



# LAWS OF MALAYSIA

REPRINT

**Act 346**

## **WILLS ACT 1959**

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**WILLS ACT 1959**

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**LAWS OF MALAYSIA****Act 346****WILLS ACT 1959**

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# LAWS OF MALAYSIA

## Act 346

### WILLS ACT 1959

An Act relating to the law on wills.

[1 April 1960, L.N. 55/1960]

#### Short title and application

1. (1) This Act may be cited as the Wills Act 1959.

(2) This Act shall apply to the States of Peninsular Malaysia only.

#### Interpretation and application

2. (1) In this Act, unless there is something repugnant in the subject or context—

“property” includes lands, leases, rents and hereditaments corporeal, incorporeal or personal and any individual shares thereof and any estate, right or interest therein or in relation thereto, moneys, shares of Government and other funds, securities for money, charges, debts, choses in action, rights, credits, goods and all other property whatsoever which devolves upon the executor or administrator and any share or interest therein and any contingent, executory or other future interest;

“\*Peninsular Malaysia” has the meaning assigned thereto in section 3 of the Interpretation Acts 1948 and 1967 [Act 388], and includes the Federal Territory of Kuala Lumpur;

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\*NOTE—All references to “West Malaysia” shall be construed as references to “Peninsular Malaysia”—see the Interpretation (Amendment) Act 1997 [Act A996], subsection 5(2).

“will” means a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil 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 or testament of the guardianship, custody and tuition of any child.

(2) This Act shall not apply to the wills of persons professing the religion of Islam whose testamentary powers shall remain unaffected by anything in this Act contained.

### **Property disposable by will**

3. Except as hereinafter provided, every person of sound mind may devise, bequeath or dispose of by his will, executed in manner hereinafter required, all property which he owns or to which he is entitled either at law or in equity at the time of his death notwithstanding that he may have become entitled to the same subsequently to the execution of the will.

### **Will of infant invalid**

4. No will made by any person under the age of majority shall be valid.

### **Mode of execution**

5. (1) No will shall be valid unless it is in writing and executed in manner hereinafter mentioned.

(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; such signature shall be made or acknowledged by the testator as the signature to his will in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary:

Provided that every will shall, as 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 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,

and the enumeration of the above circumstances shall not restrict the generality of this proviso; but no signature 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**

**6.** (1) No appointment made by will, in exercise of any power, shall be valid, unless the same 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 that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

**Publication of will not necessary**

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

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

8. 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, such will 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 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 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 of appointment mentioned in such will.

**Creditor attesting a will charging estate with debts shall be admitted a witness**

10. In case by any will 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, 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 not incompetent to be a witness**

11. 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 such will or a witness to prove the validity or invalidity thereof.



**Will to be revoked by marriage except in certain cases**

**12.** 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 property thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator or the person entitled in case of his or her intestacy:

Provided that a will expressed to be made in contemplation of a marriage shall not be revoked by the solemnization of the marriage contemplated; and this proviso 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**

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

**Revocation of will**

**14.** No will or any part thereof shall be revoked otherwise than as aforesaid, or by another will executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

**Effect of obliteration, interlineation or alteration**

**15.** 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 such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, 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 such alteration or 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.

**Revival of revoked will**

**16.** (1) No will 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 manner hereinbefore required, and showing an intention to revive the same.

(2) When any will 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 be shown.

**Subsequent conveyance or other acts not to prevent operation of will**

**17.** No transfer, conveyance, 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 estate, right, share or interest in such property as the testator shall have power to dispose of by will at the time of his death.

**Wills shall be construed to speak from the death of the testator**

**18.** Every will 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.

**Residuary devises or bequests shall include estates comprised in lapsed and void devises or bequests**

**19.** Unless a contrary intention appears by the will, such property as is comprised or intended to be comprised in any devise or bequest in such will 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 respectively, if any, contained in the will.

**General devise or bequest of 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 in the will.

**Devise or bequest without words of limitation**

**21.** Where property is devised or bequeathed to any person without any words of limitation, such devise or bequest shall be construed to pass the fee simple or other the right to the whole estate or interest in such property which the testator had power to dispose of by will unless it appears by the will that only a restricted interest was intended for such devisee or legatee.

**Construction of words importing want or failure of issue**

**22.** In any devise or bequest of property 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 such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will:

Provided that this section 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 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 or bequest of property to trustee or executor**

**23.** Where any property shall be devised or bequeathed to any trustee or executor, such devise or bequest shall be construed to pass the fee simple or other the right to the whole estate or interest in such property which the testator had power to dispose of by will unless a lesser interest in such property shall thereby be given to him expressly or by implication.

**Devise or bequest of property to trustee without limitation**

**24.** Where any property shall be devised or bequeathed to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such property, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise or bequest shall be construed to vest in or pass to such trustee the fee simple, or other the right to the whole legal estate or interest in such property which the testator had power to dispose of by will, and not an estate determinable when the purposes of the trust shall be satisfied.

**Devises or bequests to children or other issue who leave issue living at the testator's death shall not lapse**

**25.** Where any person, being a child or other issue of the testator, to whom any property shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be 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 shall appear by the will.

**Privileged wills of soldiers, airmen and sailors**

**26.** (1) A member of the armed forces of Malaysia being in actual military service, and a mariner or seaman (including a member of the naval forces of Malaysia) being at sea may dispose of his property or of the guardianship, custody and tuition of a child or may exercise a power of appointment exercisable by will by a privileged will.

(2) For the purposes of this section a privileged will means any declaration or disposition, oral or in writing, made by or at the directions of the testator which manifests the intentions of the testator which he desires to be carried or to the guardianship, custody and tuition of a child or to the exercise of a power of appointment.

(3) A declaration may be a valid privileged will notwithstanding that it was not executed in the manner appearing to have been intended by the testator or that it was intended by the testator subsequently to execute a formal will to give effect to his testamentary dispositions, unless it appears that the failure to execute such declaration in such manner or such formal will was due to the abandonment by the testator of the testamentary intentions expressed by such declaration.

(4) Sections 4, 5 and 6 shall not apply to privileged wills, nor is it necessary for a written privileged will to be signed by the testator.

(5) A privileged will other than a will which apart from the provisions of this section would have been valid under this Act 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.

### **Wills executed abroad**

**27.** A will executed outside Malaysia in the manner required by—

- (a) this Act;
- (b) the law of the place where it was executed;
- (c) the law of the testator's domicile at the time of its execution;  
or
- (d) the law of the testator's domicile at the time of his death,

shall be deemed to be will executed for the purpose of being admitted to probate in Malaysia, provided that such will is in writing or is a privileged will made under section 26.

### **Wills by citizens executed in Malaysia**

**28.** A will executed within Malaysia by a citizen (whatever may be the domicile of such person at the time of making the same or at the time of his death) shall as regards movable property and immovable property situate in Malaysia be deemed to be a will executed for the purpose of being admitted to probate in Malaysia if it is executed in the manner required by this Act.

**Change of domicile not to invalidate will**

**29.** No will shall be held to be revoked or to have become invalid in point of form nor shall the construction thereof be altered by reason only of any subsequent change of domicile of the person making the same.

**Construction of wills**

**30.** (1) A will made in any of the States of Selangor, Perak, Negeri Sembilan or Pahang before the coming into force of this Act and a will made in either of the States of Penang and Malacca shall, if such will would immediately before the commencement of this Act have been construed in accordance with the Wills Enactment 1938 [*F.M.S. 5 of 1938*], of the Federated Malay States or the Wills Ordinance of the Straits Settlements [*S.S. Cap. 53*] respectively, continue to be construed in accordance with such provisions, notwithstanding any repeal of that Enactment or Ordinance.

(2) For the purposes of subsection (1) a will re-executed, re-published or revived by a codicil shall be deemed to have been made at the time when it was so re-executed, re-published or revived.

(3) Save as provided by subsection (1) and subject to this Act, section 100 of the Evidence Act 1950 [*Act 56*] shall apply to the construction of all wills required to be construed in accordance with the law of Malaysia as if the words “in the Settlements or either of them” appearing in such section had been omitted.

**31.** (*Omitted*).

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**LAWS OF MALAYSIA****Act 346****WILLS ACT 1959**

## LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 23/1967	Interpretation Act 1967	18-05-1967
Act A331	Wills (Amendment) Act 1976	27-02-1976

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## LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
4	Act A331	27-02-1976

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