TASMANIA

WILLS ACT 1992

No. 29 of 1992

TABLE OF PROVISIONS

PART 4

CONSTRUCTION OF WILLS

Division 1—Construction of wills

Division 2—Evidence

PART 5

GIFTS TO ATTESTING WITNESSES

PART 6

RECTIFICATION OF WILLS

PART 7

SUPPLEMENTAL AND MISCELLANEOUS

SCHEDULE 1

ACTS REPEALED

WILLS ACT 1992

No. 29 of 1992

AN ACT to consolidate and amend the law relating to wills

[Royal Assent 13 November 1992]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Wills Act 1992*.

Commencement

2—This Act commences on a day to be fixed by proclamation.

Interpretation

3—In this Act, unless the contrary intention appears—

"**active service**", in relation to a member of the naval, military or air forces of the Commonwealth, means the service rendered by that member—

(a) when he or she is attached to, or forms part of, a force which—

(i) is engaged in operations against an enemy; or

(ii) is engaged in military operations in a country or place wholly or partly occupied by an enemy; or

(iii) is in military occupation of a foreign country; or

(iv) is engaged in a foreign country in operations for the protection of life or property; or

(b) during a period or in an area in respect of which there is in force pursuant to a law of the Commonwealth a declaration to the effect that the force to which he or she is attached or of which he or she forms part is, or persons serving during that period or in that area are, on active service;

"**country**" means a place or group of places having its or their own law of nationality (including the Commonwealth and its territories);

"**the Court**" means the Supreme Court of Tasmania;

"**gift**" includes devise, legacy, estate, interest, or appointment of, or affecting, any real or personal estate or any such power of appointment, but does not include a charge or direction for the payment of a debt;

"**grant of probate**" includes grant of administration with the will annexed;

"**internal law**", used in relation to a country or place, means the law that would apply in a case where no question of the law in force in any other country or place arose;

"**minor**" means a person under the age of 18 years;

"personal estate" includes leasehold estates and other chattels real and money, shares of Government and other funds, securities for money (other than real estate), debts, choses in action, rights, credits, goods and all other property which devolves by law on the executor or administrator and any share or interest in any such personal estate;

"place" means a territory (including a State or Territory of the Commonwealth);

"privileged testator" means—

(a) a member of the naval, military or air forces of the Commonwealth on active service; or

(b) a mariner or seaman being at sea;

"real estate" includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and any estate, right or interest (other than a chattel interest) in any such real estate;

"rules" means rules of court made and in force under section 49;

"will" includes a testament, a codicil, a declaration made and in force under section 9, an appointment by will or by writing in the nature of a will in exercise of a power and an appointment by will of the guardianship of a child by virtue of any Act and any other testamentary disposition.

Application of Act

4—This Act applies to the will of a person, or the exercise of a power of appointment in the will of a person, who dies after the commencement of this Act, notwithstanding that the will was made before that commencement.

PART 2

THE MAKING OF WILLS

Division 1—Property which may be disposed of by will

All property may be disposed of by will

5—(1) A person may—

(a) by a will executed in accordance with Division 3; or

(b) by a document that is taken to be a will or an amendment of a will under section 26—

devise, bequeath or dispose of all real estate and all personal estate to which that person is entitled, either at law or in equity, at the time of the death of that person and which, if not so devised, bequeathed or disposed of, would devolve on the executor or administrator of that person.

(2) The powers conferred by subsection (1) extend to—

(a) an estate *pur autre vie*, whether—

(i) there is or is not a special occupant of that estate; or

(ii) the estate is freehold or of any other tenure; or

(iii) the estate is a corporeal or incorporeal hereditament; and

(b) a contingent, executory or other future interest in any real or personal estate whether—

(i) the testator is or is not ascertained as the person or one of the persons in whom that interest may become vested; and

(ii) the testator is entitled to that interest under the instrument by which it was created or under a disposition of that interest by deed or will; and

(c) a right of entry for condition broken and any other right of entry; and

(d) any such estate, interest, right or other real or personal estate as mentioned in this section to which the testator is entitled at the time of death, notwithstanding that the testator may become entitled to the estate, interest or right subsequently to the execution of the will.

Division 2—Testamentary capacity

Validity of wills made by minors

6—(1) Except as provided by this Division, a will made by a minor is invalid.

(2) A minor who is or has been married may make a valid will.

(3) A will made by a minor who may marry and which is made in contemplation of a marriage is, on the solemnization of the marriage contemplated, valid.

(4) Where the Public Trustee, on an application by a minor under section 7, approves, by signed instrument, the making by the minor of a will in the specific terms of a proposed will attached to the application, the minor may make a valid will in those terms.

(5) Where the Court, on an application by a minor under section 8, makes an order in accordance with that section enabling the minor to make a will in the specific terms of a proposed will attached to the application, the minor may make a valid will in those terms.

(6) This section has effect subject to section 10.

Public Trustee enabling will by minor

7—(1) A minor may apply to the Public Trustee for approval of the minor making a will in the terms of a proposed will attached to the application.

(2) On an application made by a minor under subsection (1), the Public Trustee must, if satisfied that—

(a) the minor understands the nature and effect of the proposed will; and

(b) the proposed will accurately reflects the intentions of the minor; and

(c) it is reasonable in all the circumstances that the minor should be able to make the proposed will—

approve, by signed instrument and in accordance with this section, the making by the minor of a will in the specific terms of the proposed will attached to the application.

(3) An approval under subsection (2) may be given subject to such conditions, if any, as the Public Trustee thinks fit.

(4) The Public Trustee must give notice of an application by a minor under subsection (1) to each person who would, if the minor had died intestate on making the application, have been entitled in the distribution of the minor's estate.

(5) The Public Trustee must not approve the making of the will by the minor unless the Public Trustee has taken into account any objections made by each person to whom notice of the application is required to be given under subsection (4).

Supreme Court enabling will by minor

8—(1) A minor may apply to the Court for an order declaring that the minor is entitled to make a will in the terms of a proposed will attached to the application.

(2) On an application made by a minor under subsection (1), the Court may, if it is satisfied that—

(a) the minor understands the nature and effect of the proposed will; and

(b) the proposed will accurately reflects the intentions of the minor; and

(c) it is reasonable in all the circumstances that the minor should be able to make the proposed will—

make an order declaring that the minor is entitled to make a valid will in the specific terms of the proposed will attached to the application and any such order may be made on such conditions, if any, as the Court thinks fit.

(3) The Court must not approve the making of the will by the minor unless the Court has taken into account any objections made by a person who would, if the minor had died intestate on making the application, have been entitled in the distribution of the minor's estate.

Will of privileged testator

9—A privileged testator may, notwithstanding Division 3, dispose of his or her real or personal estate by a declaration, oral or in writing, of his or her intention with respect to the disposal of that property on or after his or her death.

Division 3—Execution and attestation of wills

Requirements as to writing and execution of will

10—Except as provided by this Act, a will is invalid unless it is in writing and executed in the following manner:—

(a) it is to be signed at the foot or end of the will by the testator or by some other person in the presence of, and by the direction of, the testator;

(b) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time;

(c) the witnesses must attest and subscribe the will in the presence of the testator, but no form of attestation is necessary.

Position of signature to a will

11—(1) A will is taken, so far only as regards the position of the signature of the testator or of the person signing for the testator as mentioned in section 10, to be executed in accordance with that section if the signature is placed at, after, following, under, beside or opposite to the end of the will and it is apparent on the face of the will that the testator intended to give effect by that signature to the writing signed as the will.

(2) Without limiting the generality of subsection (1), a will is not affected by the circumstance—

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

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

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

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

(e) that 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) Notwithstanding subsections (1) and (2), the signature of the testator—

(a) does not give effect to any disposition or direction that is underneath or that follows it; and

(b) does not give effect to any disposition or direction inserted after the signature was made—

unless the will is executed in accordance with section 16.

Publication of will not required

12—A will is valid if it is executed in accordance with this Division, notwithstanding that it is not otherwise published.

Will not void owing to incompetency of witness

13—If a person who attests the execution of a will is at the time of the execution of the will or at any time afterwards incompetent to be admitted a witness to prove the execution of the will, the will is not on that account invalid.

Creditor attesting to be admitted a witness

14—If by any will real or personal estate is charged with a debt and a creditor whose debt is so charged or the wife or husband of any such creditor attests the execution of that will, that creditor, notwithstanding the charge, is a competent witness to prove the execution of that will or its validity or invalidity.

Executor to be admitted a witness

15—A person who is an executor of a will is not on that account incompetent to be admitted as a witness to prove the execution of that will or its validity or invalidity.

Division 4—Alterations in wills

Effect of alterations in a will

16—(1) An obliteration, interlineation or other alteration made in any will after the execution of the will is not valid, except so far as the words or effect of the will before the alteration are not apparent, unless the alteration is executed in accordance with Division 3.

(2) A will, with an alteration as part of the will, is taken to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of, or opposite to, a memorandum referring to the alteration and written at the end or on some other part of the will.

Division 5—Appointments by wills

Validity of powers of appointment exercised by will

17—(1) An appointment made by a will in exercise of a power is not valid unless—

(a) the will is executed in accordance with Division 3; or

(b) if it is not so executed, the appointment is valid by virtue of subsection (2)—

and a will executed in accordance with that Division is, with regard to the execution and attestation of the will, a valid execution of a power of appointment by will notwithstanding any requirement that a will made in exercise of that power should be executed with some additional or other form of execution or solemnity.

(2) Where—

(a) a power of appointment has been exercised by a will; and

(b) that will has not been executed in accordance with Division 3; and

(c) that power could, immediately before the death of the testator have been exercised in some other manner—

the exercise of that power of appointment is not invalid by reason only of the fact that the will was not executed in accordance with that Division.

Division 6—Revocation of wills

Revocation of will by marriage

18—A will is revoked by a marriage of the testator unless the will is made in exercise of a power of appointment when the real or personal estate appointed in the will would not, in default of that appointment, pass to the executor or administrator of the testator.

Will made in contemplation of marriage

19—Notwithstanding section 18, a will is not revoked by a marriage of the testator if—

(a) the will is expressed to be made in contemplation of that marriage; or

(b) it appears from the terms of the will or from those terms taken in conjunction with the circumstances existing at the time of the making of the will that the testator had in contemplation that the testator would or might marry and intended the disposition made in the will to take effect in the event of the marriage so contemplated.

Revocation of will by dissolution of marriage

20—Where a marriage is dissolved, a will made by a party to the marriage is revoked on the dissolution of that marriage.

Will made in contemplation of dissolution of marriage not revoked

21—(1) Notwithstanding section 20, a will is not revoked by the dissolution of the testator's marriage if—

(a) the will expressly negatives the operation of section 20; or

(b) the will is expressed to be made in contemplation of that dissolution; or

(c) it appears from the terms of the will or from those terms taken in conjunction with the circumstances existing at the time of the making of the will that the testator had in contemplation that his or her marriage would or might be dissolved.

(2) A will referred to in subsection (1) has effect even if the testator dies before the occurrence of the contemplated dissolution of marriage.

Will not revoked by presumption

22—A will is not revoked by a presumption of intention on the ground of an alteration in circumstances.

Manner of revocation

23—(1) A will or part of a will is not revoked except as provided in this Part.

(2) A will or part of a will may be revoked—

(a) by another will executed or made in accordance with Division 3; or

(b) by some writing declaring an intention to revoke the will or part of the will and executed in accordance with Division 3; or

(c) if the will is in writing, by the destruction, whether by burning, tearing or by any other means, of the will or part of the will by the testator or by some person in the presence of, and by the direction of, the testator with the intention of revoking the will or part of the will; or

(d) in the case of a will of a privileged testator, by a declaration made orally or in writing by the testator of his or her intention to revoke the will or part of the will if the testator remains at the time a privileged testator.

(3) In the case of a will made by a minor—

(a) subsection (2) *(a)*, *(b)* and *(c)* applies to the will only if the minor is, or has at any time been, married; and

(b) subsection (2) *(d)* applies to the will only if the minor is at the relevant time a privileged testator.

Public Trustee enabling revocation of will by minor

24—(1) A minor who has made a valid will and has not at any time been married may apply to the Public Trustee for approval of the minor revoking the will, or a part of the will, by an instrument in the terms of a proposed instrument attached to the application.

(2) On an application made by a minor under subsection (1), the Public Trustee must, if satisfied that—

(a) the minor understands the nature and effect of the proposed instrument; and

(b) the proposed instrument accurately reflects the intentions of the minor; and

(c) it is reasonable in all the circumstances that the minor should be able to revoke the will, or the part of the will, by the proposed instrument—

approve, by signed instrument, the execution by the minor of an instrument in the specific terms of the proposed instrument attached to the application.

(3) Where the Public Trustee, on an application by a minor under this section, approves, by signed instrument, the revocation by the minor of a will, or a part of a will, by an instrument in the terms of a proposed instrument attached to the application, the minor may revoke the will, or the part of the will, by an instrument in those terms.

Supreme Court enabling revocation of will by minor

25—(1) A minor who has made a valid will and has not at any time been married may apply to the Court for an order declaring that the minor is entitled to revoke the will, or a part of the will, by an instrument in the terms of a proposed instrument attached to the application.

(2) On an application made by a minor under subsection (1), the Court may, if it is satisfied that—

(a) the minor understands the nature and effect of the proposed instrument; and

(b) the proposed instrument accurately reflects the intentions of the minor; and

(c) it is reasonable in all the circumstances that the minor should be able to revoke the will, or the part of the will, by the proposed instrument—

make an order declaring that the minor is entitled to revoke the will, or the part of the will, by executing an instrument in the specific terms of the proposed instrument attached to the application.

(3) Where the Court, on an application by a minor under this section, makes an order in accordance with that section enabling the minor to revoke a will, or a part of a will, by an instrument in the terms of a proposed instrument attached to the application, the minor may revoke the will, or the part of the will, by an instrument in those terms.

Division 7—Dispensation with formal requirements

Power of Supreme Court to dispense with formal requirements

26—(1) A document purporting to embody the testamentary intentions of a deceased person is taken, notwithstanding that it has not been executed in accordance with Division 3, to be a will of the deceased person, an amendment of such a will or the revocation of such a will if the Court, on application for a grant of probate of the last will of the deceased person, is satisfied that there can be no reasonable doubt that that person intended the document to constitute the will of that person, an amendment of such a will or the revocation of such a will.

(2) In considering a document for the purposes of subsection (1), the Court may have regard, in addition to the document, to any other evidence relating to the manner of execution or the testamentary intentions of the deceased person, including evidence, whether admissible before the commencement of this Act or otherwise, of statements made by the deceased person.

Division 8—Revival of wills

No revoked will revived otherwise than by re-execution or by codicil to revive it

27—(1) A will or part of a will which has been in any manner revoked is not revived otherwise than by the re-execution of the will, or by a codicil executed in accordance with Division 3, and showing an intention to revive it.

(2) Where a will which has been partly revoked and afterwards wholly revoked is revived, the revival does not extend to so much of the will as was revoked before the revocation of the whole of the will, unless an intention to the contrary is shown.

PART 3

FORMAL VALIDITY OF WILLS

Application of this Part

28—(1) This Part does not apply to a will of a testator who died before the date of the commencement of the *Wills (Formal Validity) Act 1964* but applies to a will of a testator who died or dies after that date, whether the will was executed before or after that date.

(2) Where under this Part the internal law in force in a country or place is to be applied in the case of a will, but there are in force in that country or place 2 or more systems of internal law relating to the formal validity of wills, the system to be applied is to be ascertained as follows:—

(a) if there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question, that rule is to be followed;

(b) if there is no such rule, the system is to be that with which the testator was most closely connected at the relevant time and, for that purpose, the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at that time and the time of execution of the will in any other case.

(3) In determining for the purposes of this Part whether or not the execution of a will conformed to a particular law, regard is to be had to the formal requirements of that law at the time of the execution of that will, but this subsection does not prevent account being taken of an alteration of the law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

(4) Where (whether in pursuance of this Part or not) a law in force outside Tasmania fails to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, is to be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

General rule as to formal validity

29—A will is to be treated as properly executed if its execution conformed to the internal law in force in the place where it was executed, or in the place where, at the time of its execution or of the testator's death, the testator was domiciled or habitually resident, or in a country of which, at either of those times, the testator was a national.

Additional rules

30—(1) Without limiting the effect of section 29, the following wills are to be treated as properly executed:—

(a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the country or place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will, so far as it disposes of immovable property, if its execution conformed to the internal law in force in the country or place where the property was situated;

(c) a will so far as it revokes a will which under this Part would be treated as properly executed or revokes a provision which under this Part would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

(d) a will, so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will, so far as it exercises a power of appointment, is not to be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

PART 4

CONSTRUCTION OF WILLS

Division 1—Construction of wills

Non-application of Division 1

31—A provision of this Division does not apply to a will if a contrary intention appears in the will.

Disposition by will not rendered inoperative by subsequent conveyance, &c.

32—(1) A conveyance or other act made or done after the execution of a will of, or relating to, real or personal estate comprised in the will does not prevent the operation of the will with respect to such estate or interest in that real or personal estate as the testator has power to dispose of by will at the time of his or her death.

(2) The application of subsection (1) does not extend to an act revoking a will as provided by Division 6 of Part 2.

Will construed to speak from death of testator

33—(1) A will is to 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.

(2) The construction of a will is not altered by reason of any change in the testator's domicile after the execution of the will.

Residuary devise includes estates comprised in lapsed or void devises

34—Where any real estate or any interest in any real estate comprised or intended to be comprised in a devise in a will fails or is void by reason of—

(a) the death of the devisee in the lifetime of the testator; or

(b) that devise being contrary to law; or

(c) that devise being otherwise incapable of taking effect for any other reason—

that real estate or interest in real estate is included in the residuary devise, if any, contained in the will.

General devise of land includes leasehold as well as freehold

35—A devise of—

(a) the land of a testator; or

(b) the land of the testator in any place or in the occupation of any person mentioned in the will of the testator 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, is to be construed to include any leasehold estates of the testator or any leasehold estates of the testator to which that description extends, as the case may be, as well as freehold estates.

General gift includes estates over which testator has general power to appoint

36—(1) A general devise of—

(a) the real estate of a testator; or

(b) the real estate of the testator in any place or in the occupation of any person mentioned in the will of the testator or otherwise described in a general manner—

is to be construed to include real estate or real estate to which that description extends, as the case may be, which the testator may have power to appoint in any manner that the testator may think proper and operates as an execution of that power.

(2) A bequest of—

(a) the personal estate of a testator; or

(b) the personal estate of the testator in any place or in the occupation of any person mentioned in the will of the testator or otherwise described in a general manner—

is to be construed to include personal estate or personal estate to which that description extends, as the case may be, which the testator may have power to appoint in any manner that the testator may think proper and operates as an execution of that power.

Effect of devise without words of limitation

37—Where real estate is devised to any person without any words of limitation, that devise is to be construed to pass the whole estate or interest (whether the fee simple or any other estate or interest) which the testator had power to dispose of by will in that real estate.

Construction of words "die without issue", &c.

38—(1) In a 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 mean—

(a) either a want or failure of issue of any person in the lifetime or at the time of death of the person; or

(b) an indefinite failure of the issue of that person—

are to be construed to mean a want or failure of issue in the lifetime or at the time of the death of that person, and not an indefinite failure of issue by reason of that person having a prior estate tail, or of a preceding gift, being, without any implication arising from those words, a limitation of an estate tail to that person or issue, or otherwise.

(2) This Act does not extend to a case where words such as are referred to in subsection (1) mean that if no issue described in a preceding gift is born, or if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

Interest passing to trustees under an unlimited devise

39—Where—

(a) any real estate is devised to a trustee, without any express limitation of the estate to be taken by the trustee; and

(b) the beneficial interest in that real estate, or in the surplus rents and profits of that real estate, is not given to a person for life, or that beneficial interest is given to a person for life, but the purposes of the trust may continue beyond the life of that person—

that devise is to be construed to vest in that trustee the whole legal estate (whether the fee simple or any other estate) which the testator had power to dispose of by will in that real estate, and not an estate determinable when the purposes of the trust are satisfied.

Effect of devise of estates tail

40—Where—

(a) a 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 inherit under that entail; and

(b) any such issue are living at the time of the death of the testator—

that devise does not lapse, but takes effect as if the death of that person had happened immediately after the death of the testator.

Gifts to children or other issue who leave issue living at testator's death

41—Where—

(a) a person who is a child or other issue of a testator and to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of that person dies in the lifetime of the testator leaving issue; and

(b) any such issue of that person are living at the time of the death of the testator—

the devise or bequest does not lapse, but passes to such of the issue of that person as survive the testator and, if more than one, through all degrees according to their stocks in equal shares and so that no issue may take if his or her parent is living at the date of the death of the testator and so capable of taking.

Gifts of residuary estate where beneficiary predeceases testator

42—(1) Where—

(a) a will provides for the residue of a testator's real or personal estate to be devised or bequeathed to 2 or more persons; and

(b) one or more of those persons have died in the lifetime of the testator—

the devise or bequest does not lapse, but the share of the residuary estate that would have passed to that deceased person or those deceased persons, as the case may be, devolves on the survivor or survivors.

(2) Where there is more than one survivor, they take the share that would have passed to the deceased person or persons in the same proportions as they share in the residuary estate.

(3) Nothing in subsection (2) derogates from any rule of law providing for the devolution of property by survivorship in the case of a joint tenancy.

Division 2—Evidence

Admissibility of extrinsic evidence

43—In proceedings relating to the construction of a will, evidence, including evidence of the testator's dispositive intention, is admissible to the extent that the language used in the will renders the will or any part of the will—

(a) meaningless; or

(b) ambiguous on the face of the will; or

(c) ambiguous in the light of the surrounding circumstances—

but evidence of the testator's dispositive intention is not admissible to establish any of the circumstances referred to in pararaph *(c)*.

PART 5

GIFTS TO ATTESTING WITNESSES

Gifts to an attesting witness void

44—(1) Except as provided by subsection (2), where a beneficial gift is made by a will to—

(a) a person who attests the execution of the will; or

(b) the spouse of that person—

the gift is void so far only as concerns that person, the spouse or any person claiming under either of them.

(2) A beneficial gift made by will is not made void by subsection (1) if—

(a) more than 2 persons have attested the execution of the will and at least 2 of them are not persons to whom any such gift is made or the spouses of any such persons; or

(b) all the persons who would benefit directly from the avoidance of the gift consent in writing to the distribution of the gift according to the will and they all have capacity at law to do so.

(3) Notwithstanding anything contained in this section, a person who attests the execution of a will is a competent witness to prove the execution of the will or its validity or invalidity.

Application to Supreme Court to validate gifts to interested witnesses

45—(1) Where, but for the operation of section 44, a person would be entitled to a beneficial gift, that person may, subject to and in accordance with the rules, apply to the Court for an order that that person is to be entitled under the will as if that section did not apply in relation to him or her.

(2) An application under this section may be made before the grant of probate of the will but, subject to subsection (3), is not to be made more than 6 months after that date.

(3) The Court may extend the time for the making of an application under this section, whether or not the time appointed under subsection (2) has expired, but no application may be made after the final distribution of the estate and no order under this section affects the distribution of any part of the estate made before the making of the application.

(4) Notice of an application under this section is to be served on the personal representative of the deceased person within such time as is prescribed by the rules.

Declaration by Supreme Court as to non-application of section 44

46—(1) Where the Court is satisfied that the entitlement of the applicant under the will was known to and approved by the testator and was not included in the will as the result of fraud, duress or the exercise of undue influence by any person, the Court may, by order, declare that section 44 does not apply in relation to the applicant in respect of the will in respect of which the application was made.

(2) On a copy of an order under subsection (1) being served on the personal representative of the testator, the will of the testator has effect as if section 44 does not apply in relation to the applicant in respect of the will of the testator.

(3) In an application under section 45 the applicant is not entitled to rely on any evidentiary presumption to prove or assist in proving that the testator knew and approved of the contents of the will.

PART 6

RECTIFICATION OF WILLS

Rectification of wills

47—(1) Where on an application made for a grant of probate of the last will of a deceased person or on an application made within 3 months after a grant of probate of a will, the Court is satisfied that there can be no reasonable doubt—

(a) that the deceased person made an error in expressing testamentary intentions in the will; and

(b) as to the nature and effect of the error—

the Court may—

(c) grant probate of the will of the deceased person subject to such directions as appear to the Court to be necessary in order to give effect to the testamentary intentions of the deceased person; or

(d) if probate of the will has been granted, revoke the grant and substitute a fresh grant of probate subject to any such directions.

(2) Notice of an application under subsection (1) is to be served on the personal representative of the deceased person within such time as is prescribed by the rules.

PART 7

SUPPLEMENTAL AND MISCELLANEOUS

Appeals from decisions of Public Trustee

48—(1) Where—

(a) on an application by a minor to the Public Trustee under section 7 (1), the Public Trustee refuses to approve of the minor making a will in the terms of the proposed will attached to the application or grants approval subject to conditions; or

(b) on an application by a minor to the Public Trustee under section 24 (1), the Public Trustee refuses to approve of the revocation by the minor of a will, or a part of a will, by an instrument in the terms of the proposed instrument attached to the application—

the minor may appeal to the Court from that decision.

(2) Where, on an application by a minor to the Public Trustee under section 7 (1), the Public Trustee approves, either subject to conditions or not, of the minor making a will in the terms of the proposed will attached to the application, a person who would, if the minor had died intestate on making the application, have been entitled in the distribution of the minor's estate may appeal to the Court from that decision.

(3) The Public Trustee is to be the respondent on an appeal.

(4) On an appeal the Court may affirm, vary or set aside the decision of the Public Trustee.

Rules of Court

49—The judges of the Court, in the exercise of their powers under the *Supreme Court Civil Procedure Act 1932*, may make Rules of Court regulating the procedure to be followed in making an application to the Court under, or for the purposes of, this Act.

Savings for wills made by persons on active service

50—Without limiting the application of the *Acts Interpretation Act 1931*, the repeal of the *Wills Act 1918* effected by section 51 does not disturb the effect of a will, or of an appointment contained in a will, that was validated by virtue of that Act.

Repeal of *Wills Act 1840*, &c.

51—The Acts specified in Schedule 1 are repealed.

Administration of Act

52—Until an order is made under section 4 of the *Administrative Arrangements Act 1990*—

(a) the administration of this Act is assigned to the Minister for Justice; and

(b) the Department responsible to the Minister for Justice is the Department of Justice.

SCHEDULE 1

Section 51

ACTS REPEALED

Year and Number of Act	Short title of Act
4 Vict. No. 9	*Wills Act 1840*
16 Vict. No. 4	*Wills Act 1852*
9 Geo. V No. 56	*Wills Act 1918*
1964, No. 32	*Wills (Formal Validity) Act 1964*
1985, No. 77	*Wills Amendment Act 1985*