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EXAMINING THE CONCEPT OF A VALID WILL IN NIGERIA

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Abstract
The importance of speaking from the grave cannot be overemphasized, because should a man fail to do this and die intestate, his assets will be distributed in accordance with Administration of Estates Law or his customary law and not according to his wishes. A Will is a legal document executed by a testator, expressing his or her wishes as regards the means by which his or her property is to be distributed upon their demise, they are often required to name one or more persons (the executor), to manage the estate pending its final distribution. A deceased person may choose to leave a gift for people outside his relation or for charity in his Will but this might not be possible if such deceased person did not leave a Will. In making of a Will, certain problems may arise most especially if the Will was drafted by a non-lawyer, the testator may fail to sign the Will, the person who drafted the Will may handwrite only certain portions of the Will or may fail to have witnesses as required by law even when witnesses are present they may be persons who by law should not attest to the Will such persons include any beneficiary of the Will. A Will is like an umbrella, it covers all kinds of property, imaginable and unimaginable assets such as copyright, patent, and right to trade mark, movable and immovable property. The aim of this paper is to examine the importance of a will and the ingredients that must be present before a valid Will can be birthed. This paper further examines the elements for a valid Will, the procedures for its execution, amendment and revocation in Nigeria. This paper advocates the need for individuals to draft a Will especially individuals in polygamous families, as Will reduces the incidence of conflict which arises when sharing a deceased person's estate among family members.
Keywords: Will, Validity, Deceased, Testator, Beneficiary, Estate

Introduction

In many countries, which Nigeria is not exempted a single or a married person in Nigeria can dispose of his/her property through a Will to avoid the state from taking charge of the distribution of such person's estate upon their demise. The idea or thought of making a Will to an average Nigerian is often interpreted as superstitious beliefs of wishing death on the individual, it is one largely frowned upon and not embraced by many, but in reality a Will is as important as acquiring

assets especially when one has a large family that may not easily agree on sharing after one's demise.

A Will allows a Testator to choose trustworthy persons as his Executors, who will take into consideration the interests of the beneficiaries.[1] When a person dies intestate (without a Will), only certain categories of people can become Executors and these persons may not deal with the estate fairly. Most people associate the making of a Will with the anticipation of death but asides the unrealistic notion of one making a will the act of making a Will does not mean that a person will die soon neither does it hasten death. It only ensures that upon a person's demise, the properties of the person will be shared in accordance with his/her wishes amongst the person's beneficiaries.

The importance of a Will cannot be over emphasized, It determine how assets will be shared, the appointment of executors for the estate, to avoid your properties being shared according to customary law, to avoid incessant suits in court, to take care of other incidental matters like guardianship and funeral arrangements most importantly to promote peace among the people left behind. Making of a Will is in fact one of the most critical things you can do for your loved ones.

The outcome of the paper is to give an overview of the meaning of wills and its validity, its testamentary capacity and various limitations, Execution, amendment and Revocation of Valid will in Nigeria. The various statutes applicable to Wills in Nigeria are Wills Act 1837, The Wills (Amendment) Act, 1852, Wills Law of various states, Administration of Estate Laws of the various states, High Court (Civil Procedure) Rules of various states, Evidence Act, Marriage Act, the 1999 Constitution and case laws/judicial precedents.

Thus, this paper seeks to expose the reader to the following:
(i) The meaning of a Will; (ii) Benefits of making a Will; (iii) The types of Will; (iv) Capacity of a person to make Will; (v) Validity of a Will and, (vi) Custody of a Will.

What Is a Will?

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[1] F Saiki "The importance of making a will in Nigeria" 2019, Mondaq connecting knowledge & people, available at https://www.mondaq.com/nigeria/wills-intestacy-estate-planning/877884/importance-of-making-a-will-innigeria, accessed on 20 August, 2022

A will is a testamentary and revocable document, voluntarily made, executed and witnessed according to law by a testator, wherein he disposes of his property subject to any limitation imposed by law giving such other directives as he may deem fit to his personal representative otherwise known as his executors. The executor administers his estate in accordance with the wishes manifested in his will.[2] In ***Asika v. Atuanya,***[3] the Supreme Court noted that a will has two distinct meanings. A will be sacrosanct because the wishes of the testator in the will are his last wishes and testament which applies to his declared estate.[4]

A Will is a legal document in which a testator names executor to govern his or her estate (assets and properties) after his or her death and instructs how it should be dispersed to the beneficiaries (the people who are to benefit from the Will, such as family and friends). A will can also be defined as the declaration in a prescribed manner of the intention of the person making it with regards to matters wish he wishes to take effect upon or after his death.[5] A will must be made voluntarily without any external influence. The will must be signed by the testator or any person he chooses on his behalf who then must sign in his presence and by his directions. The testator must acknowledge his signature in presence of two (2) witnesses who must be present at the same time.

Reasons/Advantages of Making A Will

1. It excludes or limits the application of customary rules of inheritance
2. A testator can appoint trusted persons to manage his estate.
3. A valid will confers authority on the executors to act immediately following the death of the testator.
4. It ensures positive display of wishes of the testator.
5. It is easier to obtain probate because a grant of letter of administration involves additional expenses of bonds and sureties.
6. It gives the Testator's peace of mind and sense of fulfilment.
7. The testator gives special directives as to the disposition of his property.
8. The testator may give additional directives as to his burial.
9. It enables the testator to decide who should inherit any property in his estate.

[2] K Abayomi, Wills: Law and Practice (Lagos, Mbeyi & Associates (Nig) Ltd, 2004).
[3] (2014) AFWLR, part 710, p. 1264.
[4] Asika v. Atuanya (2008) ALL FWLR part 433, p. 1293 at 1317
[5] Halsbury's Law of England, 3rd ed (United Kingdom, LexisNexis Butterworth, 1964) Vol.3a, p.842.

Reasons for the Undesirability in Making A Will

A lot of people do not make Wills for the following reasons:

(a) Ignorance. (b) Illiteracy and lack of exposure (c) Superstitions (d) Lack of trust.

3.0 Types of Wills and Validity

Having defined a will above, it is important to expatiate on the available types of a will recognized by the Nigerian judicial system. While discussing these types of will, each type would be x-rayed in its merits pointing out distinct measures that render them valid;

(a) Statutory Will: These are wills made in accordance with the provisions of the relevant statutes in force.[6] To be valid, the will must confirm with the requirement prescribed by the relevant statute in the English Wills Act 1837, The Wills Act (Amendment Act) 1852 and The Wills Act (Lord King down's Act)1861. The requirement for the execution of a valid will are stipulated under Section 9 of the Act, to include:

a. The will must be in writing.

b. The testator must sign his/her will or direct some other person to do so his his/her presence;

3. The relevant signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time;[7] and

4. The witnesses must attest and subscribe the will in the presence of the testator;

Note that the testator from the above requirements the testator is expected to hire a competent hand sufficient to reflect his wishes within the statutory bounds.

(a.) Writing

Every valid Will must be in writing. No particular form of writing is required; therefore, it may be typed, printed or even handwritten. The language must not only be English. It can be on any language;[8] *Whiting v. Turner*,[9]

[6] Wills Act 1837, Wills Act Amendment Act 1852, Wills Law of the Old Region of Nigeria, 1958 Wills Edict 1990 of Lagos State, Wills Edict 1990 of Oyo State.

[7] Apatire v Akanke (1953) 13 W.A.C.A. 347; Also, Illiterates Protection Act and Law; Laws of the Federation of Nigeria, 1958, Cap 83

[8] Section 9 Wills Act; Section 4 Wills Law Lagos.

[9] (1903) 89 L. 71

(b) Signed by the Testator

The Will must be signed by the testator. A signature may be an initial, across, rubber stamp,

A testator may sign the Will in 3 ways, these includes:

a. Signing the Will in the presence of at least 2 witnesses who must in his presence also attest to the Will.
b. The testator may appoint a third party to sign the Will and adopt it in the presence at least 2 other witnesses
c. The Testator himself may pre-sign the Will and later acknowledge same as his signature in the presence of at least 2 witnesses.[10]

Attestation by the Witnesses

The witnesses must be present at the same time when the testator is signing though they may not be present when each of them is signing see ***Chodwick v. Palmer***,[11]

NOTE: A Witness must sign in his own hand and cannot direct another to Sign on his behalf as a witness.

Beneficiaries or their Spouses Attesting a Will

The general rule is that a beneficiary to a Will and his/her spouse cannot take the gift made to them under a Will if either of them is a witness to the Will. Any gift made to such person will be utterly null and void;[12]

Exception to the above rules are:

1. Where a witness had signed the Will before marrying a beneficiary under the Will.
2. There are more than 2 witnesses who attested to the Will and one of them benefited from the Will.
3. The gift was made to the witness in settlement of a debt.
4. Where the witness holds the gift as a trustee under the will.
5. The gift was subsequently confirmed in another Will or codicil, which is not attested to by the beneficiary.

[10] Section 9 Wills Act; Section 4 Wills Law Lagos

[11]

[12] Section 15 Wills Act; Section 8 Will Law Lagos.

6. The witness is subsequently appointed a Solicitor to the Will which contained a charging clause.

(b) Nuncupative Wills: Some decades ago, Meek,[13] defined a *nuncupative will as: "a declaration made voluntarily and orally by a person of sound mind, in expectation of death in the presence of a disinterested persons"*. It is oral and takes effect under customary law- a directive of someone made in anticipation of death before a credible witness. Such directives are usually enforced with the consent of the testator's family.[14] Thus, a nuncupative will may be invalid if made in secret (in the absence of a witness).[15]

Similarly, Obi[16] wrote: *"the presence of a disinterested witnesses is necessary, for purposes of proof of the declaration"*.

It is submitted thus, that the essential elements of a nuncupative will are;
(a) The identity of the subject matter, this in effect means that the particular item must be specified;
(b) The identity of the beneficiary; and
(c) The absolute ownership of the property in question.[17]
(c) Written Customary Wills: Nwogugu,[18] stated: writing is not an intrinsic feature of customary law, where the customary law Will was not drafted by a solicitor. Where the written customary law Will was not drafted by a solicitor, it must be proved to be genuine. There are two schools of thought on the validity of a written will. Odje appears to suggest that any such document must fall or rise with the provisions of the general statue relating to Wills.[19] A written will is usually a typed Will that has to be dated and signed in front of two witnesses. The two witnesses must also sign the Will. All three (you and your two witnesses) must be together when signing. The two witnesses cannot be beneficiaries under the Will.

Capacity of a Will

[13] C K Meek Land Tenure and Land Administration in Nigeria in colonial Research Studies, No.22 (London, H.M.S.O 1957) p. 182.
[14] Ibid.
[15] Ayinke v. Ibudunmi (1959) 4 F.S.C. 280, at pp. 281-282.
[16] S N C Obi Ibo Law of Property (African Law) (United Kingdom, Butterworth, 1963) at p.248.
[17] E I Nwogugu, Family in Nigeria (Ibadan, Heinemann Educational Books Nig. Ltd 1990) Pp.396-397
[18] E I Nwogugu (n.13) at p.397
[19] B W Harvey," The Law and Practice of Nigerian Wills, Probate and Succession" (London, Sweet &Maxwell, 1968) at p. 45

(i) Testamentary Capacity: In the common law tradition, testamentary capacity is the legal term used to describe a person's legal and mental ability to make or alter a valid will. This concept has also been called sound mind and memory or disposing mind and memory.
These are the elementary criteria to be possessed by an individual before he is qualified in law to make a valid Will. The testator must possess the Testamentary Capacity to make a valid Will. Testamentary Capacity involves two main criteria; that is:

(i) Age and (ii) Mental capacity

Testamentary Capacity of a person to make a will

The testator must have testamentary capacity i.e. he must be 18 or 21 above depending on the applicable law, the age requirement maybe set out as follows-

(a) Under the Wills Act, the legal age by which a person can make a Will is twenty-one years.[20]

(b) Lagos State- Section 3 of Wills Law Lagos State provides that the legal age in Lagos State is eighteen years.[21]

(c) Kaduna State – Section 6 of Wills Law of Kaduna State provides that the legal age in Kaduna State is eighteen years.[22]

(d) Abia State – the legal age is also eighteen years.[23]

(e) Oyo State- Section 5 Wills Edict of Oyo State the legal age in Oyo State is eighteen years.[24]

The EXCEPTION to the above rule of the requirement of age is a privileged Will allowed to be made by members of the Military who are below the age limit of adulthood even though he is a minor and such Will need not comply with the rigorous formalities prescribed by law.[25] There are as follows:

(a) Soldiers in actual military service (at war) (b) Sea Men at sea (c) Mariners at sea (d) Crew of commercial airlines in the Air;[26]

[20] Section 7 of Wills Act 1837
[21] Wills Law Lagos State Cap. W2 Laws of Lagos State, 2004.
[22] Wills Law Cap. 163 of Kaduna State of 1991.
[23] Wills Law Abia State Cap. 37 Laws of Abia State 1999.
[24] Wills Edict of Oyo State 1990.
[25] Section 8 Wills Edict Oyo; Section 6 Wills Edict Lagos; Section 9 Wills Law Western Region
[26] Section. I1 Wills Act; Section. 6 Wills Law Lagos

In the States in which the Wills Act of 1837 is still the applicable law, there is unrestricted testamentary freedom. Testators in those States are free to dispose of their properties to whomever they wish, even if they choose to disregard their family members and dependants and give all their properties to complete strangers.[27] The applicable section is Section 3 (1) which reads as follows: It shall be lawful for every person to demise, bequeath or dispose of, by his Will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death …

Although, Section 3 of the Wills Act 1837 stipulates that there is no restriction to testamentary freedom, this absolute testamentary freedom as in the Wills Act of 1837 was criticized on moral, customary and religious grounds. It was argued that it could lead to testators disinheriting his dependents in favour of strangers, which would cause hardship to those dependents.[28]

Limitations to Testamentary Capacity/ Freedom include:
I. *Customary Law Limitation:* This restriction serves to restrict the property that can be disposed of by will. S. 3 (1) of the Wills Law of the former Western Region. This statutory limitation recognized that complete testamentary freedom could upset some established rules in our Customary Laws. Belgore JSC explains this in case of *Lawal–Osula v. Lawal– Osula*,[29].

There was confusion as to the effect of S. 3 (1) of the Wills Law of Western Nigeria, i.e. whether it operated to take away the testamentary capacity of all person's subject to any Customary Law or if it merely qualified the property that could be disposed of in a will.[30]

For example, in the case of *Idehen v. Idehen*,[31] this was a case involving the Bini Customary Law. The court therefore held that the part of the will devising the houses to the deceased eldest son as invalid but upheld the remaining part of the will as valid. At the Court of Appeal, the plaintiff's right to the two houses was upheld but the entire will was declared void reason being that the dispositions under were all void. Upon further appeal, the Supreme Court however held that

[27] A I Fenemigbo, "Statutory Limitation to Testamentary Freedom" 2013 avaliable at https://www.ajolilnfo/index.php/naujiliji/view136294/125784. Accessed on 20 August, 2022
[28] I Sagay Nigerian Law of Succession (Lagos, Malthouse Press Ltd, 2007) p.127
[29] [1995] 32 LRCN 291
[30] I Sagay (n.25) p. 141
[31] (1991) 6 NWLR (Pt. 198) 382.

Section 3 (1) of the Wills Law of Old Bendel State,[32] related only to the subject matter of a demise, that is, it restricted only the property that could be passed under a will, and that it was not intended to take away the testamentary capacity of a testator i.e. his ability to make a will.

II. *Islamic Law Limitation*: The Supreme Court decision in ***Adesubokun v. Yunusa***.[33] In this case, the Supreme Court held that the testator intended to distribute his property under the Wills Act and thus Islamic Law could not be applied to him. According to Dadem, it was perhaps in response to the complete testamentary freedom approved by the Supreme Court in the case of ***Adesubokun v. Yunusa,***[34]. This restriction is now subsumed under the Wills Law of Kaduna State, the Wills Law of Oyo State, the Plateau State Wills Edict,[35] the Bauchi State Wills Law,[36] the Kwara State Wills Law[37] and the Jigawa State Wills Law.[38] This was also held in the case of *Ajibaiye v. Ajibaiye,*[39] where contrary to the wishes of the testator, excluding the application of Islamic law in disposing of his property.

III. *Provision for Family and Dependents*: This is recognized by statutes. Section 2,[40] provides that notwithstanding the provisions of a testator's/testatrix's will, the wife or husband as the case may be or the children may apply to the court on the ground that the dispositions in the will did not make reasonable financial provisions for his dependents. The application is made at the High Court of a State.

This reasonable financial provision in the case of an application by a spouse save when the marriage was subject to a decree of judicial separation, means such financial provision as would be reasonable in all the circumstances of the case for the spouse to receive, whether such is required for his or her maintenance or not.[41] Section 2(3) goes on to stipulate that all applications must be brought within a period of six months from the grant of probate.

[32] Cap 172 of 1976, applicable in Edo State.
[33] [1971] 1 All NLR 225
[34] Ibid.
[35] No. 2 of 1988.
[36] Cap 168 Laws of Bauchi State 1989
[37] Cap 168 Laws of Kwara State 1991
[38] Cap 155 Laws of Jigawa State 1998
[39] (2007) All FWLR (Pt. 359) 1321
[40] Wills Law of Lagos State Cap. W2 Laws of Lagos State, 2004.
[41] Wills Law of Lagos State, Section 2 (2).

Mental Capacity

A testator must have the mental capacity or sound-disposing mind to make a Will. This must be present both at the time of giving instructions for his Wilt to be prepared and at the time of its execution. For a testator to possess the testamentary capacity to make a will, three things must exist which are namely:

(a) The testator must understand that he is giving his property to one or more objects of his regard;
(b) He must understand and recollect the extent of his property.
(c) He must also understand the nature and extent of the claim upon him both of those whom he is including in his will and those he is excluding from his will.

In ***Okelola v Boyle,***[42] Onu J.S.C, observed that no person is capable of making a will who is not of sound mind, memory and understanding. That the testator's mind must be sound to be capable of forming the testamentary intentions in the will, his memory must be sound to recall the several persons who ought to be considered as his possible beneficiaries.

To proof a testator was of sound mind as at when he made the will the burden of proof is often on the beneficiary where a person alleges foul play, the evidence would be oral or documentary and include the following:
(a) Evidence that the will was indeed written by the testator (b) Corroborating evidence of an attesting witness (c) Medical Evidence[43] (d) The routine and habits of the testator.[44]

The test for determining if the testator has mental capacity or a sound-disposing mind when making his Will was laid down in the case of Banks v. Goodfellow,[45] was follows:

(a) The testator understands the nature and effect of making a Will.
(b) He recollects all the properties he wishes to dispose, i.e. he knows the extent of his estate: ***Adebajo v. Adebajo.***[46]
(c) He recollects and appreciates the persons who are the intended beneficiaries.

[42] (1998)2 NWLR part 539, p, 533.
[43] Adebajo v Adebajo (1971) ALL NLR p. 155.
[44] Ibid.
[45] (1870) LR 5QB 549
[46] (1993) LCN/1742(SC)

(d.) He remembers and clearly states the manner in which the estate is to be distributed between
the beneficiaries

Blind Persons Capacity to Make a Will
A blind person can make a Will, however, for the Will to be valid, a special attestation clause must be inserted to the Will as evidence of having read the Will to him. It is called blind person's jurat.

NOTE: A blind person cannot attest or act as a witness to a Will because his disability makes it impossible for him to see the signature of the testator and he act of signing the document.

Amendment of a Will
A will is amended with the use of codicils. A codicil is a legal document that dictates any modifications or amendments to your last Will and Testament. According to Wikipedia,[47] A codicil is a testamentary or supplementary document similar but not necessarily identical to a will. In some jurisdictions, it may serve to amend rather than replace a previously executed will. In others, it may serve as an alternative to a will. In still others, there is no recognized distinction between a codicil and a will. Order 49, Rule 27(2) of the Federal Capital Territory Abuja High Court Civil Procedure Rules 2004, states that "The provisions respecting Wills shall apply equally to codicils."

Specifically, a codicil performs the following functions:
(a) It may affirm the contents of a will. (b) It may alter or amend the provisions of a will.
(c) It may correct a clerical error in a will and validate alterations in a will. (d) It may revoke a will.

Vitiating Elements of a Valid Will
The following can make a valid Will invalid;
a. Insane Delusion (b) Undue influence (c) Fraud (d) Mistake (e) Suspicious circumstances

(a) Insane Delusion

[47] https://en.wikipedia.org accessed 22 August, 2022

Delusion is a belief which no rational person could hold but which reasoning with the testator cannot eradicate from his mind and which is capable of influencing the provision of his will. The Delusion must influence disposition to render the will invalid-***Battan- Singh v. Armichand;***[48] ***Amu v. Amu***.[49] There must be a nexus between the delusion and the disposition of the will.

(b) Undue Influence

Undue influence is coercion to make a will in a particular way ***Hall v. Hall,***[50] an undue influence must be proven not presumed. In the case of ***Money- penny v. Brown,***[51] the wife was holding the hand of the testator on his sick bed and was directing what he wrote, the Will was set aside for undue influence: see also ***Myn v Robinson***.[52] However, mere existence of fiduciary relationship or immoral consideration (for instance where the testator was living with his mistress until his death) does not, imply undue influence: ***Johnson v Maja***.[53]

(c) Suspicious Circumstance

This is a situation where the circumstances surrounding the Will are such that casts doubt in the mind of the court to the effect that the Will may not constitute the free will of the testator. For instance, where; the sole beneficiary is the solicitor or the neighbour of the testator; ***Wintle v. Nye;***[54] ***Okelola v Boyle***.[55]

Wills and Probate

A person can make arrangements as to how his/her estate shall be managed after death. This is normally done through the making of a Will. When a Testator dies, it is the lot of an executor, if he is willing to act, to assume control and management of the estate and to take necessary steps for its administration. A person appointed an executor is not bound to take up the office. An Executor is defined as a person appointed by a Testator in a Will to administer the property of the Testator and carry into effect the provisions of the Will.[56]

Custody of Will

[48] (1948) LJR 827
[49] (1999) 3 PLR (CA)
[50] (1868) LR1 P&D 481
[51] (1711) HL/PO/JO/5
[52] 2 Hagg. Eccl. Rep. 179.
[53] (1951) 13 WACA 290.
[54] (1959) 1 WLR 284, 291 (HL)
[55] (1998) 2 NWLR (PT. 539) 533. SC
[56] MUDASHIRU V ABDULLAHI (2011) 7 NWLR (PT 1247) 591

A will can be kept in the following places:
The Testator's safe box; (b) At the Probate Registry; (c) Banks (d) With a trusted friend or relative; (e) With the Solicitor who drafted the Will; (f) With an executor of the Will.

A Testator may deposit his Will for safe custody at the Registry upon payment of the prescribed lodgement fee and the Will so lodged must be sealed under his seal and the seal of the Court.[57]

Order 62 Rule 2 of the High Court of Lagos State (Civil Procedure Rules) 2019 provides that:
"*An original Will, of which probate or administration with Will annexed is granted, shall be kept in the Probate Registry in such manner as to secure its convenient inspection.*"
However, it is recommended that the Will be preserved at the probate register to facilitate the process of searching for and discovering the Will.

Revocation of Wills
A Will may be revoked or made invalid either by the acts of the testator or by implication of the law. There are four ways in which a Will maybe revoked are as follows; by marriage, by making another Will, by writing to revoke and by destruction.[58]

i. *Revocation of Will by Marriage*
The position of the law is that if a testator after making a Will contracts a valid marriage under the Act, the Will is impliedly revoked by that marriage. As noted above, the testator's marriage will automatically revoke any existing wills and codicils.[59] This revocation occurs by operation of law, whether or not the testator wishes or intends such a revocation.

In Lagos State, the typical law states: "Every Will made by a man or woman shall be revoked by his or her marriage (other than a marriage in accordance with customary law) except: A will be expressed to be made in contemplation of the

[57] Order 62 Rule 1 Lagos State High Court (Civil Procedure) Rules 2019; Order 54 Rule 16 Delta State High Court (Civil Procedure) Rules 2009; Order 53 Rule 16 Edo State High Court (Civil Procedure) Rules 2012. Order 48 Rule 16 High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004
[58] Section 18 and 20 Wills Act, section 11 and 13 Wills Law Lagos State; section 14 and 16 Wills Law Kaduna State; Section 13 and 15 Wills Law Abia State; section 13 and 15 Wills Law Oyo State.
[59] Section 18 Wills; section 11 Will Law Lagos State.

celebration of that marriage. Provided that the names of the parties to the marriage contemplated are clearly stated"[60]

ii. *Revocation of Will by Voluntary Act*

Pursuant to Section 14 of the Wills Act, a will may be revoked, in whole or in part, by the formal execution of a written declaration of revocation, whether this declaration stands alone or is found as part of a subsequent will or codicil. To be effective, however, the testator must intend to rescind the prior will, in whole or in part. In ***Re Spracklan's Estate***,[61] the testatrix wrote a letter to the manager of her bank where the will was kept with the words "Will you please destroy the will already made out". She signed the letter and it was duly attested. The act was held to be revocation.

iii *Revocation of Will by Destruction*

In ***Cheese v. Lovejoy***,[62] the testator drew a line across the will and wrote the words 'revoked' he squeezed same and threw it in a waste bin. His maid picked it up and placed it on the table, where it remained until his death. The court held that there was no revocation of the Will. In ***Re Krushel Estate,***[63] torn bits were found in a bag of garbage after the deceased shot himself. The court held that the throwing away of a mutilated will did not amount to revocation because it was not proven that the mutilation was done at the request of the deceased. This decision was followed by the Nova Scotia Court of Appeal in ***Re Theriault estate***,[64].

iv. Partial Revocation

It is possible to only have a partial revocation of the contents of a will that is to revoke only particular gifts or appointments made under a will. In *Re Witham*,[65] the court admitted to probate a will that had been mutilated by scissors with certain clauses cut out. The court made this finding because one of the clauses had been pinned back to the will in another place.

v. *Conditional Revocation*

What happens when a will or codicil is revoked by a later will and that later will be ultimately found to be ineffective? In such a case, for example where the new

[60] Section 11 Wills Edict 1990 0f Lagos State and Section 13 Wills Edict of Oyo State which has identical provisions.
[61] (1938) 2 ALL ER 345.
[62] (1877)2 P & D 251
[63] (1990) 40 E.T.R. 129.
[64] (1997) N.S.J.No.36.
[65] (1938) 3 D.L.R. 142.

will is struck down for improper execution, lack of mental capacity, undue influence or the like, the court may breathe life back into the previous will. Williams & Mortimer catalogued three sub-heads of conditional revocation:

1. Purported and revocation due to a mistake of fact.[66]
2. Purported Revocation due to mistake of Law.[67]
3. Purported revocation effected as a preliminary to making a fresh Will.[68] It may do so by applying the doctrine of conditional revocation and finding that the testator's intention to revoke the first will was conditional on the new will being an effective substitution for it. The court will apply this doctrine to avoid an intestacy and admit the previous will into probate.

Conclusion

The importance of speaking from the grave cannot be overemphasized, because should a man fail to do this and die intestate, his assets will be distributed in accordance with Administration of Estates Law or his customary law and not according to his wishes.

Anyone who has children, property and assets should have a will. And, once drafted and signed, it should be reviewed every three to five years to ensure that it continues to reflect your life and wishes. With that, it can be updated according to any life changes, like marriage, having children, a death in the family, divorce, and property acquisition.

If an individual does not have a will, they have no say regards how their estate is distributed, dying without a will (known as 'dying intestate') would subject the estate to be distributed to your relatives according to a legal formula (called the 'intestacy rules'). This could be very different from what you wanted or intended to happen. Dying 'intestate' can also cause complications, delays and extra costs for those left behind. Dying intestate without any relatives closer than a first cousin automatically transfers your estate to the government.

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[67] Adam v. Southerden (1925), p. 177
[68] Powell v Powell (1866) L.R. 1P & D209.

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