

LAST WILL - SRI LANKA

Section 4 of the **Prevention of Frauds Ordinance** set out the requirements relating to the execution of Last Wills in Sri Lanka. These requirements are as follows: -

1. The Will or Codicil must be in writing;
2. It must be signed at the foot or end thereof by the testator or some other person in his presence and by his direction;
3. Such signature must be made or acknowledged by the testator either;
 - a. in the presence of a licensed Notary Public and two or more witnesses, or
 - b. in the presence of five or more witnesses;
4. The Notary and the two witnesses or the five witnesses must be present at the same time;
5. The Notary and the two witnesses must duly attest the execution, or the five witnesses must subscribe the Will in the presence of the testator.

This Section is similar to **Section 9** of the **English Wills Act**.

However it may be noted that a Notary may be dispensed if five witnesses are present. The duplicate of the Will need not be sent to the Registrar of Lands as is required in respect of other notarially attested documents.

All Wills must be in writing and the law of Sri Lanka does not recognize nuncupative Wills. The only exception is contained in **Section 14**, which provides that notwithstanding anything to the contrary contained in the Ordinance, any Soldier being in actual military service or any Mariner being at Sea may dispose of personal estate as he might have done before the Ordinance. In England this privilege has been extended to real property also.

The Will need not be in the handwriting of the testator himself. However under Roman Dutch Law if the Will is in the handwriting of a person who is given a benefit under the Will he cannot take such a benefit unless the testator adds a clause in his own handwriting to the effect that he dictated the Will and acknowledged its correctness or in some other manner confirm such a disposition.

The signature must be at the foot or end and it should be placed by the testator or other person in his presence and by his direction. The signature should not be in detached piece or paper. If the testator cannot write or is too ill to write, he may make a mark or direct his signature to be made for him.

The signature must be placed in the presence of a licensed Notary Public and two witnesses or five witnesses. If any of the witness is incompetent the Will will be invalid.

The Notary Public must be present at the same time and the both witnesses must be present when the signature is acknowledged. Although the signature must be made in the presence of two witnesses, it is not necessary that they should actually see the testator write. It would be sufficient if they are in such a position that they may if they please see him writing.

In selecting a witness, no person should be indicated in whom or a wife or husband of whom any benefit is conferred under the Will. If such a person attests the Will the beneficiary or the wife or husband of the beneficiary who attest the Will can take nothing under the Will.

The Will must be revoked by -

1. By the marriage of the testator;
2. By another Will or Codicil, executed in the same manner;
3. By some writing declaring an intention to revoke the same and executed in the same manner as Wills and Codicils.
4. By the burning, tearing, or otherwise destroying the same by the testator or some person in his presence and by his direction, with the intention of revoking the same.

The Will that is revoked may be revived-

1. By a re-execution thereof; or
2. By a Codicil executed and provided by the Ordinance and showing an intention to review the same.

J.M. SWAMINATHAN

LLB (Cey), LLM M Phil (Col)

Attorney-at-Law,

Partner, M/S Julius & Creasy

Lecturer Diploma in International Law Course - Sri Lanka Law College

Member Intellectual Property Advisory Commission