STATE OF SABAH

WILLS ORDINANCE

(Sabah Cap. 158)

ARRANGEMENT OF SECTIONS

PART II

CONSTRUCTION OF WILLS AND CODICILS

PART III

VOID DEVISES AND BEQUESTS

PART IV

VESTING OF LEGACIES

PART V

ONEROUS DEVISES OR BEQUESTS

PART VI

CONTINGENT DEVISES OR BEQUESTS

PART VII

CONDITIONAL DEVISES OR BEQUESTS

PART XI

DEMONSTRATIVE LEGACIES

PART XII

ADEMPTION OF LEGACIES

PART XIII

PAYMENT OF LIABILITIES IN RESPECT OF SUBJECT OF DEVISE OR BEQUEST

PART XIV

BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS

PART XV

BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND

PART XVI

BEQUESTS OF ANNUITIES

PART XVII

LEGACIES TO CREDITORS AND PORTIONERS

PART XVIII

ELECTION

PART XIX

GIFTS IN CONTEMPLATION OF DEATH

PART XX

PRIVILEGED WILLS

LIST OF AMENDMENTS

Ordinance No./ Enactment No.	*Sections amended*	*Effective date of amendment*
17/1961	1 2), (3)	12-09-196l

To declare the law relating to wills.

[30*th April* 1953.]

Short title and application.

1. (1) This Ordinance may be cited as the Wills Ordinance.

(2) Nothing in this Ordinance shall affect the validity of any will made by any native or muslim according to native law or custom or islamic law as the case may be.

(3) Nothing in this Ordinance contained shall enable any native to dispose of his property by will in a manner contrary to any law or custom having the force of law applicable to him at the time of his death.

Interpretation.

2. In this Ordinance, unless there is something repugnant in the subject or context-

"bequests" and its grammatical derivations and cognate expressions includes all dispositions by will or codicil of any property, of whatsoever nature or description, and has the same meaning as "devise";

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its contents, and shall be deemed to form part of the will;

"devise" and its grammatical derivations and cognate expressions includes all dispositions by will or codicil of any property, of whatsoever nature or description, and has the same meaning as "bequest";

"property" shall include lands, leases and rents, and any undivided share thereof and any right or interest therein, 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;

"lands" shall include things attached to the earth or permanently fastened to anything attached to the earth;

"will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death and includes a testament and an appointment by will or by writing in the nature of a will in exercise of a power.

PART I

WILLS AND CODICILS

Person capable of making will or codicil.

3. Except as hereinafter provided, every person of sound mind may devise, bequeath or dispose of by his will or codicil executed in manner hereinafter required, all the property which he owns or to which he is entitled at the time of his death.

Will or codicil of infant invalid.

4. No will or codicil made by any person under the age of twenty-one years shall be valid.

Mode of execution.

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

(2) *(a)* The testator shall sign or affix his mark to the will or codicil or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will or codicil.

(c) The will or codicil shall be attested by two or more witnesses present at the same time, each of whom has seen the testator sign or affix his mark to the will or codicil or has seen some other person sign the will or codicil, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the

will or codicil in the presence of the testator, but no form of attestation shall be necessary.

Execution of appointment by will or codicil.

6. (1) No appointment made by will or codicil in exercise of any power, shall be valid, unless the same is executed in manner hereinbefore required.

(2) Every will or codicil 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 or codicil made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Publication of will or codicil not necessary.

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

Will or codicil not to be invalidated by reason of incompetency of attesting witness.

8. If any person who attests the execution of a will or codicil 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 or codicil 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 or codicil 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 codicil 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 or appointment mentioned in such will or codicil.

Creditor attesting a will or codicil charging estate with debts shall be admitted a witness.

10. In case by any will or codicil 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 or codicil, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or codicil, 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 or codicil to be revoked by marriage except in certain cases.

12. Every will or codicil made by a man or woman shall be revoked by his or her marriage, except a will or codicil 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 executor or administrator or the person entitled in case of intestacy:

Provided that a will expressed to be made in contemplation of a marriage shall, notwithstanding anything in this section or any other rule of law to the contrary, not be revoked by the solemnization of the marriage contemplated.

No will or codicil to be revoked by presumption from altered circumstances.

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

Revocation of will or codicil.

14. 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 or codicil 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 in will or codicil.

15. No obliteration, interlineation or other alteration made in any will or codicil after the execution thereof shall be valid or have any effect so far as the words or effect of the will or codicil before such obliteration, interlineation or other alteration shall not be apparent, unless such obliteration, interlineation or other alteration shall be executed in like manner as hereinbefore is required for the execution of the will or codicil; but the will or codicil with such obliteration, interlineation or other 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 some other part of the will or codicil opposite or near to such obliteration, interlineation or other alteration or at the foot or end of or opposite or near to such obliteration, interlineation or other alteration, or at the foot or end of or opposite to a memorandum referring to such obliteration, interlineation or other alteration and written at the end or some other part of the will or codicil.

Revival of revoked will or codicil.

16. (1) No will or codicil, 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 or codicil, 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 is shown by the will or codicil.

Subsequent transfer or assignment or other acts not to prevent operation of will or codicil.

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

Will or codicil shall be construed to speak from the death of the testator.

18. Every will or codicil 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 or codicil.

Residuary devises or bequests shall include property comprised in lapsed and void devises or bequests.

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

General devise or bequest of estate or 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 by the will or codicil.

Devise or bequest without words of limitation.

21. Where property is devised or bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will or codicil that only a restricted interest was intended for him.

PART II

CONSTRUCTION OF WILLS AND CODICILS

Wording of will or codicil.

22. It is not necessary that any technical words or terms of art be used in a will or codicil, but only that the wording be such that the intentions of the testator can be known therefrom.

Inquiries to determine questions as to object or subject of will or codicil.

23. For the purpose of determining questions as to what person or what property is denoted by any words used in a will or codicil, a court shall inquire into every material fact relating to the persons who claim to be interested under such will or codicil, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Misnomer or misdescription of object.

24. (1) Where the words used in a will or codicil to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

When words may be supplied.

25. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Rejection of erroneous particulars in description of subject.

26. If the thing which the testator intended to devise or bequeath can be sufficiently identified from the description of it given in the will or codicil but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the devise or

bequest shall take effect.

When part of description may not be rejected as erroneous.

27. If a will or codicil mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 26 shall be deemed to have been struck out of the will or codicil.

Extrinsic evidence admissible in cases of latent ambiguity.

28. Where the words of a will or codicil are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.

29. Where there is an ambiguity or deficiency on the face of a will or codicil, no extrinsic evidence as to the intentions of the testator shall be admitted.

Meaning of clause to be collected from entire will.

30. The meaning of any clause in a will or codicil is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

When words may be understood in restricted sense, and when in sense wider than usual.

31. General words may be understood in a restricted sense where it may be collected from the will or codicil that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected

from the other words of the will or codicil that the testator meant to use them in such wider sense.

Which of two possible constructions preferred.

32. Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

No part rejected, if it can be reasonably construed.

33. No part of a will or codicil shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will or codicil.

34. If the same words occur in different parts of the same will or codicil, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

Testator's intention to be effectuated as far as possible.

35. The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

The last of two inconsistent clauses prevails.

36. Where two clauses or gifts in a will or codicil are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Will, codicil, devise or bequest void for uncertainty.

37. A will, codicil, devise or bequest not expressive of any definite intention is void for uncertainty.

Words describing subject refer to property answering description at testator's death.

38. The description contained in a will or codicil of property, the subject of gift, shall, unless a contrary intention appears by the will or codicil, be deemed to refer to and comprise the

property answering that description at the death of the testator.

Implied gift to objects of power in default of appointment.

39. Where property is devised or bequeathed to or for the benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the will or codicil does not provide for the event of no appointment being made; if the power given by the will or codicil is not exercised, the property belongs to all the objects of the power in equal shares.

Devise or bequest to "heirs", etc., of particular person without qualifying terms.

40. Where a devise or bequest is made to the "heirs" or "right heirs" or "relations" or "nearest relations" or "family" or "kindred" or "nearest of kin" or "next-of-kin" of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the devise or bequest, the property devised or bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Devise or bequest to "representatives" etc., of particular person.

41. Where a devise or bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the devise or bequest, the property devised or bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it.

Devise or bequest in alternative.

42. Where property is devised or bequeathed to a person with a devise or bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the will or codicil, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Effect of words describing a class added to devise or bequest to person.

43. Where property is devised or bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will or codicil.

Devise or bequest to class of persons under general description.

44. Where a devise or bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

45. In a will, unless the context otherwise clearly demonstrates—

(a) the word “children” applies only to lineal descendants in the first degree of the person whose “children” are spoken of;

(b) the word “grandchildren” applies only to lineal descendants in the second degree of the person whose “grandchildren” are spoken of;

(c) the words “nephews and nieces” apply only to children of brothers or sisters;

(d) the words “cousins”, or “first cousins”, or “cousins-german”, apply only to children of brothers or of sisters of the father or mother of the person whose “cousins”, or “first cousins”, or “cousins-german”, are spoken of;

(e) the words “first cousins once removed” apply only to children of cousins-german, or to cousins-german of a parent of the person whose “first cousins once removed” are spoken of;

(f) the words “second cousins” apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose “second cousins” are spoken of;

(g) the words “issue” and “descendants” apply to all lineal descendants whatever of

the person whose "issue" or "descendants" are spoken of;

(h) words expressive of collateral relationship apply alike to relatives of full and of half-blood; and

(i) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives or failing such relatives, reputed legitimate.

46. (1) In the absence of any intimation to the contrary in a will or codicil, the word "child", the word "son", the word "daughter" or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will or codicil the reputation of being such relative:

Provided that when any beneficiary in a will or codicil is described as a relation but that description is coupled with a name or other designation or description which might have been used by the testator to designate one or more existing illegitimate relatives as well as one or more existing legitimate relatives, the Court may hear evidence extrinsic to the will or codicil in order to assist it in deciding what was the intention in fact of the testator.

(2) For the purposes of this section, "illegitimate relative" includes any person whom the testator has purported to adopt as a relative but whose adoption as such is not recognised by law or custom.

Rules of construction where will or codicil purports to make two devises or bequests to same person.

47. (1) Where a will or codicil purports to make two devises or bequests to the same person, and a question arises whether the testator intended to make the second devise or bequest instead of or in addition to the first; if there is nothing in the will or codicil to show what he intended, the following rules shall have effect in determining the construction to be put upon the will or codicil—

(a) if the same specific thing is devised or bequeathed twice to the same

legatee in the same will or codicil or in the will and again in the codicil, he is entitled to receive that specific thing only;

(b) where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the quantity or amount of anything, he shall be entitled to one such legacy only;

(c) where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both;

(d) where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

(2) In paragraphs *(a)* to *(d)* of subsection (1) the word "will" does not include codicil.

Constitution of residuary legatee.

48. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Property to which residuary legatee entitled.

49. Under a residuary devise or bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Time of vesting legacy in general terms.

50. If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

51. (1) If the legatee does not survive the testator, the legacy cannot take effect, but

shall lapse and form part of the residue of the testator's property, unless it appears by the will or codicil that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Legacy does not lapse if one of two joint legatees dies before testator.

52. If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.

Effect of words showing testator's intention to give distinct shares.

53. If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

When lapsed share goes as undisposed of.

54. Where a share which lapses is a part of the general residue bequeathed by the will or codicil, that share shall go as undisposed of.

When devise or bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

55. Where a devise or bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the devise or bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the will or codicil.

Devise or bequest to A for benefit of B does not lapse by A's death.

56. Where a devise or bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the devise or bequest is made.

Survivorship in case of devise or bequest to described class.

57. Where a devise or bequest is made simply to a described class of persons, the thing devised or bequeathed shall go only to such as are alive at the testator's death:
Provided that, if property is devised or bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior devise or bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

PART III

VOID DEVISES AND BEQUESTS

Devise or bequest to person by particular description who is not in existence at testator's death.

58. Where a devise or bequest is made to a person by a particular description, and there is no person in existence as the testator's death who answers the description, the devise or bequest is void:

Provided that, if property is devised or bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior devise or bequest or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he is dead, to his representatives.

Devise or bequest to person not in existence at testator's death, subject to prior devise or bequest.

59. Where a devise or bequest is made to a person not in existence at the time of the testator's death, subject to a prior devise or bequest contained in the will or codicil, the later devise or bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Rule against perpetuity.

60. No devise or bequest is valid whereby the vesting of the thing devised or bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing devised or bequeathed is to belong.

Devise or bequest to a class some of whom may come under rules in sections 59 and 60.

61. If a devise or bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 59 or section 60, such devise or bequest shall be void in regard to those persons only and not in regard to the whole class.

Devise or bequest to take effect on failure of devise or bequest void under sections 59, 60 and 61.

62. Where by reason of any of the rules contained in sections 59, 60 and 61, any devise or bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any devise or bequest contained in the same will or codicil, and intended to take effect after or upon failure of such prior devise or bequest, is also void.

General restrictions on accumulation of income.

63. (1) No person may by will or codicil settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following namely-

(a) a term of twenty-one years from the death of the testator; or

(b) the duration of the minority or respective minorities of any person or persons living or en ventre sa mère at the death of the testator; or

(c) the duration of the minority or respective minorities only of any person or persons who under the limitations of the will or codicil directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated.

In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (save as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed.

(2) This section shall not extend to any provision-

(a) for payment of the debts of any testator or other person;

(b) for raising portions for;

(i) any child; children or remoter issue of any testator;

(ii) any child, children or remoter issue of a person taking any interest under any will or codicil directing the accumulations or to whom any interest is thereby limited;

and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

Restriction on accumulation for purchase of land.

(3) No person may by will or codicil settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only for any longer period than the duration of the minority or respective minorities of any person or persons who, under the limitations of the will or codicil directing the accumulation, would, for the time being, be entitiled to receive the income so directed to be accumulated if he had attained his majority.

(4) This section applies to wills and codicils made by persons living and of sound mind after the 12th day of March 1937.

PART IV

VESTING OF LEGACIES

Date of vesting of legacy when payment or possession postponed.

64. (1) Where by the terms of a devise or bequest the legatee is not entitled to immediate possession of the thing devised or bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will or codicil, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

(2) An intention that a legacy to any person shall not become vested in interest in him is not to be inferred, merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Date of vesting when legacy contingent upon specified uncertain event.

65. (1) A legacy devised or bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

(2) A legacy devised or bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent:

Provided that, where a fund is bequeathed to any person upon his attaining a particular age, and the will or codicil also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Vesting of interest in devise or bequest to such members of a class as shall have attained particular age.

66. Where a devise or bequest is made only to such members of a class as shall have attained particular age, a person who has not attained that age cannot have a vested interest in the legacy.

PART V
ONEROUS DEVISES OR BEQUESTS

Onerous devises or bequests.

67. Where a devise or bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

One of two separate and independent devises or bequests to same person may be accepted and other refused.

68. Where a will or codicil contains two separate and independent devises or bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

PART VI
CONTINGENT DEVISES OR BEQUESTS

Devise or bequest contingent upon specified uncertain event no time being mentioned for its occurrence.

69. Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will or codicil for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Devise or bequest to such of certain persons as shall be surviving at some period not specified.

70. Where a devise or bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the will or codicil.

PART VII

CONDITIONAL DEVISES OR BEQUESTS

Devise or bequest upon impossible condition.

71. A devise or bequest upon an impossible condition is void.

Devise or bequest upon illegal or immoral condition.

72. A devise or bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Fulfilment of condition precedent to vesting of legacy.

73. Where a will or codicil imposes a condition to be fulfilled before the legatee can take a vested interest in the thing devised or bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Devise or bequest to A and on failure of prior devise or bequest to B.

74. Where there is a devise or bequest to one person and a devise or bequest of the same thing to another, if the prior devise or bequest shall fail, the second devise or bequest shall take effect upon the failure of the prior devise or bequest although the failure may not have occurred in the manner contemplated by the testator.

When second devise or bequest not to take effect on failure of first.

75. Where the will or codicil shows an intention that the second devise or bequest shall take effect only in the event of the first devise or bequest failing in a particular manner, the

second devise or bequest shall not take effect, unless the prior devise or bequest fails in that particular manner.

Devise or bequest over, conditional upon happening of specified uncertain event.

76. (1) A devise or bequest may be made to any person with the condition superadded that, in case a specified uncertain event shall happen, the thing devised or bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing devised or bequeathed shall go over to another person.

(2) In each case, the ulterior devise or bequest is subject to the rules contained in sections 65, 66, 67, 68, 69, 70, 7l, 72, 74 and 75.

Condition must be strictly fulfilled.

77. An ulterior devise or bequest of the kind contemplated by section 76 cannot take effect, unless the condition is strictly fulfilled.

Original devise or bequest not affected by invalidity of second.

78. If the ulterior devise or bequest be not valid, the original devise or bequest is not affected by it.

Devise or bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

79. A devise or bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Such condition must not be invalid under section 65.

80. In order that a condition that a devise or bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a devise or bequest as contemplated by section 65.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject matter to go over.

81. Where a devise or bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject matter of the devise or bequest shall go to another person, or the devise or bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Performance of condition, precedent or subsequent within specified time. Further time in case of fraud.

82. Where the will or codicil requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the devise or bequest is to go over to another person or the devise or bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

PART VIII
DEVISES OR BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT

Direction that fund be employed in particular manner following absolute devise or bequest of same to or for benefit of any person.

83. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will or codicil contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will or codicil had contained no such direction.

Direction that mode of enjoyment of absolute devise or bequest is to be restricted, to secure specified benefit for legatee.

84. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will or codicil had contained no such direction.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

85. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will or codicil, remains a part of the estate of the testator.

PART IX
DEVISES OR BEQUESTS TO AN EXECUTOR

Legatee named as executor cannot take unless he shows intention to act as executor.

86. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

PART X
SPECIFIC LEGACIES

Specific legacy defined.

87. Where a testator devises or bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Bequest of certain sum where stocks, etc., in which invested are described.

88. Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will or codicil.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

89. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will or codicil, possessed of stock of the specified kind to an equal or greater amount than the amount bequeathed.

Bequest of money where not payable until part of testator's property disposed of in certain manner.

90. A money legacy is not specific merely because the will or codicil directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place.

When enumerated articles not deemed specifically devised or bequeathed.

91. Where a will or codicil contains a devise or bequest of the residue of the testator's property along with an enumeration of some items of property not previously devised or bequeathed the articles enumerated shall not be deemed to be specifically devised or bequeathed.

Retention, in form, of specific devise or bequest to several persons in succession.

92. Where property is specifically devised or bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Sale and investment of proceeds of property devised or bequeathed to two or more persons in succession.

93. Where property comprised in a devise or bequest to two or more persons in succession is not specifically devised or bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the Court may by law authorise or direct, and the fund thus constituted shall be enjoyed by

the successive legatees according to the terms of the will or codicil.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

94. If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XI
DEMONSTRATIVE LEGACIES

Demonstrative legacy defined.

95. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

96. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.

PART XII
ADEMPTION OF LEGACIES

Ademption explained.

97. If anything which has been specifically devised or bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will or codicil.

Non-ademption of demonstrative legacy.

98. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will or codicil does not exist at the time of the death of the testator, or has been converted into property of a different kind, but it shall in such case be paid out of the general assets of the testator.

Ademption of specific bequest of right to receive something from third party.

99. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

100. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

101. If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.

102. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Ademption where stock specifically bequeathed, does not exist at testator's death.

103. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

104. Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

105. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

When removal of thing bequeathed does not constitute ademption.

106. The removal of the thing bequeathed from the place in which it is stated in the will or codicil to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

When thing bequeathed is a valuable to be received by testator from third person and testator himself, or his representative, receives it.

107. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

108. Where a thing specifically bequeathed undergoes a change between the date of the will or codicil and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Change of subject without testator's knowledge.

109. Where a thing specifically bequeathed undergoes a change between the date of the will or codicil and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Stock specifically bequeathed lent to third party on condition that it be replaced.

110. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

111. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XIII
PAYMENT OF LIABILITIES IN RESPECT OF SUBJECT OF DEVISE OR BEQUEST

Non-liability of executor to exonerate specific legatees.

112. (1) Where property specifically devised or bequeathed is subject at the death of the testator to any pledge, lien, charge or incumbrance created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will or codicil, the legatee, if he accepts the devise or bequest, shall accept it subject to such pledge, lien, charge or incumbrance, and shall (as between himself and the testator's estate) be liable to

make good the amount of such pledge, lien, charge or incumbrance.

(2) A contrary intention shall not be inferred from any direction which the will or codicil may contain for the payment of the testator's debts generally.

(3) A periodical payment in the nature of land-revenue or in the nature of rent or rate is not such an incumbrance as is contemplated by this section.

Completion of testator's title to things devised or bequeathed to be at cost of his estate.

113. Where anything is to be done to complete the testator's title to the thing devised or bequeathed, it is to be done at the cost of the testator's estate.

Exoneration of legatee's property for which land revenue rent or rate payable periodically.

114. Where there is a devise or bequest of any interest in property in respect of which payment in the nature of land-revenue or in the nature of rent or rate has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death.

Exoneration of specific legatee's stock in joint stock company.

115. In the absence of any direction in the will or codicil, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest.

PART XIV
BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS

Bequest of thing described in general terms.

116. If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

PART XV
BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND

Bequest of interest or produce of fund.

117. Where the interest or produce of a fund is bequeathed to any person, and the will or codicil affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

PART XVI
BEQUESTS OF ANNUITIES

Annuity created by will payable for life only unless contrary intention appears by will.

118. Where an annuity is created by will or codicil, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will or codicil, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

119. Where the will or codicil directs that an annuity shall be provided for any person out of the proceeds of property or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy

vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will or codicil.

Abatement of annuity.

120. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will and codicil, if any, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will and codicil, if any.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

121. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XVII

LEGACIES TO CREDITORS AND PORTIONERS

Creditor *prima facie* entitled to legacy as well as debt.

122. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will or codicil that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Child *prima facie* entitled to legacy as well as portion.

123. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will or codicil that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

No ademption by subsequent provision for legatee.

124. No devise or bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

PART XVIII

ELECTION

Circumstances in which election takes place.

125. Where a person, by his will or codicil, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case, he shall give up any benefits which may have been provided for him by the will or codicil.

Devolution of interest relinquished by owner.

126. Any benefits given up in the circumstances stated in section 125 shall devolve as if they had not been disposed of by the will or codicil in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will or codicil.

Testator's belief as to his ownership immaterial.

127. The provisions of sections 125 and 126 apply whether the testator does or does not believe that which he professes to dispose of by his will or codicil to be his own.

Devise or bequest for person's benefit how regarded for purpose of election.

128. A devise or bequest for a person's benefit is, for the purpose of election, the same thing as a devise or bequest made to himself.

Person deriving benefit indirectly not put to election.

129. A person taking no benefit directly under a will or codicil, but deriving a benefit under it indirectly, is not put to his election.

Person taking in individual capacity under will or codicil may in other character elect to take in opposition.

130. A person who in his individual capacity takes a benefit under a will or codicil may, in

another character, elect to take in opposition to the will and codicil.

Exception to provisions of last six sections.

131. Notwithstanding anything contained in sections 125 to 130, where a particular gift is expressed in the will or codicil to be in lieu of something belonging to the legatee which is also in terms disposed of by the will or codicil, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will or codicil.

When acceptance of benefit given by will or codicil constitutes election to take under will or codicil.

132. Acceptance of a benefit given by will or codicil constitutes an election by the legatee to take under the will or codicil, if he had knowledge of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Circumstances in which knowledge or waiver is presumed or inferred.

133. (1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will or codicil without doing any act to express dissent.

(2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the devise or bequest in the same condition as if such act had not been done.

When testator's representatives may call upon legatee to elect.

134. If the legatee does not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will or codicil, the representatives shall, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will or codicil.

Postponement of election in case of disability.

135. In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

PART XIX
GIFTS IN CONTEMPLATION OF DEATH

Property transferable by gift made in contemplation of death.

136. (1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will or codicil.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

PART XX
PRIVILEGED WILLS

Privileged wills.

137. Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged or any mariner being at sea, may, if he has completed the age of twenty-one years, dispose of his property by a will made in the manner provided in the following section. Such wills are called privileged wills.

Mode of making, and rules for executing privileged wills.

138. (1) Privileged wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged wills shall be governed by the following rules-

(a) the will may be written wholly by the testator with his own hand. In such

case it need not be signed or attested;

(b) it may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested;

(c) if the instrument purporting to be a will is written wholly, or in part by another person and is not signed by the testator, it shall be deemed to be his will, if it is shown that it was written by the testator's directions or that he recognised it as his will;

(d) if it appears on the face of the instrument that execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument;

(e) if the soldier, airman or mariner has written instructions for the preparation of his will, but had died before it could be prepared and executed, such instructions shall be considered to constitute his will;

(f) if the soldier, airman or mariner has, in the presence of two witnesses, given verbal instruction for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence nor read over to him;

(g) the soldier, airman or mariner may make a will by word of mouth by declaring his intention before two witnesses present at the same time;

(h) a will made by word of mouth 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.