

Chapter 2

TESTACY AND INTESTACY

Introduction

- ▶ Wills Act 1959 is applicable to non-muslims only.
- ▶ Will : “ a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by Will or by writing in the nature of a Will in exercise of a power and also a disposition by Will or testament of the guardianship, custody and tuition of any child.”

Purposes of a Will

- ▶ it expresses the testator's declaration as to the disposition of his property
- ▶ appointment of an executor/ executrix to administer the estate
- ▶ appointment of trustee(s) to manage all or part of the estate
- ▶ appointment of guardian(s) for minor or disabled children or dependents
- ▶ to give instructions on burial, cremation or any other personal or peculiar wishes of the testator.

Formalities and Legal Requirements of Wills

- i) **Writing:** Will must be in writing (unless it is a privileged Will), can be handwritten, typewritten or printed.
- ii) **Language:** The wordings need not be in legal or formal language so long as it is capable of comprehension.

Formalities and Legal Requirements of Wills

- iii) **Testator's Signature:** must sign or thumbprint, at the end of the Will.
- iv) **Witnesses' Signature:** the Testator must sign in the presence of at least two witnesses, the two witnesses must sign in the presence of the Testator and each other. Witnesses cannot be beneficiaries or spouse of the beneficiary(ies) to the Will. It does not invalidate the Will but the gift is invalidated.

Formalities and Legal Requirements of Wills

v) Testator's Age:

West Malaysia and Sarawak : **18** years old

Sabah : **21** years old

vi) Testamentary Capacity:

- sound mind
- independent choice

Formalities and Legal Requirements of Wills

vii) Revocation:

- a) Express revocation
- b) A later Will
- c) Marriage
- d) Destruction
- e) Conversion to Islam

Contents of a Will

- ▶ Opening Clause
- ▶ Revocation Clause
- ▶ Appointment of Executor/ Trustee Clause
- ▶ Appointment of Guardian Clause
- ▶ Asset distribution Clause
- ▶ Residuary Clause
- ▶ Funeral Clause
- ▶ Attestation Clause

Types of Wills

- ▶ Individual Will
- ▶ Privileged Wills
- ▶ Mutual Wills
- ▶ Joint Wills

Inheritance (Family Provision) Act 1971

This Act allows the dependents to apply to court to “vary” the Will to make provisions for their maintenance, as the Testator has not provided sufficiently.

Inheritance (Family Provision) Act 1971

Persons who are qualified:

- i. **Spouse** of the deceased;
- ii. The **daughter** who is unmarried or who is mentally or physically disabled, incapable of maintaining herself;
- iii. An **infant son**; and
- iv. A **son** who is mentally or physically disabled, incapable of maintaining himself.

Intestacy

- ▶ The beneficiaries will have to apply to High Court for Letters of Administration (LA).
- ▶ Before the LA is granted, two sureties are required as security.
- ▶ The security shall be in the form of a bond in the amount equivalent to the **gross value** of estate.

Intestacy

Administration bond can be dispensed with, if:

- ▶ The deceased' estate does not exceed RM50,000;
- ▶ A trust corporation is being appointed as the administrator;
- ▶ The administrator is the sole beneficiary;
- ▶ The Court grants a full or partial waiver.

Intestacy

Once the LA is granted, the Administrators are to distribute the estate according to :

- ▶ Distribution Act 1958 (amended 1997) for West Malaysia and Sarawak
- ▶ Intestate Succession Ordinance 1960 for Sabah

Distribution Act 1958 (amended 1997)

Intestate leaving surviving	Distribution
Spouse only (no parent(s)/issue)	Spouse – whole estate
Spouse & Parent(s) (no issue)	Spouse – 1/2 Parent(s) - 1/2
Issue Only (no spouse/parent(s))	Issue – whole estate
Parent(s) only	Parents(s) – whole estate
Spouse & Issue (no parent(s))	Spouse – 1/3 Issue – 2/3
Issue & Parent(s) (no spouse)	Issue – 2/3 Parent(s) – 1/3
Spouse, Issue & Parent(s)	Spouse – 1/4 Issue – 1/2 Parent(s) – 1/4

Distribution Act 1958 (amended 1997)

The following person(s) are entitled in accordance to priority when an intestate dies without leaving a surviving spouse, child or parent:

1. Brothers and sisters
2. Grandparents
3. Uncles and aunts
4. Great grand parents
5. Great uncles and aunts
6. Government

Distribution Act 1958 (amended 1997)

- ▶ Issue: includes children and descendants of the children
- ▶ Parent: natural father or mother of a child or the lawful father or mother of a child under the Adoption Act 1952

The Intestate Succession Ordinance 1960

Intestate leaving surviving	Distribution
Spouse only (no Issue/parent)	Spouse – whole estate
Spouse & Issue	Spouse – $\frac{1}{3}$ Issue – $\frac{2}{3}$ (Subject to the rights of the surviving spouse)
Spouse & Parent(s) (no issue)	Spouse – Personal Chattels $\frac{1}{2}$ Parent(s) – $\frac{1}{2}$ (Subject to the rights of the surviving spouse) ₁₈