THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

LANGATA CUMPUS (NAIROBI)

GROUP CAT

THE LAW OF SUCCESION

GROUP C

NAME REG NO.

DOMINIC KIPKOECH 1030269

DICKENS OTIENO 1030676

MARTIN MAINGI 1030628

ROBERT TANUI 1030785

**RULES USED TO GUIDE CONSTRUCTION OF WILLS IN COURTS**

**INTODUCTION**

When attempting to understand the operation of rules of construction of wills, it is important we distinguish it from the rules of law. Lord Hawkins states a rule of construction always contains the saving clause while on the other hand a rule of law acts independently of the intention and applies to dispositions of property in whatever forms of word expressed as in the ruling of Shelley’s case[[1]](#footnote-1).

Construction means interpretation of attempting to understand the legal effect of a will.

There are numerous special rules which apply to the interpretation of legal documents such as a will and the most important thing is the legal effect to the key in issue. The issue is the intention of the testator to determine words he referred in its will.

The documents is the supreme, hence the courts gives legal effects to the words in the document.

**THE RULES ARE AS FOLLOWS**.

**RULES PERTAINING TO EXTRINSIC EVIDENCE**

The written will itself is regarded as the source of the testator’s intention. The courts will not generally go beyond the will that is matters that are not contained in the will itself. Evidence act has rules on how a document should be interpreted. The court in some jurisdictions may be unique regarding the questions of the admissibility of extrinsic evidence. You must ensure that you against yourself with these local rules[[2]](#footnote-2).

In tunga for example section 35(1) of the brobate and administration act cap 16 provides a wide exception. It says 35(1) extrinsic evidence is admissible to show the intention of the testator and to assist in construction of or to explain any contradiction evidence an all cases[[3]](#footnote-3)

**LATER PROVISIONS WILL TAKE PRECEDENCE**.

The courts are not too keen to apply another rule which is more a rule of thumb. That is where are two provisions which are inconsistent, the courts will regard the latter provisions as the true one. The reason behind this is that this provision was written at a later stage than the first provision.[[4]](#footnote-4)

A rather obvious example is where the first clause in a will gives, all my property to my wife and latter clause gives, all my property to my daughter, it is the latter one which will prevail. The two clauses are clearly inconsistent and in such cases the court prefers the second one[[5]](#footnote-5).

Another cause of action would be to hold that the will is invalid for uncertainty, but the courts generally prefer to uphold a will as valid whenever they can. There is another rule on this which is the rule against intestacy. Intestacy is a situation where a testator dies without a will. The courts will generally adopt an interpretation of a will which will uphold it as valid in order to prevent an intestacy arising[[6]](#footnote-6).

Where a first clause gives all my property to my wife and second clause gives, my motor vehicle to my daughter, the result would be that the first clause actually read subject to the second one. In other words, the wives would receive the car

Issue whether the will fails when the beneficiary pre-deceased the testator. To benefit under a will a beneficiary must survive the testator. A legacy is said to have lapsed and will fall into residue. If the beneficiary dies before the testator or if the beneficiary dies before a condition precedent o the vesting of the legacy is satisfied.[[7]](#footnote-7)

From the scenario the beneficiary predeceased the testator (wife who was to inherit the property died before the husbands hence this makes the will null, revoked if or fails the will. The only option is the testator is to draft another will.

**ORDINARY MEANING RULE**

Ordinarily meaning rule can also be referred to words given to court in their ordinary grammatical sence. Most words given to court in their ordinarily grammatical sence. Most words have more than one meaning so the courts shall try to identify the most common of such term used I the will[[8]](#footnote-8).

**WORDS NOT TO BE READ IN ISOLATION**

The meaning is that the rule guides the court that words has to be gathered from the whole of the will. In other words, the whole of the will provides the content of the will as a whole the meaning might become clear.

**THE DICTIONARY MEANING**

Sometimes the will might contain a dictionary or glossary of the meaning of particular words used y the testator in the will. The court will look at it to see if the testator used some words in special way.[[9]](#footnote-9)

**QUESTION 2**

There are various issues that arise from the context given and of which have been discussed below.

**ISSUE WHEATHER THE CHILDREN HAVE A RIGHT TO INHERIT THEIR PARENTS PROPERTY.**

From the above given contest we see that Mr. peanut who was a local rich business man had his first will in which had his wife to inherit everything. Later his wife died and thus he had to amend his will or else he had to re-write his will. On his second will he wrote that all his property was to be left to her daughters of whom were two of them. One of the daughters happened to have seen the will and thus informed the other and thus they stopped taking of their father as they used to do and thus the man got angry and decided to tear the will through the way of destruction.

From the above referring to the law of succession act section 38 states that where an intestate has left a surviving child or children but no spouse, the net intestate shall, subject to the provisions of sections 41 and 42 devolve upon the surviving child, if there be only. Or shall be equally divided among the surviving children.[[10]](#footnote-10)

From the above we can say that despite the issue of destruction of the will through tearing to very pieces the both the children left will have the full legal right to inherit what belonged to their father.

This is also related to section 36 where if the testator dies intestate then all the property is left to the other surviving spouse where by the surviving spouse will have the personal and household effects of the deceased absolutely and also the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater, and a life interest in the whole of the remainder. Though you will find that in our case then it’s different since there i no spouse and thus all property is to be left and to be equally divided by the court to all the children and in our case find that they were two girls left behind[[11]](#footnote-11).

**ISSUE ON WHETHER THE WILL WAS REVOKED BY THE TESTATOR.**

Revoking a will means that the will is no longer valid. There are various ways in which a will can be revoked and they are through: revocation by destruction in which the testator must have the intention to destroy the will and actually go ahead and do it. It’s done by obliterating an important part of the will e.g. using a penknife to scratch out the signature put by the witness or as well the signature of the testator[[12]](#footnote-12). A will can also be revoked through writing declaration where there is sufficient intention to revoke the will, though this must be done through or following what the law states. A will can also be revoked by another will or codicil and this is where another will be written and thus revoking the will that had been written first[[13]](#footnote-13).

There is also the act of destroying the will and this will not revoke the will and in any case that the testator destroyed the will with the intention of doing so the the will be revoked.

So on our context there is this issue where Mr. peanut tore his will to small pieces after his daughters neglected taking care of him and the action of neglecting came about when the two daughters realized that their father had written a will and in which he was to leave all the property to them.

The act of destruction must have the intention that is sufficient and this clearly shown when the daughters neglect their father and due to the man getting angry due to the action of the daughters he tore the will into very small pieces and thus revoking the will all the same.

Under destruction of a will the whole or any part of a will or codicil is revoked by te burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention.

This as was held in the case of doe d v perkes where by the testator being angry with a devisee named in his will began to tear it up with the intention of revoking it, and tore it into four pieces before he was stopped, partly by a bystander who sized is arms and partly by the apologies of the devisee. Later the testator came back to his mind and stated that it is good job it is no worse. In this case the will remained though the act of destruction had taken place but in our scenario there was complete destruction of the will and thus revoking it. From above we can conclude that Mr. peanut had the intention of revoking of his will and thus ended up revoking the whole will.

**ISSUE OF DESTRUCTION OF THE WILL**.

To revoke a will by destruction the testator must intend to destroy the will and actually do so. With a mere effort of crossing a line on the will is not sufficient to revoke the will as destruction needs to be something more substantial and can be done through obliterating an important part of the will to make sure that the will becomes illegible[[14]](#footnote-14). And in any case the act of destruction has to take place and the testator is not the person to do so and ends up appointing another person then they have to make sure that the act of destruction is done in presence of the testator[[15]](#footnote-15). In any case that after the death of the testator the will is not found the its assumed that the testator had destroyed the will before his demise[[16]](#footnote-16).

In our case scenario the testator tore his will due to the neglecting of himself by his daughters. By tearing that will then it’s clear that he had the intention of revoking the will he had written and thus ended up dying intestate.

This can also be one of the rebuttable presumption of a will found mutilated at death in which if a will which has been in the testator’s possession but which is found to be torn or mutilated at his death is presumed to have been torn or mutilated by the testator with the intention of revoking it in whole or in part but either way the presumption can also be rebutted by evidence which can also be used to prove the contrary[[17]](#footnote-17).

**ISSUE OF REVOKING A WILL BY CROSSING A LINE THROUGH IT**.

As discussed earlier there are various ways of revoking a will. This happens when the testator using a ball point pen crosses a line over the face of the will with the intention of revoking the will. Accordingly, it there are scenarios where the signature of the attesting witness is scratched out or either way the signature of the testator but in any case that the signature is eligible then the will cannot be revoked at all[[18]](#footnote-18). Though there are also other scenario where the signatures of both the witness and the testator are scratched out using a penknife and thus they are at all not eligible and thus there is the revocation of the will[[19]](#footnote-19).

1. The law of succession 12th edition [↑](#footnote-ref-1)
2. The law of succession 12th edition [↑](#footnote-ref-2)
3. The law of succession act kenya [↑](#footnote-ref-3)
4. Kenya legal resources [↑](#footnote-ref-4)
5. Case book on the law of succession 4th edition [↑](#footnote-ref-5)
6. The law of succession 12th edition [↑](#footnote-ref-6)
7. Casebook on the law of succession 2nd edition [↑](#footnote-ref-7)
8. The law of succession 12th edition [↑](#footnote-ref-8)
9. The legal dictionary [↑](#footnote-ref-9)
10. The law of succession act [↑](#footnote-ref-10)
11. The law of succession act [↑](#footnote-ref-11)
12. The law of succession 12th edition [↑](#footnote-ref-12)
13. The law of succession 12th edition [↑](#footnote-ref-13)
14. Casebook on the law of succession 4th edition [↑](#footnote-ref-14)
15. The law of succession 12th edition [↑](#footnote-ref-15)
16. The law of succession 12th edition [↑](#footnote-ref-16)
17. The law of succession 12th edition [↑](#footnote-ref-17)
18. Kenya legal resources [↑](#footnote-ref-18)
19. The law of succession 12th edition [↑](#footnote-ref-19)