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DEPARTEMENT VAN JUSTISIE.

DEPARTMENT OF JUSTICE.

Onderstaande Wetsontwerp word ter algemene inligting gepubliseer.

The following Bill is published for general information.

WETSONTWERP

Om die wetsbepalings betreffende die verlyding van testamente te konsolideer en te wysig.

(Deur die MINISTER VAN JUSTISIE ingedien te word.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

Woordbepaling.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) „bevoegde getuie” iemand wat agtien jaar of ouer is en op die tydstip wanneer hy ’n testament attesteer, nie onbevoeg is om in ’n geregshof getuienis af te lê nie; (i) 5
 - (ii) „Hof” ’n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika of die Hoë Hof van Suidwes-Afrika of ’n regter daarvan; (ii) 10
 - (iii) „Meester” ’n Meester van die Hooggeregshof van Suid-Afrika, die Assistent-Meester te Kimberley of die Meester van die Hoë Hof van Suidwes-Afrika; (iii) 15
 - (iv) „onderteken” in die geval van ’n erflater, ook die maak van ’n merk, maar in die geval van ’n getuie, nie ook die maak van ’n merk nie, en het „handtekening” ’n ooreenstemmende betekenis. (iv) 20

Vormvereistes by die verlyding van ’n testament.

2. (1) Behoudens die bepalinge van artikel drie—
 - (a) is geen testament wat op of na die eerste dag van Januarie 1953, verly word, geldig nie tensy—
 - (i) die testament aan die end daarvan deur die erflater of iemand anders in sy teenwoordigheid 25 en in opdrag van hom onderteken word; en
 - (ii) bedoelde handtekening in teenwoordigheid van twee of meer bevoegde getuies wat gelyktydig teenwoordig is deur die erflater of deur bedoelde ander persoon aangebring word of deur die 30 erflater en, indien dit deur bedoelde ander persoon aangebring word, ook deur daardie ander persoon erken word; en
 - (iii) bedoelde getuies die testament in teenwoordigheid van die erflater en, indien die testament 35 deur bedoelde ander persoon onderteken word, ook in teenwoordigheid van daardie ander persoon, attesteer en onderteken; en
 - (iv) indien die testament meer dan een bladsy beslaan, elke bladsy deur die erflater of deur bedoelde 40 ander persoon en deur bedoelde getuies onderteken word;
 - (b) is geen skrapping, byvoeging, verandering of tussenskrif wat in ’n testament wat op of na genoemde datum verly is, en na verlyding daarvan aangebring word, 45 geldig nie tensy—
 - (i) die skrapping, byvoeging, verandering of tussenskrif deur die handtekening van die erflater of deur die handtekening van iemand anders in sy teenwoordigheid en in opdrag van hom aange- 50 bring, bevestig word; en
 - (ii) bedoelde handtekening in teenwoordigheid van twee of meer bevoegde getuies wat gelyktydig teenwoordig is, aangebring word deur die erflater of deur bedoelde ander persoon of deur die 55 erflater en, indien dit deur bedoelde ander persoon aangebring word, ook deur daardie ander persoon erken word; en
 - (iii) die skrapping, byvoeging, verandering of tussenskrif ook bevestig word deur die handtekeninge 60 van bedoelde getuies in teenwoordigheid van die erflater aangebring en indien die skrapping, byvoeging, verandering of tussenskrif deur die handtekening van bedoelde ander persoon bevestig word, ook in teenwoordigheid van bedoelde 65 ander persoon.

BILL

To consolidate and amend the law relating to the execution of wills.

(To be introduced by the MINISTER OF JUSTICE.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates—

Definitions.

- 5 (i) "competent witness" means a person of the age of eighteen years or over who at the time he witnesses a will is not incompetent to give evidence in a court of law; (i)
- 10 (ii) "Court" means a provincial or local division of the Supreme Court of South Africa or the High Court of South-West Africa or any judge thereof; (ii)
- 15 (iii) "Master" means a Master of the Supreme Court of South Africa, the Assistant Master at Kimberley or the Master of the High Court of South-West Africa; (iii)
- (iv) "sign" includes in the case of a testator the making of a mark but does not include the making of a mark in the case of a witness, and "signature" has a corresponding meaning. (iv)

20 2. (1) Subject to the provisions of section *three*—

Formalities required in the will.

- (a) no will executed on or after the first day of January, 1953, shall be valid unless—
- 25 (i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and
- 30 (ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and
- 35 (iii) such witnesses attest and subscribe the will in the presence of the testator and, if the will is signed by such other person, in the presence also of such other person; and
- (iv) if the will consists of more than one page, each page is signed by the testator or by such other person and by such witnesses;
- 40 (b) no deletion, addition, alteration or interlineation made in a will executed on or after the said date and made after the execution thereof shall be valid unless—
- 45 (i) the deletion, addition, alteration or interlineation is identified by the signature of the testator or by the signature of some other person made in his presence and by his direction; and
- 50 (ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and
- 55 (iii) the deletion, addition, alteration or interlineation is further identified by the signatures of such witnesses made in the presence of the testator and, if the deletion, addition, alteration or interlineation has been identified by the signature of such other person, in the presence also of such other person.

(2) 'n Skrapping, byvoeging, verandering of tussenskrif wat in 'n na bedoelde datum verlyde testament aangebring word, word, by die toepassing van sub-artikel (1), vermoed tensy die teendeel bewys word, aangebring te gewees het nadat die testament verly was.

5

Soldatetestamente.

3. (1) Enigiemand kan, terwyl hy op aktiewe diens is by enige van die land-, lug- of seemagte van die Unie of van enige ander met die Unie geallieerde of geassosieerde land in enige oorlog, 'n testament maak sonder om aan die by artikel twee voorgeskrewe vormvereistes of enige ander vormvereistes 10 hoegenaamd, te voldoen, en kan 'n testament mondeling sowel as skriftelik maak.

(2) So 'n testament, hieronder 'n soldatetestament genoem, is geldig indien die maker daarvan sterf terwyl hy by bedoelde magte op aktiewe diens is of binne een jaar nadat by opgehou 15 het om aldus op aktiewe diens te wees.

(3) 'n Soldatetestament wat deur die maker daarvan onderteken is, kan op aansoek by die Meester wat magsbevoegdheid het deur daardie Meester sonder 'n hofbevel aanvaar word mits hy deur getuienis by wyse van beëdigde verklaring oortuig is 20 dat dit 'n ingevolge sub-artikels (1) en (2) geldige testament is.

(4) Iemand wat hom deur die Meester se aanvaarding van die testament veronreg voel, kan binne dertig dae na die aanvaarding, of binne so 'n verdere tydperk as wat die Hof op gegronde redes mag tōestaan, en na bestelling van kennisgewing 25 aan enigiemand wat deur die aanvaarding geraak word, by die Hof wat regsbevoegdheid het aansoek doen om 'n bevel tot die nietigverklaring van die aanvaarding, en die Hof kan die aanvaarding bekragtig of nietig verklaar of so 'n ander bevel 30 uitvaardig as wat hy mag goedvind.

(5) Indien 'n soldatetestament mondeling gemaak is of, indien 'n soldatetestament hoewel dit op skrif is nie deur die maker daarvan onderteken is nie of, indien 'n soldatetestament deur die maker daarvan onderteken is maar die Meester geweier het om dit te aanvaar, kan die Hof wat magsbevoegdheid het, 35 die Meester op aansoek gelas, indien die Hof oortuig is dat die testament 'n ingevolge sub-artikels (1) en (2) geldige testament is, om die testament te aanvaar en indien nodig, kan hy die bepalings van die testament vasstel en enige verdere of ander bevel wat hy goedvind, uitvaardig. 40

(6) Kennisgewing van 'n aansoek ingevolge sub-artikel (3) of (5) word, tensy die Hof anders gelas, aan die eggenoot en intestaat erfgename van die oorledene bestel en ook aan iemand wat geregtig mag wees om uit hoofde van 'n vorige testament van die oorledene 'n vordering te doen indien dit bekend is 45 dat so 'n vorige testament bestaan.

Bevoegdheid om 'n testament te maak.

4. Elkeen wat agtien jaar oud of ouer is kan 'n testament maak tensy hy wanneer hy die testament maak verstandelik onbekwaam is om die aard en uitwerking van sy handeling te begryp, en die bewyslas dat hy op daardie tydstip verstandelik 50 onbekwaam was, rus op die persoon wat dit beweet.

Getuies kan geen voordeel uit 'n testament ontvang nie.

5. Iemand wat die verlyding van 'n testament attesteer of die eggenote van so iemand, of 'n regsverkrygende van so iemand of sy eggenote, is onbevoeg om enige voordeel hoege- 55 naamd uit daardie testament te ontvang.

Getuie kan nie as eksekuteur ens. benoem word nie.

6. Indien iemand die verlyding van 'n testament attesteer ingevolge waarvan daardie persoon of sy eggenote tot eksekuteur, administrateur, trustee of voog benoem word, is bedoelde benoeming nietig.

Herroeping van wette.

7. Die in die Bylae genoemde wette word hiermee herroep 60 vir sover in die vierde kolom van die Bylae aangedui word: Met dien verstande dat die aldus herroepe wette op 'n testament wat voor die eerste dag van Januarie 1953 verly is, van toepassing bly.

Toepassing in Suidwes-Afrika.

8. Hierdie Wet is ook in die gebied Suidwes-Afrika van toe- 65 passing.

Kort titel.

9. Hierdie Wet heet die Wet op Testamente, 1952.

(2) Any deletion, addition, alteration or interlineation made in a will executed after the said date shall for the purposes of sub-section (1) be presumed, unless the contrary is proved, to have been made after the will was executed.

5 3. (1) Any person while on active service with any of the land, air or naval forces of the Union or of any other country allied to or associated with the Union in any war, may make a will without complying with the formalities prescribed by section two or with any formalities whatsoever, and may make
10 a will orally as well as in writing. Soldiers' wills.

(2) Such a will, hereinafter called a soldier's will, shall be valid if the maker thereof dies while he is, or within one year after he has ceased to be, on active service with such forces.

(3) A soldier's will, signed by the maker thereof, may on
15 application to the Master having jurisdiction, be accepted by that Master without an order of court, provided he is satisfied by evidence on affidavit that it is a valid will in terms of sub-sections (1) and (2).

(4) Any person aggrieved by the Master's acceptance of the
20 will may, within thirty days after the date of such acceptance, or within such further period as the Court may on good cause allow, and after service of notice upon any person affected by such acceptance, make application to the Court having jurisdiction for an order setting aside such acceptance and the
25 Court may confirm or set aside such acceptance or make such other order as it may deem fit.

(5) If a soldier's will is made orally or if a soldier's will although made in writing is not signed by the maker thereof or if a soldier's will is signed by the maker thereof but the Master
30 has refused to accept it, the Court having jurisdiction may on application, if the Court is satisfied that the will is a valid will in terms of sub-sections (1) and (2), direct the Master to accept the will and, if necessary, may settle the terms of the will and may make such further or such other order as to it seems fit.

(6) Notice of any application under sub-section (3) or (5) shall, unless the Court otherwise directs, be served on the spouse and intestate heirs of the deceased and also on any person who may be entitled to claim under any previous will made by the deceased, if such previous will is known to exist.

40 4. Every person of the age of eighteen years or more may make a will unless at the time of making the will he is mentally incapable of appreciating the nature and effect of his act, and the burden of proof that he was mentally incapable at that time shall rest on the person alleging the same. Competency to make a will.

45 5. A person who attests the execution of any will or the spouse of such person, or any person claiming under such person or his spouse, shall be incapable of taking any benefit whatsoever under that will. Witnesses cannot benefit under a will.

50 6. If any person attests the execution of a will under which that person or his spouse is nominated as executor, administrator, trustee or guardian, such nomination shall be null and void. Witness cannot be nominated as executor, etc.

7. The laws specified in the Schedule are hereby repealed to the extent set forth in the fourth column of the Schedule: Repeal of laws.
Provided that the laws so repealed shall continue to apply in
55 respect of any will executed before the first day of January, 1953.

8. This Act shall apply also in the Territory of South-West Africa. Application to South-West Africa.

9. This Act shall be called the Wills Act, 1952.

Short title.

Bylae.

HERROEPE WETTE.

Provinsie of Unie.	No. en Jaar van Wet.	Titel of Onderwerp van Wet.	In hoeverre herroep.
Kaap die Goeie Hoop.	Ordonnansie No. 15 van 1845.	Verlyding van Testamente.	Soveel as wat nog nie herroep is nie.
Do.	Wet No. 22 van 1876.	„Attesting Witnesses Act, 1876.”	Die geheel, behalwe artikel <i>twee</i> vir sover dit op volmagte van toepassing is.
Do.	Wet No. 3 van 1878.	„Wills Attestation Amendment Act, 1878.”	Die geheel.
Natal ..	Ordonnansie No. 1 van 1856.	Testamentêre beskikkings van in Natal gebore onderdane van Groot-Brittanje en Ierland.	Die geheel.
Do.	Wet No. 2 van 1868.	Verlyding van Testamente en Kodisille.	Die geheel.
Oranje-Vrystaat.	Ordonnansie No. 11 van 1904.	„Execution of Wills and Other Testamentary Instruments Ordinance, 1904.”	Artikels <i>een</i> tot en met <i>vyf</i> en artikels <i>sewe</i> en <i>tien</i> vir sover laasgenoemde twee artikels op testamente van toepassing is.
Suidwes-Afrika.	Proklamasie No. 23 van 1920.	„Wills Proclamation, 1920.”	Die geheel.
Transvaal ..	Ordonnansie No. 14 van 1903.	„Wills Ordinance, 1903.”	Die geheel.
Unie	Wet No. 14 van 1920.	„Testamenten Ordonantie 1903 (Transvaal) Wijzigings Wet, 1920.”	Die geheel.

Schedule.

LAWS REPEALED.

Province or Union.	No. and Year of Law.	Title or Subject of Law.	Extent of Repeal.
Cape of Good Hope.	Ordinance No. 15 of 1845.	Execution of Wills ..	So much as is unrepealed.
Do.	Act No. 22 of 1876	Attesting Witnesses Act, 1876.	The whole, excepting section <i>two</i> insofar as it applies to powers of attorney.
Do.	Act No. 3 of 1878	Wills Attestation Amendment Act, 1878.	The whole.
Natal ..	Ordinance No. 1 of 1856.	Testamentary dispositions of Natal-born subjects of Great Britain and Ireland.	The whole.
Do.	Law No. 2 of 1868	Execution of Wills and Codicils.	The whole.
Orange Free State.	Ordinance No. 11 of 1904.	Execution of Wills and other Testamentary Instruments Ordinance, 1904.	Sections <i>one</i> to <i>five</i> inclusive and sections <i>seven</i> and <i>ten</i> insofar as the two last mentioned sections apply to wills.
South - West Africa.	Proclamation No. 23 of 1920.	Wills Proclamation, 1920	The whole.
Transvaal ..	Ordinance No. 14 of 1903.	Wills Ordinance, 1903 ..	The whole.
Union ..	Act No. 14 of 1920	Wills Ordinance, 1903 (Transvaal) Amendment Act, 1920.	The whole.