate has not already been granted or ordered in consequence of the defective execution of such will, or where the property, being other than personality, has not been possessed or enjoyed by some person claiming to be entitled thereto, in consequence of the defective execution of such will, or the right thereto has not been decided to be in some other person than the person claiming under the will in consequence of the defective execution of such will.

Mode of executing testamentary appointment.

10.-(1) No appointment made by will in exercise of any power shall be valid unless it is executed in manner hereinbefore required.

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

Publication of will not required.

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

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

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

Gifts to an attesting witness or his or her wife or husband, to be void.

13.-(1) Where 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 or debts) is thereby

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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 the wife or husband of such person or any person claiming under such person or wife or husband, be utterly null and void.

(2) The person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

Creditor attesting a will charging estate with debts.

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

Executor shall be admitted a witness.

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

Revocation of will by marriage.

16.-(1) A will shall be revoked by the subsequent marriage of the testator except a will expressed to be made in contemplation of that marriage.

(2) This section shall not apply to a will made in exercise of a power of appointment when the property thereby appointed would not, in default of appointment, pass to the personal representative of the testator.

Altered circumstances not to revoke will.

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

Manners of revoking wills.

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

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(a) by marriage as provided by section 16 of this Act;

(b) by another will or codicil executed in accordance with section 7 of this Act;

(c) by a written revocation executed in the manner in which the will was executed; or

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

Alteration in will after execution.

19.-(1) No obliteration, interlineation, or other alteration made in a will after execution shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in the manner in which the will was executed.

(2) The will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator, and the signature of each witness if any is required, is made,

(a) in the margin or on some other part of the will opposite or near to such alteration; or

(b) at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

Manner of reviving revoked will.

20.-(1) No will or codicil or any part thereof which is in any manner revoked shall be revived, otherwise than by the re-execution thereof or by a codicil executed in accordance with section 7 of this Act and showing an intention to revive the same.

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(2) When any will or codicil which is partly revoked and afterwards wholly revoked is revived, such 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 shall be shown.

Effect of subsequent conveyance, etc., on will.

21. 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 such will is revoked in accordance with section 18 of this Act, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator has power to dispose of by will at the time of his death.

Effect of failure of devise.

22. Unless a contrary intention appears by the will, such real estate or interest therein as is comprised or intended to be comprised in any devise in such 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 such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

When leaseholds included in a devise of land.

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

Power of appointment executed by general word in a will.

24.-(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 such description extends as the case may be, which he has power to appoint in any manner he may

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think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will.

(2) In like manner a bequest of the personal estate of the testator or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description extends, as the case may be, which he has power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will.

Devise without words of limitation.

25. Where any real estate shall be devised to any person without any words of limitation, 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 estate, unless a contrary intention appears by the will.

Construction of terms, etc.

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

(2) This Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there is 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 to trustees and executors.

27. Where any real estate is devised to any trustee or executor, such devise shall be construed to pass the fee simple

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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, shall thereby be given to him expressly or by implication.

Construction of devise in trust without express limitation.

28. Where any real estate is devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such 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, such 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 shall be satisfied.

Devise of estate tail not to lapse in certain cases.

29. 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 heritable under such entail, and any such issue shall be living at the time of the death of the testator, such 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.

Gifts to children dying to take effect per stirpes.

30. Where any such person, being a child or other issue of the testator, to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person dies in the lifetime of the testator leaving issue, and any such issue of such person is living at the time of the death of the testator, such devise or bequest 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.

Wills of soldiers, etc.

31.-(1) Notwithstanding anything contained in this Act, any member of Her Majesty's Forces being in actual naval,

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military or air force service, and any mariner or seaman being at sea may dispose of his personal estate as such a person might have done in England before the passing of the Wills Act 1837, c.26.

3 of 1978.

(2) Subsection (1) of this section, authorises any such soldier or mariner or seaman so to dispose of his estate though under the age of eighteen years.

Validity of devises by soldiers, etc.

32. A testamentary disposition of any real estate made by a person to whom section 31 of this Act, applies, and who dies after the passing of this Act, shall, notwithstanding that the person making the disposition was at the time of making it under eighteen years of age or that the disposition has not been made in such manner or form as was at the passing of this Act required by law, be valid in any case where the person making the disposition was of such age and the disposition has been in such manner and form that if the disposition had been a disposition of personal estate made by such person domiciled in England, it would have been valid.

Power to appoint testamentary guardian.

33. Where any person dies after the passing of this Act having made a will which is, or which, if it had been a disposition of property, would have been rendered valid by section 31 of this Act, any appointment in that will of any person as guardian of the infant children of the testator shall be of full force and effect.

PART II

Inheritance (Family Provision)

Interpretation. In this Part.

34.-(1) In this Part, unless the context otherwise requires,

"annual income" means, in relation to a testator's net estate, the income that the net estate might be expected at the date of the order, when realised, to yield in a year;

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"court" means the Supreme Court;

"estate duties" means estate duty and every other duty leviable or payable on death;

"net estate" means all the property of which a testator had power to dispose by his will, otherwise than by virtue of a special power of appointment, less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty payable out of his estate on his death; "son" and "daughter" respectively, includes a male or female child adopted by the testator by virtue of an order made under the Families and Children Act, Cap. 173, and also a son or daughter of the testator *en ventre sa mere* at the date of the testator's death;

"will" includes codicil.

(2) References in this Part to any enactment or any provision of any enactment shall, unless the context otherwise requires, be construed as references to that enactment or provision as amended by any subsequent enactment including this Part.

Power of Court to order maintenance for dependants out of testator's estate.

35. Where, after the commencement of this Act, a person dies domiciled in Belize leaving,

(a) a wife or husband;

(b) a daughter who had not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself;

(c) an infant son; or

(d) a son who is, by reason of some mental or physical inability, incapable of maintaining himself,

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and leaving a will, then, if the court on application by or on behalf of any such wife, husband, daughter or son as aforesaid, in this Part referred to as a "dependent" of the testator, is of opinion that the will does not make reasonable provision for the maintenance of that dependent, the court may order that such reasonable provision as the court thinks fit, shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the testator's net estate for the maintenance of that dependent,

Provided that no application shall be made to the court by or on behalf of any person in any case where the testator has bequeathed not less than two-thirds of the income of the net estate to a surviving spouse and the only other dependent, or dependents (if any) is or are a child or children of the surviving spouse.

Maintenance to be by way of periodical payments.

36. The provision for maintenance to be made by an order shall, subject to section 38, be by way of periodical payments of income, and the order shall provide for their termination not later than,

(a) in the case of a wife or husband, her or his re-marriage;

(b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;

(c) in the case of an infant son, his attaining the age of eighteen years;

(d) in the case of a son under disability, the cesser of his disability;

(e) in case of any dependent, his or her earlier death.

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Annual income to be limited.

37. The amount of the annual income which may be made applicable for the maintenance of a testator's dependents by an order or orders to be in force at any one time shall in no case be such as to render them entitled under the testator's will as varied by the order or orders to more than the following fraction of the annual income of his net estate, that is to say,

(a) if the testator leaves both a wife or husband and one or more other dependents, two-thirds; or

(b) if the testator does not leave a wife or husband, or leaves a wife or husband and no other dependent, one-half.

Payment out of capital.

38. Where the value of a testator's net estate does not exceed fifteen thou- sand dollars, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a payment out of capital, so however that the court, in determining the amount of the provision, shall give effect to the principle of section 37 of this Act.

Matters to be considered in making order.

39. In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the testator's net estate and shall not order any such provision to be made as would necessitate a realisation that would be improvident, having regard to the interests of the testator's dependents and of the person who, apart from the order, would be entitled to that property.

Other matters to be taken into consideration.

40. The court shall, on any application made under this Part, have regard,

(a) to any past, present or future capital or income from any source of the dependent of the testator to whom the application relates;

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(b) to the conduct of that dependent in relation to the testator and otherwise; and

(c) to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependent, to the beneficiaries under the will, or otherwise.

Testator's reasons for dispositions.

41.-(1) The court shall also, on any such application, have regard to the testator's reasons, so far as ascertainable, for making the dispositions made by his will, or for not making any provision or any further provision, as the case may be, for a dependent.

(2) The court may accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the testator and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Time within which application must be made.

42.-(1) Except as provided by section 44 of this Act, an order under this Part shall not be made except on an application made within six months from the date on which representation in regard to the testator's estate for general purpose is first taken out.

(2) For the purposes of the Act regulating the administration of the estates of deceased persons, (which relate to the discretion of the court as to the persons to whom administration is to be granted) a dependent of a testator by whom or on whose behalf an application under this Act is proposed to be made shall be deemed to be a person interested in his estate.

Effect and form of order.

43.-(1) Where an order is made under this Act, then for all purposes, including the purposes of the enactment relating to

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estate duty, the will shall have effect, and shall be deemed to have had effect as from the testator's death, as if it had been executed with such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.

(2) The court may give such consequential direction as it thinks fit for the purpose of giving effect to an order made under this Part, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision.

(3) A certified copy of every order made under this Act shall be filed with the probate papers in the Registry relating to the estate of the deceased and shall be permanently annexed to the probate of the will of the testator or the letters of administration with the will annexed, as the case may be.

Variation of orders.

44.-(1) On any application made at a date after the expiration of the period specified in section 42 of this Act, the court may make such an order as is hereinafter mentioned, but only as respects property, the income of which is at that date applicable for the maintenance of a dependent of the testator, that is to say,

(a) an order for varying a previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependent or of a person beneficially interested under the will in the property; or

(b) an order for making provision for the maintenance of another dependent of the testator.

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(2) An application to the court for an order under subsection (1) (a) of this section, may be made by or on behalf of a dependent of the testator or by the trustees of the property or by or on behalf of a person beneficially interested therein under the will.

Provision for dependents out of capital.

45.-(1) Notwithstanding anything contained in this Part, where the testator's net estate does not exceed ten thousand dollars, the court shall have power to make an order directing payment to a dependent or dependents out of such estate of a sum not exceeding,

(a) if a testator leaves both a wife or husband and one or more other dependents, two-thirds of such estate; or

(b) if the testator does not leave a wife or husband, or leaves a wife or husband, and no other dependent, one-half.

(2) For the purposes of subsection (1) of this section, the personal representatives of the testator shall from the date of the order hold the net estate upon trust for sale, and payment from the proceeds thereof or from any other fund in his hands of any sum in accordance with the direction of any such order.

(3) Sections 39, 40 and 41 of this Act, shall have effect, *mutatis mutandis*, as regards the matters to which the court shall have regard in making an order under this section.

PART III

Miscellaneous

Contingent and future testamentary gifts to carry the intermediate income.

46.-(1) A contingent or future specific devise or bequest of property, whether real or personal, and a contingent residuary devise of freehold land, and a specific or residuary devise of freehold land to trustees upon trust for persons whose interests

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are contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator, except so far as such income, or any part thereof, may be otherwise expressly disposed of.

(2) This section applies only to wills coming into operation after the commencement of this Act.

Power of tenant in tail in possession to dispose of property by specific devise or by bequest.

47.-(1) A tenant in tail of full age shall have power to dispose by will by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally,

(a) of all property of which he is tenant in tail in possession at his death; and

(b) of money, including the proceeds of property directed to be sold, subject to be invested in the purchase of property, of which if it had been so invested he would have been tenant in tail in possession at his death,

in like manner as if, after barring the entail, he had been tenant in fee simple or absolute owner thereof for an equitable interest at his death, but, subject to and in default of any such disposition by will, such property shall devolve in the same manner as if this section had not been passed.

(2) This section applies to entailed interests authorised to be created by the law relating to property, as well as to estates tail created before the commencement of this Act or to a tenant in tail after possibility of issue extinct, and does not render any interest which is not disposed of by the will of the tenant in tail liable for his debts or other liabilities.

(3) In this section, "tenant in tail" includes an owner of a base fee in possession who has power to enlarge the base fee into a fee simple without the concurrence of any other person.

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(4) This section only applies to wills executed after the commencement of this Act, or confirmed or republished by codicil executed after such commencement.

Prescribed forms for reference in wills.

48. The Chief Justice may from time to time prescribe and publish forms to which a testator may refer in his will and give directions as to the manner in which they may be referred to, but unless so referred to, such forms shall not be deemed to be incorporated in a will.

Depositories of wills of living persons.

49. There may, under the control and direction of the Supreme Court, be provided safe and convenient depositories for the custody of the wills of living persons, and any person may deposit his will therein on payment of such fees and subject to such provisions as may from time to time be prescribed by Rules of Court.

Limitation of application of Act.

50. This Act shall not extend to any will made before 8th March, 1856, but every will re-executed or republished or revised by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, republished or revised, and this Act shall not extend to any estate *pur autre vie* of any person who shall have died before 8th March, 1856.

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