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CHAPTER 55

WILLS

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ARRANGEMENT OF SECTIONS

1. Interpretation
2. Who may make a will
3. Devise of land
4. Form of will
5. Duties of witnesses
6. Witnesses
7. Revocation of will
8. Revocation on marriage
9. Appointment and qualifications of executors
10. Preservation of wills
11. District Commissioner to ascertain if will exists
12. District Commissioner to inform executors and publish the will
13. Document of authority to executors to act
14. Duties of executors
15. Obligations to the estate
16. Penalty for concealing a will
17. Validity or construction
18. Executor's liability
19. Removal and substitution of an executor
20. Death of an executor
21. Estate vests in surviving and new executors
22. Infant's property
23. Court may authorise sale of infant's property
24. Penalty for executor's wilful mismanagement
25. Testator's intentions only ascertainable in part
26. Incapacity to benefit
27. Penalty for interfering with estate of deceased testator
28. Regulations

WILLS

To provide for the making of, and giving effect to wills.

1. Interpretation

In this Act, unless the context otherwise requires –

"court" means the competent court;

"infant" means a person under the age of 21 provided that for the purposes of section 22 of this Act no person who is legally married shall be regarded as an infant.

2. Who may make a will

Any person not being an infant and being of sound mind, memory and understanding may make provision by will for the disposal of the whole or any part of his property, of which he is the sole and total owner, after his death, in accordance with and subject to the provisions of this Act.

3. Devise of land

A will under the provisions of this Act may only dispose of any estate in land vested in the testator of which he is competent to dispose on death in accordance with custom, or of any estate in land registered in his name alone.

4. Form of will

A will may be in any form or language, but shall –

(a) be in writing;

(b) be signed or thumb printed by the testator at the foot of every page of the will and at the end of the will in the presence of at least two witnesses present at the same time.

5. Duties of witnesses

(1) Every witness to a will shall witness the signature or thumb print of the testator by affixing his signature at the foot of every page and at the end of the will. The address or place of origin of every witness shall be written immediately opposite to his signature.

(2) A witness shall only affix his signature if the testator signs or thumb prints the will as provided by section 4, in his presence and in the presence of the other attesting witness or witnesses; and at least two witnesses shall attest this will in the presence of each other.

(3) It shall not be necessary for a witness to know the contents of the will but he shall know that he is witnessing a will.

6. Witnesses

(1) Every witness to a will shall –

(a) not be an infant;

(b) not be of unsound mind;

(c) not knowingly be a beneficiary under such will;

(d) be able to sign his name.

(2) If any person knowing himself to be a beneficiary under a will acts as a witness thereto, the validity of the will shall not be affected, but the beneficiary shall lose any

property, benefit or advantage to which he would otherwise have been entitled under such will.

7. Revocation of will

A testator may, by a new document made and executed in accordance with the provisions of this Act, or by its destruction, revoke a will already made.

8. Revocation on marriage

Should any person marry after making a will the said marriage shall automatically revoke such will.

9. Appointment and qualifications of executors

(1) A testator may appoint by his will up to a maximum of four persons to be an executor or executors thereof.

(2) If a testator fails to appoint an executor or if any executor appointed is by reason of disability unable to act, or is dead or unwilling to act, the court may appoint any person or persons to act as executors but so that the number does not exceed four:

Provided that where it appears to the court that the value of the property or estate of the testator does not exceed VT 20,000 the court may without appointing an executor or other formal proceeding pay thereout any debts or charges and carry out the directions of the deceased.

(3) A person appointed under the provisions of this section shall not be an infant and shall not be of unsound mind.

10. Preservation of wills

(1) A testator may forward his will to the Registrar of the Supreme Court for safe keeping or through the District Commissioner in the area wherein the testator resides.

(2) Any District Commissioner who receives a will as aforesaid shall forthwith forward it to the Registrar of the Supreme Court.

11. District Commissioner to ascertain if will exists

(1) When a District Commissioner is informed of the death of any person he shall ascertain from the Registrar of the Supreme Court if the said person had a will deposited with the Registrar and, if such was the case, obtain the will from him.

(2) If no such will has been deposited with the Registrar, the District Commissioner shall make enquiries from the relatives or neighbours of the deceased to ascertain if a will exists and if a will is found shall take possession of it.

12. District Commissioner to inform executors and publish the will

(1) When a District Commissioner obtains possession of a will of a deceased person he shall forthwith notify the executors named therein and shall publish the contents thereof by reading the same in open court held in the area in which the testator had resided or had his permanent home.

(2) The executors and all persons who have an interest in the deceased's estate, or would have had if the deceased had died intestate, shall be given at least 7 days notice of the date on which the said public reading shall take place.

13. Document of authority to executors to act

(1) On the publication of a will the court shall issue to the executor, or executors or such of them as are not under a disability, or have not refused to act, a document of authority in such form as may be prescribed.

(2) The court shall not issue a document of authority until it is satisfied that adequate provision has been made for the maintenance of the deceased's spouse, and children under the age of 18. Where the court considers that adequate provision has not been made it shall vest such part of the property of the deceased as it thinks fit, in the said spouse and children.

(3) Such document of authority shall vest all the property of the deceased, with the exception of any property which the court has vested in accordance with subsection (2), in the executor or executors and shall authorise any person who is in possession of any property of, or is indebted to, the testator to deliver such property or discharge such indebtedness to the executors.

14. Duties of executors

On the issue of the document of authority the executors shall proceed to ascertain and collect all the property of the deceased and shall discharge thereout all his debts and obligations; thereafter they shall proceed to carry out the directions of the deceased.

15. Obligations to the estate

Any person who delivers any property of the testator, or who discharges an indebtedness to the testator as provided by section 13(3) by payment to the executors or any one of them to whom a document of authority has been issued shall be exonerated from all obligations that might otherwise attach to such delivery or discharge.

16. Penalty for concealing a will

Any person who conceals or fails to disclose the whereabouts of, or to hand over to a District Commissioner of the area, a will of a deceased person shall be guilty of an offence and on conviction thereof shall be liable to a fine of VT 20,000, or to a term of imprisonment not exceeding 6 months, or to both such fine and imprisonment.

17. Validity or construction

(1) Where any doubt exists as to the validity or the true meaning of a will the executors or any of them, or any person having an interest in the will may apply to the court to have the validity determined or the will construed.

(2) In construing a will the court shall not be bound by any technical terms of what might otherwise be considered technical terms but shall be concerned solely to ascertain the true intention of the deceased.

18. Executor's liability

The executors or any of them shall be liable personally for any debt of the testator of whose existence they were aware only to the extent of the estate vested in them under the provisions of this Act and shall not personally be liable either jointly or severally for anything done in good faith in accordance with the provisions of the will, the document of authority or a direction of the court.

19. Removal and substitution of an executor

The court may at any time, on being satisfied that it is desirable so to do, either on the application of any person interested in the estate or of its own volition remove an executor and, should it think fit, appoint another in his place.

20. Death of an executor

On the death of an executor the court may appoint another person to replace such deceased executor.

21. Estate vests in surviving and new executors

The estate of a testator vested in an executor who has died or been removed by the court shall vest in the remaining executor or executors (if any) and any new executor appointed under the provisions of this section.

22. Infant's property

.(1) Any property devised or bequeathed to an infant shall remain vested in, and shall be administered by the executor or executors for the benefit of the infant until such time as the infant attains the age of 21.

(2) On an infant attaining the age of 21 all property then vested in the executor or executors on his behalf shall vest in the infant. The same shall apply should the child marry before the age of 21.

23. Court may authorise sale of infant's property

Notwithstanding the provisions of section 22, the court may authorise the sale of any, or any part of property vested in an executor or executors for the benefit of an infant and may order the proceeds to be invested in such manner as to the court may seem fit or to be employed in whole or in part for the benefit of the infant in such manner as the court shall direct.

24. Penalty for executor's wilful mismanagement

Any executor who –

(a) wilfully deals with an estate, or any part thereof vested in him in a manner not authorised by the will or by the court; or

(b) wilfully disobeys or fails to carry out any order or direction given to him by the court in relation to the will; or

(c) wilfully fails satisfactorily to account to the court for any such estate,

shall, without prejudice to any other proceedings to which he may be liable under the Penal Code or otherwise, be guilty of an offence and on conviction therefor shall be liable to a fine not exceeding VT 20,000, or to a term of imprisonment not exceeding 6 months, or to both such fine and imprisonment.

25. Testator's intentions only ascertainable in part

Where the intention of a testator is ascertainable as to part of a will, effect shall be given to that part of the will notwithstanding the failure of the remaining part.

26. Incapacity to benefit

No persons shall succeed to any property, benefit or advantage on the death of another if such person:

(a) has been convicted of the murder or manslaughter of the deceased;

(b) has by coercion, fraud or undue influence caused the deceased to make a will;

(c) has by coercion, fraud or undue influence prevented the deceased from making or revoking a will;

(d) has aided, abetted, counseled or procured any person to commit any of the acts set out in paragraph (a), (b) or (c) of this section.

27. Penalty for interfering with estate of deceased testator

Any person who wilfully interferes with, appropriates, deals with or disposes of, or in any way uses the whole or any part of the estate of a deceased testator otherwise than for the purpose of preserving such estate or in accordance with the instructions of an executor or an order of the court shall be guilty of an offence and on conviction therefor shall be liable to a

fine not exceeding VT 50,000, or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment.

28. Regulations

The Minister responsible for justice may by Order make regulations prescribing the fees to be paid under the provisions of this Act on anything which may be or is to be prescribed and generally for the better carrying out of the provisions of this Act.