[Extract from *The Laws of the Territory of New Guinea* 1921-1945 (*Annotated*).]

WILLS ORDINANCE 1938-1939.[1]

An Ordinance Relating to Wills.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act* 1920-1935, as follows:—

1. This Ordinance may be cited as the *Wills Ordinance* 1938-1939.[1] Short title. **Amended by No. 3 of 1934, s. 50.**

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.[1] Commencement.

3. Unless otherwise prescribed, nothing in this Ordinance shall affect any will made or any proceeding pending or any right acquired or anything done or made valid under or by any law of the Territory in force before the commencement of this Ordinance. Saving.

4. Nothing in this Ordinance shall apply to a native or to any will made by a native. Non-application of Ordinance to natives.

5. In this Ordinance, unless the contrary intention appears— Definitions.

"personal estate" includes leasehold estates and other chattels real and 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 (other than real estate) which devolves by law upon the executor or administrator and any share or interest in any such personal estate;

"real estate" includes messuages, lands, rents, and hereditaments, whether freehold or of any other tenure, and

(1) The *Wills Ordinance* 1938-1939 comprises the *Wills Ordinance* 1938, as amended by the other Ordinance referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in *N.G. Gaz.* as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
Wills Ordinance 1938 (No. 39 of 1938)	24.8.1938	15.12.1938	1.11.1938 (*N.G. Gaz.* of 31.8.1938)
Wills Ordinance 1939 (No. 3 of 1939)	2.3.1939	15.5.1939	1.11.1938 (Sec. 2, *Wills Ordinance* 1939)

whether corporeal, incorporeal, or personal, and any estate, right, or interest (other than a chattel interest) therein;

"will" includes testament, codicil, appointment by will or by writing in the nature of a will in exercise of a power, disposition by will and testament or devise of the custody and tuition of any child, and any other testamentary disposition.

Re-execution, republication, and revival of wills.

6. Every will re-executed or republished or revived by any codicil shall, for the purposes of this Ordinance, be deemed to have been made at the time at which the will or codicil was so re-executed, republished, or revived.

Disposition of property by will.

7.—(1.) Every person may devise, bequeath, or dispose of by his will executed in the prescribed manner all real estate and all personal estate to which he is 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 his executor or administrator.

(2.) The power given by this section shall extend to—

(*a*) any estate *pur autre vie* whether there is or is not any special occupant thereof and whether the estate is freehold or of any other tenure and whether it is a corporeal or incorporeal hereditament;

(*b*) every contingent, executory, or other future interest in any real or personal estate whether the testator is or is not ascertained as the person or one of the persons in whom that interest may become vested, and whether he is entitled to that interest under the instrument by which it was created or under any disposition thereof by deed or will;

(*c*) every right of entry for condition broken and every other right of entry; and

(*d*) any such estate, interest, right, or other real or personal estate as is mentioned in this section to which the testator is entitled at the same time of his death, notwithstanding that he became so entitled subsequently to the execution of his will.

Invalidity of will of minor.

8. A will made by any person under the age of twenty-one years shall not be valid.

Requirements as to writing and execution of will.

9. A will shall not be valid unless it is in writing and executed in the following manner:—

(*a*) 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;

(*b*) The signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(*c*) The witnesses shall attest and subscribe the will in the presence of the testator, but a form of attestation shall not be necessary.

When signature to a will to be deemed valid.

10.—(1.) Every will shall, so far only as regards the position of the signature of the testator or of the person signing for him as mentioned in the last preceding section, be deemed to be valid within the meaning of this Ordinance, if the signature is so placed at, after, following, under, beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by his signature to the writing signed as his will.

(2.) Any such will shall not be affected by the circumstance—

(*a*) that the signature does not follow, or is not immediately after the foot or end of the will; or

(*b*) that a blank space intervenes between the concluding word of the will and the signature; or

(*c*) that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows, or is after, or under, or beside the names, or one of the names of the subscribing witnesses; or

(*d*) that the signature is 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 is written above the signature; or

(*e*) that there appears 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.

(3.) The provisions of the last preceding sub-section shall not restrict the generality of sub-section (1.) of this section, but a signature under this Ordinance shall not be operative to give effect to any disposition or direction—

(*a*) which is underneath or which follows it; or

(*b*) which is inserted after the signature was made.

Appointments by will to be executed like other wills, &c.

11.—(1.) Any appointment made by will in exercise of any power shall not be valid unless the will is executed in the prescribed manner.

(2.) Every will executed in the prescribed manner shall, in so far as concerns the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will made in exercise of that power should be executed with some additional or other form of execution or solemnity.

Publication not requisite.

12. Every will executed in the prescribed manner shall be valid without any other publication thereof.

Wills made out of the Territory to be admitted if made according to the law of the place where made, &c.

13. Every will made out of the Territory by a testator (whatever the domicile of the testator at the time of making the will or at the time of his death) shall, as regards his real and personal estate, be held to be well executed for the purpose of being admitted in the Territory to probate, if it is made according to the forms required either—

(*a*) by the law of the place where it was made;

(*b*) by the law of the place where the testator was domiciled when it was made; or

(*c*) by the law then in force where he had his domicile of origin.

Wills made in the Territory to be admitted if made according to local law.

14. Every will made within the Territory by a testator (whatever the domicile of the testator at the time of making it or at the time of his death) shall, as regards his real and personal estate, be held to be well executed, and shall be admitted in the Territory to probate if it is executed according to the forms required by the law for the time being in force in the Territory.

Incompetency of witness not to invalidate will.

15. Where any person who attests the execution of a will is at the time of the execution thereof or at any time thereafter incompetent to be admitted as a witness to prove the execution, the will shall not on that account be invalid.

Gifts to an attesting witness to be void.

16.—(1.) Where any person, 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 a charge or direction for the payment of any debts) is given or made by a will, attests the execution of the will, the devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns the person so attesting the execution of the will or the wife or husband of that person or any person claiming under that person or wife or husband, be void.

(2.) Notwithstanding any such devise, legacy, estate, interest, gift, or appointment, the person so attesting shall be admitted as a witness to prove the execution of the will or the validity or invalidity thereof.

Creditor attesting to be admitted as witness.

17. Where by any will any real or personal estate is charged with any debt and any creditor whose debt is so charged or the wife or husband of that creditor attests the execution of the will, the creditor shall, notwithstanding the charge, be admitted as a witness to prove the execution of the will or the vadility or invalidity thereof.

Executor to be admitted as witness.

18. An executor of a will shall not be incompetent to be admitted witness to prove the execution of the will or the validity or invalidity thereof.

Revocation of will by marriage.

19.—(1.) Except as otherwise provided in this section, every will made by a man or woman shall be revoked by his or her marriage.

(2.) This section shall not apply to a will made by a man or woman in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of the appointment, pass to his or her executor or administrator.

(3.) A will expressed to be made in contemplation of a marriage shall not be revoked by the solemnization of the marriage contemplated.

No will to be revoked by presumption.

20. A will shall not be revoked by any presumption of an intention on the ground of an alteration in circumstances.

In what case wills may be revoked.

21. A will or codicil or any part thereof shall not be revoked otherwise than—

(*a*) by marriage as provided by this Ordinance; or

(*b*) by another will or codicil executed in the prescribed manner; or

(*c*) by some writing declaring an intention to revoke the will, codicil, or part and executed in the manner in which a will is required by this Ordinance to be executed; or

(*d*) by the testator or some person in his presence and by his direction, with the intention of revoking the will, codicil, or part, burning, tearing, or otherwise destroying the will, codicil, or part.

Change of domicile not to invalidate will.

22. A will shall not be deemed to be revoked or to have become invalid, and the construction thereof shall not be altered by reason of any subsequent change of domicile of the testator.

Alterations in a will to be executed as a will.

23.—(1.) Any obliteration, interlineation, or other alteration made in any will after the execution thereof shall not, except so far as the words or effect of the will before any such alteration are not apparent, be valid or have any effect, unless the alteration is executed in the manner in which a will is required by this Ordinance to be executed.

(2.) The will with the alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of witnesses are made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of or opposite to a memorandum referring to the alteration and written at the end or some other part of the will.

Revival of revoked wills.

24.—(1.) A will or codicil or any part thereof which has been in any manner revoked shall not be revived otherwise than by the re-execution thereof or by a codicil executed in the prescribed manner and showing an intention to revive the will, codicil, or part.

(2.) When any will or codicil which has been partly revoked and afterwards wholly revoked is revived, the revival shall not, unless the contrary intention appears by the will, extend to so much of the will or codicil as was revoked before it was wholly revoked.

When a devise not to be rendered inoperative, &c.

25. A conveyance or other act (other than an act by which the will is revoked in the prescribed manner) made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised shall not prevent the operation of the will with respect to such estate or interest in that real or personal estate as the testator had power to dispose of by will at the time of his death.

A will to speak from the death of the testator.

26. Every will shall, unless the contrary intention appears by the will, 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.

What a residuary devise shall include.

27. Where any devise of real estate or interest in real estate fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect, the devise shall, unless the contrary intention appears by the will, be included in the residuary devise (if any) contained in the will.

28. 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, unless the contrary intention appears by the will, be construed to include the leasehold estates of the testator or his leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates. Estates included in a general devise.

29.—(1.) A general devise 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, unless the contrary intention appears by the will— General devises and bequests of property subject to a power of appointment.

(*a*) be construed to include any real estate or any real estate to which the description extends, as the case may be, which he has power to appoint in any manner he thinks proper; and

(*b*) operate as an execution of that power.

(2.) A bequest of the personal estate of the testator or of personal property described in a general manner shall, unless the contrary intention appears by the will—

(*a*) be construed to include any personal estate or any personal estate to which the description extends, as the case may be, which he has power to appoint in any manner he thinks proper; and

(*b*) operate as an execution of that power.

30. Where any real estate is devised to any person without any words of limitation, that devise shall, unless the contrary intention appears by the will, be construed to pass the whole estate or interest, whether the fee simple or any other estate or interest, which the testator had power to dispose of by will in that real estate. Devises without words of limitation.

31.—(1.) 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 that person and not an indefinite failure of his issue, unless a contrary intention appears by the will by reason of that 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 that person or issue or otherwise. Construction of the words "die without issue" or "die without leaving issue," &c.

(2.) This section shall not extend to cases where the words mentioned in sub-section (1.) of this section import if no issue described in a preceding gift is born or if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Devises to trustees or executors, &c., not to pass a chattel interest.

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

Trustees under an unlimited devise, &c., to take the fee.

33. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by the trustee and the beneficial interest in the real estate or in the surplus rents and profits thereof is not given to any person for life or that beneficial interest is given to any person for life but the purposes of the trust may continue beyond the life of that person, the devise shall be construed to vest in the trustee the whole legal estate, whether the fee simple or any other estate, which the testator had power to dispose of by will in that real estate and not an estate determinable when the purposes of the trust are satisfied.

Devises of estates tail not to lapse.

34. Where any person to whom any real estate is devised for an estate tail or an estate in *quasi* entail, dies in the lifetime of the testator leaving issue who would be inheritable under such entail and any such issue is living at the time of the death of the testator, the devise shall not, unless the contrary intention appears by the will, lapse but shall take effect as if the death of that person has happened immediately after the death of the testator.

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

35. Where any person being a child or other issue of the testator to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of that person dies in the lifetime of the testator leaving issue and any such issue of that person is living at the time of the death of the testator, the devise or bequest shall not, unless the contrary intention appears by the will, lapse but shall take effect as if the death of that person had happened immediately after the death of the testator.

Validity of certain wills.

Amended by No. 3 of 1939, s. 3.

36. Nothing contained in sections thirteen, fourteen, and twenty-two of this Ordinance shall invalidate any will which would have been valid if those sections had not been enacted, except in so far as the will may be revoked or altered by any subsequent will made valid by those sections.