



ANALYSIS

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Act to be read with the Wills Act 1837 (U.K.).</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">WILLS OF SERVICEMEN AND SAILORS</p> <p>3. Interpretation.</p> <p>4. Persons who are privileged under this Part of this Act in respect of making wills.</p> <p>5. Privileged persons may make informal wills.</p> <p>6. Wills of minors who are or are about to become privileged persons and revocations thereof.</p> <p>7. Modifications of principal Act in relation to wills of privileged persons.</p> | <p>8. Declaration of emergency force.</p> <p>9. Will by oral declaration to become void unless testator dies within twelve months.</p> <p>10. Special provisions in respect of wills of seamen and naval ratings.</p> <p>11. Repeals, revocations, and savings.</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">MISCELLANEOUS</p> <p>12. Wills of married minors.</p> <p>13. Wills in contemplation of marriage.</p> <p>14. Law which determines validity of will of movable property.</p> <p>15. Declaration that certain spent provisions of principal Act shall cease to have effect as part of law of New Zealand.</p> |
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1955, No. 94

Title.

AN ACT to amend the law relating to wills.

[27 October 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. This Act may be cited as the Wills Amendment Act 1955.

2. (1) This Act, and the Wills Act Amendment Act 1852 of the United Kingdom Parliament so far as it has effect as part of the law of New Zealand in accordance with the English Laws Act 1908, shall, for the purposes of the law of New Zealand, be read together with and deemed part of the Wills Act 1837 of the United Kingdom Parliament (hereinafter referred to as the principal Act).

Act to be read with the Wills Act 1837 (U.K.).

15 and 16 Vict., ch. 24 (U.K.)

See Reprint of Statutes, Vol. VIII, p. 594

(2) It is hereby declared that the provisions of the Acts Interpretation Act 1924, so far as they are applicable and with the necessary modifications, shall apply with respect to the said Acts of the United Kingdom Parliament, so far as they have effect as part of the law of New Zealand, as if the said Acts were Acts of the General Assembly of New Zealand.

7 Will. IV and 1 Vict., ch. 26 (U.K.)

See Reprint of Statutes, Vol. VIII, p. 568

PART I

WILLS OF SERVICEMEN AND SAILORS

3. In this Part of this Act, unless the context otherwise requires,—

Interpretation.

“Allied armed force” includes any armed force which is co-operating with any part of the New Zealand armed forces, and any armed force for which the Government of New Zealand has agreed to raise or supply members:

“Commonwealth” means the British Commonwealth of Nations; and includes every territory for whose international relations any country of the Commonwealth is responsible:

“Emergency force” means any part of the New Zealand armed forces which is for the time being an emergency force in accordance with section eight of this Act:

“Enemy” means an enemy within the meaning of the New Zealand Army Act 1950:

“Formal revocation”, in relation to any will, means a revocation thereof made by a formal will or by some writing declaring an intention to revoke the same and executed in accordance with section nine of the principal Act:

“Formal will” means a will made in accordance with section nine of the principal Act:

1950, No. 39
Cf. 1954,
No. 20, s. 2 (2)

“Informal will” means a will which is expressed in any form of words whether written or spoken and which is not made in accordance with section nine of the principal Act:

1954, No. 53

“Naval Discipline Act” has the same meaning as that expression has in the Navy Act 1954:

“New Zealand armed forces” means the New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force; and includes all persons for the time being subject to military law or air force law or to the Naval Discipline Act by reason of their carrying out duties necessitating their accompanying the New Zealand armed forces or any portion thereof:

“Prisoner of war” means a person belonging to the armed forces of a belligerent, or a mariner or seaman of a ship of a belligerent, who has been captured by the enemy of that belligerent in the course of operations of war on land or sea or in the air and is in consequence for the time being held captive by that enemy; and includes a person belonging to the armed forces of a belligerent who is for the time being interned in another country because he belongs to those forces:

“Privileged person” means a person who is declared by section four of this Act to be a privileged person.

Persons who are privileged under this Part of this Act in respect of making wills.

7 Will. IV and 1 Vict., ch. 26, s. 11 (U.K.)

1916, No. 13, s. 34 (Reprint of Statutes, Vol. VIII, p. 1169)

S.R. 1939/276, reg. 6

S.R. 1952/184, reg. 4

4. Without restricting the powers conferred by the principal Act or any other enactment, it is hereby declared that every person, whether male or female, shall be a privileged person for the purposes of this Part of this Act at any material date, if at that date,—

(a) New Zealand is engaged in any war and the person is outside New Zealand as a member of the New Zealand armed forces or of any Commonwealth or Allied armed force which was raised or partly raised in New Zealand; or

(b) The person is—

(i) A member of any emergency force; or

(ii) A member of any part of the New Zealand armed forces, or of any Commonwealth or Allied armed force, who is serving in operations against an enemy; or

(iii) A member of any armed force who is in actual military service or who is so circumstanced that if he were a soldier he would be in actual military service; or

(iv) A mariner or seaman who is at sea; or

(v) A prisoner of war who was a privileged person immediately before his capture or internment.

5. (1) Subject to the provisions of this Part of this Act, any privileged person may make an informal will.

(2) Without limiting the general power conferred by subsection one of this section, it is hereby declared that, subject to the provisions of this Part of this Act, any privileged person may, by an informal will,—

(a) Dispose of the whole or any part of his real and personal estate which devolves in accordance with the law of New Zealand:

(b) Exercise any power of appointment that may in accordance with the law of New Zealand be lawfully exercised by a formal will:

(c) Revoke wholly or in part any previous formal or informal will:

(d) Appoint any person as guardian of his infant children:

(e) Make any other provision whatsoever which may lawfully be made by a formal will.

(3) It is hereby declared that any privileged person may revoke any previous formal or informal will by any words whether written or spoken declaring an intention to revoke the same.

(4) Subject to the provisions of this Part of this Act, all the provisions of the principal Act which have effect as part of the law of New Zealand (except section nine), and all the provisions of any other enactment relating to wills which has effect as part of the law of New Zealand, shall apply to informal wills.

(5) Section one hundred and eleven of the Maori Affairs Act 1953 shall not apply to any formal or informal will made under this Part of this Act by a privileged person who is a Maori, but nothing in this Part of this Act shall restrict the operation of section one hundred and fourteen of that Act.

Privileged persons may make informal wills.
1916, No. 13, s. 34 (1)
S.R. 1939/276, regs. 8, 9

1953, No. 94

(6) Notwithstanding anything to the contrary in any other enactment, an informal will may be proved upon such evidence as the Court may consider sufficient.

6. Notwithstanding anything to the contrary in section seven of the principal Act,—

(a) An informal will made by a privileged person who is under the age of twenty-one years shall be as valid as it would have been if the testator had been over that age:

(b) A formal will made by a testator who is under the age of twenty-one years shall be as valid as it would have been if the testator had been over that age, if at the date of the making of the will the testator—

(i) Is a privileged person; or

(ii) Has received orders to train for or join any emergency force; or

(iii) Has received orders to train for or join any part of the New Zealand armed forces, or of any Commonwealth or Allied armed force which was raised or partly raised in New Zealand, for service outside New Zealand in connection with any war in which New Zealand is engaged; or

(iv) Has received orders to train for or join any part of the New Zealand armed forces, or of any Commonwealth or Allied armed force, for service in operations against an enemy; or

(v) Has received orders to join any ship as a mariner or seaman.

(c) A formal revocation of a will which depends for its validity on this Part of this Act, or a burning, tearing, or other destruction of any such will by or by direction and in the presence of the testator with the intention of revoking the same, shall, notwithstanding that the formal revocation, burning, tearing, or other destruction is made or occurs, or the direction is given, while the testator is under the age of twenty-one years, be as effective as a revocation of the will at it would have been if the testator had been over that age.

Wills of minors who are or are about to become privileged persons and revocations thereof.

1918, No. 10, s. 23 (Reprint of Statutes, Vol. VIII, p. 1170)
S.R. 1939/276, reg. 3
S.R. 1952/184, reg. 3

7. (1) Nothing in section fifteen of the principal Act shall cause to be null and void any devise, legacy, estate, interest, gift, or appointment to any person who attests the execution of any will or to the wife or husband of any such person, if at the date of the execution of the will the testator was a privileged person.

Modifications of principal Act in relation to wills of privileged persons.

(2) Notwithstanding anything to the contrary in section twenty of the principal Act, where any testator who is a privileged person, whether or not he has attained the age of twenty-one years, directs or authorizes (either in writing or orally) any other person to burn or tear or otherwise destroy any will of the testator with the intention of revoking the same, any burning, tearing, or other destruction effected pursuant to the direction or authority shall (notwithstanding that it does not take place in the testator's presence) be as effective to revoke the will as it would have been if it had taken place in his presence.

(3) Nothing in section twenty-one of the principal Act shall require any obliteration, interlineation, or alteration made in any formal or informal will to be executed in accordance with section nine of the principal Act if the obliteration, interlineation, or alteration was made—

- (a) By the testator or by some person in his presence and by his direction; and
- (b) While the testator was a privileged person, whether or not he had attained the age of twenty-one years.

8. The Minister of Defence may, by notice in the *Gazette*, declare that, from any date specified in the notice (whether the date is before or after the date of the commencement of this Act or before or after the date of the notice) any part of the New Zealand armed forces shall be, or shall cease to be, an emergency force for the purposes of this Part of this Act.

Declaration of emergency force.

S.R. 1952/184, reg. 2

9. (1) Where any testator who dies after the commencement of this Act has (whether before or after the commencement of this Act) made a valid informal will which has not been validly revoked and which was not either expressed in writing and signed by the testator, or wholly

Will by oral declaration to become void unless testator dies within twelve months.

1916, No. 13, s. 34 (2)

written by the testator, at a time when he could make a valid informal will, the will shall not have any force or effect unless,—

(a) In a case where the testator was a prisoner of war when he made the will or became a prisoner of war within twelve months after he made the will, the testator dies while he is a prisoner of war or within twelve months after he ceased to be a prisoner of war:

(b) In any other case, the testator dies within twelve months after he made the will.

(2) In this section the term “will” includes any words declaring an intention to revoke a will.

10. (1) Nothing in this Part of this Act shall affect the provisions of section one hundred and ten of the Shipping and Seamen Act 1952.

(2) The Minister of Defence, after considering a report from the New Zealand Naval Board, may issue a certificate in respect of any informal will made either before or after the commencement of this Act by any rating of the New Zealand Naval Forces (whether for the time being employed therein or transferred for employment with any Commonwealth or Allied armed force) declaring that, unless the Supreme Court (on application in solemn form made within three months after the date of the issue of the certificate) grants probate of the will, the will shall be invalid in respect of all money and effects of the rating on board his ship or in his personal custody, and of all wages, allowances, and other money due to him from any Naval Authority; and where the Minister of Defence issues such a certificate in respect of any will and probate of the will is not thereafter granted on an application in solemn form made within three months after the date of the issue of the certificate, the will shall not have any force or effect to pass any such money, effects, wages, or allowances:

Provided that no such certificate shall be issued in respect of any will unless the Minister of Defence is satisfied that the validity of the will in respect of the said assets is to be determined according to the law of New Zealand.

Special provisions in respect of wills of seamen and naval ratings.
28 and 29 Vict., ch. 72, ss. 5, 6 (U.K.)
2 and 3 Geo. VI, ch. 87, s. 1 (U.K.)
1952, No. 49

11. (1) Section eleven of the principal Act and section twenty-two of the Statute of Frauds 1677 of the Parliament of England shall cease to have effect as part of the law of New Zealand.

(2) For the avoidance of doubt it is hereby declared that the following enactments of the United Kingdom Parliament shall not have effect as part of the law of New Zealand:

(a) The Navy and Marines (Wills) Acts 1865 to 1939:

(b) Section twelve of the principal Act and the enactments therein mentioned.

(3) The War Legislation Amendment Act 1916 and section twenty-three of the War Legislation and Statute Law Amendment Act 1918 are hereby repealed.

(4) The Soldiers' Wills Emergency Regulations 1939 and the Soldiers' Wills Emergency Regulations 1939, Amendment No. 2 are hereby revoked.

(5) Except as provided in section nine of this Act, all wills which were made before the commencement of this Act shall, so far as they are subsisting or in force immediately before the commencement of this Act, enure thereafter as fully and effectually as they would if this Part of this Act had not been passed:

Provided that this Part of this Act shall apply, and the enactments mentioned in subsections one to four of this section shall not apply, to any amendment or revocation of any such will if the amendment or revocation is made after the commencement of this Act.

(6) The Kayforce Wills Notice 1953 shall continue and have effect as if it had been given under section eight of this Act.

PART II

MISCELLANEOUS

12. (1) Notwithstanding anything to the contrary in section seven of the principal Act or any other enactment or rule of law, every minor after his or her marriage shall be competent to make a valid will or revoke a will in all respects as if he or she were of full age.

(2) Section fourteen of the Infants Act 1908 is hereby consequentially repealed.

Repeals,
revocations,
and savings.
29 Cha. II,
ch. 3

28 and 29 Vict.,
ch. 72 (U.K.)

7 and 8 Geo.
V, ch. 58

20 and 21 Geo.
V, ch. 38
(U.K.)

2 and 3 Geo.
VI, ch. 87
(U.K.)

See Reprint
of Statutes,
Vol. VIII,
pp. 1073, 1169,
1170

S.R. 1939/276

S.R. 1952/184

S.R. 1953/41

Wills of married
minors.

1908, No. 86,
s. 14

See Reprint
of Statutes,
Vol. III,
p. 1073

Wills in
contemplation
of marriage.
1952, No. 51,
s. 39

13. (1) Notwithstanding anything in section eighteen of the principal Act or any other enactment or rule of law, a will expressed to be made in contemplation of a marriage shall not be revoked by the solemnization of the marriage contemplated.

1944, No. 18

(2) This section applies only to wills made on or after the fifth day of December, nineteen hundred and forty-four (being the date of the passing of the Law Reform Act 1944).

1952, No. 51

(3) Section thirty-nine of the Property Law Act 1952 is hereby consequentially repealed.

Law which
determines
validity of will
of movable
property.
1952, No. 56,
s. 40

14. (1) Every will and other testamentary instrument made out of New Zealand by any person (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards movable property, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required by—

- (a) The law of the place where the person was domiciled at the time of his death; or
- (b) The law of the place where the same was made; or
- (c) The law of the place where the person was domiciled when the same was made; or
- (d) The law in force when the same was made in the place where the person had his domicile of origin.

(2) Every will and other testamentary instrument made within New Zealand by any person (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards movable property, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required by—

- (a) The law of the place where the person was domiciled at the time of his death; or
- (b) The law of New Zealand; or
- (c) The law of the place where the person was domiciled when the same was made.

(3) No will or other testamentary instrument of any person shall, so far as it relates to movable property in New Zealand, be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason only of any subsequent change of domicile of the person making the same.

(4) In this section—

“Land” means land in New Zealand; and includes any estate or interest in land in New Zealand:

“Movable property” includes a mortgage of land, a rent charge or annuity or legacy charged on land, and any interest in the proceeds of sale of land contracted to be sold or held upon trust for sale; but does not include a leasehold estate or interest in land.

(5) This section shall apply to all wills made on or after the date of the commencement of this Act. The validity of all other wills shall be determined as if this section had not been passed.

(6) Section forty of the Administration Act 1952 is hereby consequentially repealed. 1952, No. 56

15. It is hereby declared that sections two, four, five, eight, and thirty-two of the principal Act shall cease to have effect as part of the law of New Zealand.

Declaration that certain spent provisions of principal Act shall cease to have effect as part of law of New Zealand.

AND IS

ENACTED