MONTSERRAT

CHAPTER 3.08

WILLS ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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ARRANGEMENT OF SECTIONS

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(Acts 3 of 1872, 5 of 1917 and 11 of 1939, S.R.O. 15/1956, Acts 23 of 1961 and 8 of 1966)

Commencement

[6 August 1872]

Short title

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

Interpretation

2. In this Act—

"personal estate" shall extend to leasehold estates and other chattels real, and also to money; shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever, which by law devolves upon an executor or administrator, and to any share or interest therein;

"real estate" shall extend to the messuages, lands, rents, and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein;

"will" shall extend to a testament and a codicil, and to an appointment by will, or by writing in the nature of a will, in the exercise of a power, and also to a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of any Act of Parliament or of the Legislature of Montserrat, and to any other testamentary disposition.

PART 1

POWER OF DEVISING, ETC.

All property may be disposed of by will

3. It shall be lawful for every person to devise, bequeath, or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate to which he shall be entitled, either at law or in equity, at the

time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator, and also to estates *pur autre vie*, whether there shall, or shall not, be any special occupant thereof, and whether the same shall be freehold or of any other tenure, and whether the same shall be a corporeal or incorporeal hereditament, and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may, or may not, be ascertained as the person, or one of the persons, in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests, and rights respectively, and other real and personal estate as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Estates *pur autre vie*

4. If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent as in the case of freehold land in fee simple; and, in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and, if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Father may dispose of custody of children during minority

5. It shall be lawful for the father of any child under the age of 21 years and not married at his decease, whether then born or *in ventre sa mere*, to dispose by will of the custody and tuition of such child for such time as such child shall remain under the age of 21 years, or any less time, and the person, to whom the custody of such child shall be so disposed, shall have the same powers, rights, and remedies in relation to the person and property of such child as a guardian by statute or a guardian in common socage in England.

Person under age

6. No will made by any person under the age of 21 years shall be valid.

PART 2

MODE OF MAKING WILLS

Will shall be in writing and signed by testator in presence of two witnesses at one time

7. No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot, or end, thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two, or more, witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Rights of person under will made before 1873 not affected

8. Nothing in this Act contained shall affect the rights of any person claiming under any will or document made before the 1st day of January, 1873.

When signature to will shall be deemed valid

9. Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed valid within section 7 as explained by 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 signature to the writing signed as his will; and no such will shall be affected by the circumstances that the signature shall not follow, or be immediately after, the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance 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, under, or beside, the names, or one of the names, of the subscribing witnesses, or by the circumstance 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 by the circumstance 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 the above enactment, but no signature under this Act 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.

Appointments by will to be executed like other wills and to be valid although other required solemnities are not observed

10. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and 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 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.

Soldiers' and mariners' wills

11. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done by the law of England before the making of this Act.

Publication not requisite

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

Will not to be void on account of incompetency of attesting witness

13. If any person, who shall attest 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 attesting witness void

14. If any person shall attest 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 real or personal estate 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 of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. *(Amended by Act 8 of 1966)*

Creditor attesting to be admitted a witness

15. In case, by any will, any real or personal estate 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 to be admitted a witness

16. 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.

Executor deemed trustee of undisposed residue

17. If a person appoints an executor under his or her will such executor shall be deemed in equity to be a trustee for the person (if any) who would be entitled to the estate, under the statute of distributions, in respect of any residue not expressly disposed of, unless it shall appear by the will, or any codicil thereto, that the person so appointed executor was intended to take such residue beneficially.

Will revoked by marriage

18. Every will made by a man, or woman, shall be revoked by his, or her, marriage:

Provided that no clinical marriage solemnized in Montserrat agreeably to the provisions of any Marriage Act then in force, shall operate to revoke or render invalid any will made or to be made by the person contracting such marriage.

No will revoked by presumption

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

No will revoked except by another will or writing duly executed or by destruction

20. No will, or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil, 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.

No alteration in will shall have effect unless executed as a will

21. 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.

No will revoked to be revived except by re-execution or codicil duly executed

22. No will, or codicil, or any part thereof, which 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; and, when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

Devise not rendered inoperative by subsequent conveyance or act

23. No conveyance, or other act, made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

Will to speak from death of testator

24. Every will shall 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, unless a contrary intention shall appear by the will.

A residuary devise shall include estate comprised in lapsed and void devises

25. Unless a contrary intention shall appear by the will, such real estate, or interest therein, as shall be comprised, or intended to be comprised, in any devise in such will contained, which shall fail, or be void, by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A general devise of testator's lands shall include leasehold as well as freehold lands

26. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person, mentioned in his will, 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, shall be construed to include the leasehold estates of the testator, or his leasehold estates or any of them to

which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

A general gift shall include estates over which testator has general power of appointment

27. A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person, mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), 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 by the will; and, in like manner, a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), 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 by the will.

A devise without words of limitation shall pass the fee

28. Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

The words "die without issue," or "die without leaving issue," shall mean die without issue living at the death

29. In any 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 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 by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise:

Provided that this Act 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.

No devise to trustees or executors except for a term, shall pass a chattel interest

30. Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will, in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

Trustees under unlimited devise, where trust may endure beyond life of person beneficially entitled for life, to take the fee

31. Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, 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 shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will, in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devises of estates tail shall not lapse

32. Where any person, to whom any real estate shall be devised for an estate tail, or an estate in quasi entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise 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.

Gifts to children, or other issue, who leave issue living at testator's death, shall not lapse

33. Where any person, being a child or other issue of the testator, to whom any real or personal estate 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 the contrary intention shall appear by the will.

Heir or devisee of real estate not to claim payment of mortgage out of personal assets

34. When any person shall die seised of, or entitled to, any estate, or interest, in any land or other hereditaments, which shall, at the time of his

death, be charged with the payment of any sum, or sums, of money by way of mortgage, and such person shall not, by his will or deed or other document, have signified any contrary or other intention, the heir or devisee, to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage debt discharged, or satisfied, out of the personal estate, or any other real estate, of such person, but the land or hereditaments so charged shall, as between the different persons claiming through, or under, the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof:

Provided that nothing herein contained shall affect, or diminish, any right of the mortgagee on such lands or hereditaments to obtain full payment, or satisfaction, of his mortgage debt, either out of the personal estate of the person so dying as aforesaid or otherwise.

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