



## ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p>2. Effect of divorce, etc., on wills</p>	<p>3. Restriction on operation of section 15 of principal Act</p> <p>4. Modification of principal Act in relation to wills of privileged persons</p>
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1977, No. 55

**An Act to amend the law relating to wills**

[21 November 1977]

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

**1. Short Title and commencement**—(1) This Act may be cited as the Wills Amendment Act 1977, and 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).

(2) This Act shall come into force on the 1st day of July 1978.

**2. Effect of divorce, etc., on wills**—(1) Where at the death of any person there is in force any absolute decree or order or any legislative enactment for the divorce of the person, or for the dissolution or nullity of the marriage of the person, and that decree or order or legislative enactment would be recognised by the Courts in New Zealand, any will of the person

that was made before the decree or order or legislative enactment shall be read and take effect subject to the following provisions of this section.

(2) Subject to the following subsections of this section, in any such will of any person—

(a.) So far as it concerns the other partner to the former or purported marriage of that person and the executor or administrator of that other partner, the following shall be null and void:

(i) Any beneficial devise, legacy, estate, gift, or appointment of or affecting any real or personal property given or made by the will of that person:

(ii) Any direction, charge, trust, or provision in the will of that person for the payment of any debt that is charged by way of mortgage on any real or personal property that belongs to that other partner or that devolved by survivorship on that other partner; and

(b) The appointment of that other partner as executor or trustee or advisory trustee of the will of that person shall be null and void; and

(c) The will shall be read and take effect so far as concerns the real and personal property affected by any such devise, legacy, estate, gift, appointment, direction, charge, trust, or provision as if that other partner had died immediately before the person making the will.

(3) Subsection (2) of this section shall not apply to—

(a) Any direction, charge, trust, or provision in any such will of any person for the payment of any amount in respect of any debt or liability, including any liability under a promise within the meaning of the Law Reform (Testamentary Promises) Act 1949, of the maker of the will to the other partner to the former or purported marriage of that person or to the executor or administrator of that other partner:

(b) Any beneficial devise, legacy, estate, gift, appointment, direction, charge, trust, or provision in any such will of any person expressed to take effect notwithstanding this section, or notwithstanding or in contemplation of (as the case may be) the making of any decree, order, or legislative enactment for the divorce of the person, or for the dissolution or nullity of the marriage of the person:

(c) Any beneficial devise, legacy, estate, gift, appointment, direction, charge, trust, or provision in any such will of any person if, after the relevant decree or order or legislative enactment for the divorce of the person or the nullity of the marriage of the person, he has, by a codicil, expressly shown an intention that the devise, legacy, estate, gift, appointment, direction, charge, trust, or provision shall have effect notwithstanding this section or notwithstanding the making of the decree, order, or legislative enactment.

(4) For the purposes of this section—

(a) Where a will or any part thereof is, by any codicil, confirmed or ratified or in any manner revived, it shall be deemed to have been made at the time when it was first made, and not at the time when it was confirmed or ratified or revived:

(b) Where a will or any part thereof is re-executed, it shall be deemed to have been made at the time when it was re-executed, and not at the time when it was first made.

(5) This section shall apply in relation to every will, whether made before or after the commencement of this Act, if the maker of the will dies after the commencement of this Act but not otherwise.

### **3. Restriction on operation of section 15 of principal Act—**

(1) For the purposes of section 15 of the principal Act (which relates to the avoidance of gifts to attesting witnesses and their spouses), the attestation of a will by a person to whom or to whose spouse there is given or made any such disposition as is described in that section shall be disregarded if the will is duly executed without his attestation and without that of any other such person.

(2) This section applies to the will of any person dying after the commencement of this Act, whether the will was executed before or after the commencement of this Act.

Cf. Wills Act 1968, s. 1 (U.K.)

### **4. Modification of principal Act in relation to wills of privileged persons—**(1) Section 7 of the Wills Amendment Act 1955 is hereby amended by omitting from subsection (2)

and also from subsection (3) the expression “twenty-one years”, and substituting in each case the expression “18 years”.

(2) This section shall apply in relation to any burning, tearing, or other destruction of a will if it takes place after the commencement of this Act, but not otherwise.

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This Act is administered in the Department of Justice.

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