

Inviata a tutti i Membri del Comitato

Marzo 1965

U.D.P. 1965 - Etude: XLIII
Forme du testament - Doc. 18

U.P.L. 1965 - Study XLIII
Form of Wills

COPY



Lord Chancellor's Office
House of Lords
London S W 1

15th March, 1965

Dear Wortley,

UNIDROIT - Form of Wills

Vincent Evans sent me a copy of the Avant-Projet of January 1965 (Etude XLIII, Document 15) and invited me to let you have my comments. They are as follows:-

Generally, I find the revised draft a great improvement on the earlier one; this is perhaps not surprising since most of the objections I raised have been met. In particular, I am sure that it was very prudent to omit any reference to the testator's capacity which appeared to me to raise almost insuperable difficulties.

Article 3: Is this intended to permit the acknowledgment by the testator of his signature which has already been affixed? I am not sure how elastic the French term "signé" is.

Article 8: Whose responsibility is it supposed to be to date the will? There would be something to be said for imposing this responsibility on the authorised depositary, but it is not of great importance.

Article 9: Is paragraph (2) intended to cover what we would call codicils, or merely amendments made to the main text on the occasion on which it is signed? If it is the former, it would be impracticable in many cases to ensure that the codicil was witnessed by and deposited with the same persons who discharged the corresponding functions when the will was first made.

I take it from this that paragraph (2) is really only dealing with amendments made at the time. This raises a question of some importance, namely, whether Article 14 permits the will to be withdrawn temporarily for the purpose of the addition of a codicil. I refer to this later.

Article 10: I presume that paragraph (2) deliberately refrains from suggesting who is to be responsible for producing a competent interpreter. Does paragraph (3) mean that the matters referred to are to be incorporated in the will before it is signed and, if so, in what language?

Article 11: Is there really any value in this? It may be impracticable for the authorised depositary to satisfy himself of the testator's identity and, in any event, if the "testator" is really an impersonator, the will will be a forgery and invalid on that ground.

Article 12(1): What is supposed to be the effect of incapacity on the part of a witness? I believe I am right in saying that some countries would treat the capacity of a witness as a matter of form and others as a matter of substance: do we not want a provision which says that the capacity of the witness is to be treated as a matter of form so that, if a witness is incapable under the local law (which I take it is intended to mean the local municipal law), the will is not formally valid - unless it qualifies under some other head?

Article 14: I have already adverted to the point that there ought to be some provision for enabling a codicil to be added to the will, so as to avoid the necessity for re-writing the whole thing. It ought to be practicable to provide for a temporary withdrawal for the addition of such a codicil, the formalities involved for the codicil being the same as those involved for the will itself.

The above are very minor criticisms of the draft which I personally regard as satisfactory. I ought, however, to reiterate my warning that you should not infer from this that this Office or the Government would necessarily be in favour of the whole project.

I am sending a copy of this letter to Vincent Evans.

Yours sincerely,
(Sgd.) J.M. Bourne