

## WILLS ACT

**Repealed by Act 2009-25 as from 9.7.2009**

**Principal Act**

<b>Act. No. 1964-08</b>	<i>Commencement</i>	24.12.1918, ss.12-16
		31.5.1962, s.10
		15.5.1964, ss. 1-6
		11.5.1972, ss. 7, 8, 11 and 17
		6.7.1978, s. 9
	<i>Assent</i>	21.5.1964

Amending enactments	Relevant current provisions	Commencement date
Acts. 1918-26		
1962-06	ss. 14 and 17	
1972-06	ss.3(5), 4(1) and (3), 13 and 14	
1978-18	s.2	

## English sources

Wills (Soldiers and Sailors) Act 1918 (7 & 8 Geo.5 c.58)  
 Law of Property Act 1925 (15 & 16 Geo.5 c.20)  
 Wills Act 1963 (1963 c.44)  
 Family Law Reform Act 1969 (1969 c.46)

DERIVATION OF SECTIONS

Section	
1.	Act. 1964 No. 8, s.1
2.	“ 2
3.	“ 3
4.	“ 4
5.	“ 5
6.	“ 6
7.	Act. 1972 No. 6 s.3(5)
8.	“ 4(1)
9.	Act. 1978 No. 18 s.2
10.	Act. 1962 No. 6 s.17
11.	Act. 1972 No. 6 s.14
12.	Act. 1918 No. 26 s.2
13.	“ 3
14.	“ 4
15.	“ 5
16.	“ 6
17.	Act. 1972 No. 6 s.4(3)

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**ARRANGEMENT OF SECTIONS**

## Section

*General provisions*

1. Short title.
2. Interpretation.
3. General rule as to formal validity.
4. Additional rules.
5. Certain requirements to be treated as formal.
6. Construction of wills.
7. Saving.

*Modifications of the Wills Act 1837.*

8. Amendment of the Wills Act.
9. Wills made in contemplation of marriage.
10. Wills of married women.
11. Interpretation of s. 33 of the Wills Act.

*Special provisions relating to the Armed Forces*

12. Interpretation.
13. Explanation of s.11 of the Wills Act.
14. Extension of s.11 of the Wills Act.
15. Testamentary dispositions of real property.
16. Power to appoint testamentary guardians.
17. Power of revocation.

**1964-08**  
**Repealed**

## Wills

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AN ACT TO MAKE VARIOUS PROVISIONS RELATING TO WILLS.

**Short title.**

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

2. Interpretation.

(1) In this Act, unless the context otherwise requires,—

“internal law”, in relation to any territory or state, means the law which would apply in a case where no question of the law in force in any other territory or state arose ;

“state” means a territory or group of territories having its own law of nationality ;

“will” includes any testamentary instrument or act, and “testator” shall be construed accordingly.

“the Wills Act” means the Wills Act 1837 as applied to Gibraltar.

(2) Where under this Act the internal law in force in any. territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follow—

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

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

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

**General rule as to formal validity.**

3. A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national.

**Additional rules.**

4.(1) Without prejudice to section 3, the following shall be treated as properly executed—

- (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in the territory with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;
- (c) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated ;
- (d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

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

**Certain requirements to be treated as formal.**

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

**Construction of wills.**

6. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

**Saving.**

7. Notwithstanding any rule of law, a will or codicil executed before the 1st day of September 1972 shall not be treated as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

*Modifications of the Wills Act 1837*

**Amendment of Wills Act.**

8. In section 7 of the Wills Act, in its application to wills made after the 1st day of September 1972, there shall be substituted for the words “twenty-one years” the words “eighteen years”.

**Wills made in contemplation of marriage.**

9. Notwithstanding anything in section 18 of the Wills Act or any other statutory provision or rule of law to the contrary, a will made after the 6th day of July 1978 and expressed to be made in contemplation of marriage shall not be revoked by the solemnization of the marriage contemplated.

**Wills, of married women.**

10. Section 24 of the Wills Act shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband.

**Interpretation of s.33 of the Wills Act.**

11. In relation to a testator dying after the 1st day of September 1972, section 33 of the Wills Act shall have effect as if—

- (a) the reference to a child or other issue of the testator (that is, the intended beneficiary) included a reference to any illegitimate child of the testator and to anyone who would rank as such issue if he, or some other person through whom he is descended from the testator, had been born legitimate ; and
- (b) the reference to the issue of the intended beneficiary included a reference to anyone who would rank as such issue if he, or some other person through whom he is descended from the intended beneficiary, had been born legitimate.

(2) In this section “illegitimate child” includes an illegitimate, child who is a legitimated person within the meaning of the Legitimacy Act or a person recognized by virtue of that Act or at common law as having been legitimated. Special provisions relating to the Armed Forces

**Interpretation.**

12. For the purposes of section 11 of the Wills Act and of this Act, the expression “soldier” includes a member of the Royal Air Force and references in this Act to section 11 include a reference to that section as explained and extended by this Act.

**Explanation of s.11 of the Wills Act.**

13. In order to remove doubts as to the construction of the Wills Act, it is declared and enacted that section 11 of that Act authorizes and has always authorized any soldier being in actual military service, or any mariner or seaman being at sea, to dispose of his personal estate as he might have done before the passing of that Act, though under the age of eighteen years.

**Extension of s.11 of the Wills Act.**

14. Section 11 of the Wills Act shall extend to any member of Her Majesty's naval or marine forces not only when he is at sea but also when he is so circumstanced that if he were a soldier he would be in actual military service within the meaning of that section.

**Validity of testamentary dispositions of real property made by soldiers and sailors.**

15. A testamentary disposition of any real estate in Gibraltar made by a person to whom section 11 of the Wills Act applies, and who dies after the 24th day of December 1918, shall, notwithstanding that the person making the disposition was at the time of making it under eighteen years of age or that the disposition has not been made in such manner or form as was at that date required by law, be valid in any case where the person making the disposition was of such age and the disposition has been made in such manner and form that if the disposition had been a disposition of personal estate made by such a person domiciled in Gibraltar it would have been valid.

**Power to appoint testamentary guardians.**

16. Where any person dies after the 24th day of December 1918 having made a will which is, or which, if it had been a disposition of property, Would have been rendered Valid by Section 11 of the Wills Act, any appointment contained in that will of any person as guardian of the minor children of the testator shall be of full force and effect.

**Power of revocation.**

17. A will which has been made by a person under the age of eighteen years and which is valid by virtue of the provisions of section 11 of the Wills Act, may be revoked by that person notwithstanding that he is still under that age, whether or not the circumstances are then such that he would be entitled to make a valid will under those provisions.