

LAW FOR NON-LAWYERS SERIES **1**

HOW TO
WRITE YOUR
WILL
WITH EASE

**Answers To 149 Questions
About A Will
Revised Edition**

KEHINDE ADEGBITE

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1

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**Answers To 149
Questions About A Will**
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AGBO AREO PUBLISHERS

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This book is a gift

From.....

To.....

On this day of 20.....

May you learn from the pages of this book, how to take care of your loved ones even when you are no more. You're loved!

Dedication

This book is dedicated to
God and Humanity

Preface

Some years ago, I approached a commercial bank for a loan and completed every document necessary for the transaction. Eventually, after every pre-requisite was fulfilled, the bank came up with additional requirements and I lost interest as a result. The loan was therefore never granted. I subsequently stopped my salaries from being paid into that bank and changed to another one.

About three years later, I received a letter from my former bank asking me to come and pay the loan which I took and which has accumulated so much interest. Seeing the letter, I laughed and did not bother myself at all. My prayer then was that the bank would commit a further blunder by communicating with my employer so that I could have a basis to file an action in defamation against it. You just imagine how much I could have claimed in damages against the bank. But unfortunately no such communication ever took place thereafter.

Imagine again that I were not a lawyer, how I probably would have been running helter-skelter either to consult a lawyer or visit the bank to see that the error was corrected.

I have had varied and several experiences both as a practising lawyer and an adjunct law teacher who has been teaching Business Law and the Nigerian Legal System to the students of Accountancy, Business Administration, Secretarial Studies in polytechnics and universities as well as professional students of ATS, ICAN, ACCA and ANAN. These students are mostly adults, with so many years of working experience and in fact, some of them hold top management positions in the organizations they work for.

However, one thing I've discovered with these students, clients and many other people I've interacted with is that a lot of them don't know the basic things about the Law and are suffering from the consequences of their ignorance. Their usual excuse and disposition is "...after all, I'm not a lawyer." Agreed, they are not lawyers but who usually have problems with the Law: is it lawyers or non-lawyers?

Is it just not wise for you to have some knowledge about the Law, if not anything else? Tell me one thing that is not related to the Law and I'll tell you a whole lot of things affected by it. Do you have a family? Then there is Family Law. For those who buy and sell, there is Law of Contract. If you're into sports, there is Sports Law. Telephone has Telecommunications Law. For internet, there is Internet Law. For books and other art works, you have Copyrights Law. Are you a business owner or you are into business? There is Business Law. And as for politics, there is Electoral Law. If you are a lover of customs and traditions, there is Customary and Chieftaincy Law. Have business with a bank? Just know that there is Banking Law. The list is simply inexhaustible. And you must have heard that **"ignorance of the law is not an excuse."**

This gap that exists between the people and the Law is what "Law For Non-Lawyers Series" sets out to fill. When people are more knowledgeable about the Law, incidents like police brutalities are bound to reduce. What business do the police have in a civil matter? Are the police debt collectors? This happens almost every day where a debtor is asked by the police to enter into an undertaking as to how he will repay his creditor without the debtor raising any objection due to ignorance.

Even if you have the money to retain the services of a lawyer, you cannot retain his presence at every point in time. You may have committed a mistake with grave legal consequences before realizing that you have to consult your lawyer. The series is here to arm you with practical legal tips that will enable you nip legal mistakes in the bud and to empower you in order to handle elementary legal challenges better, if they arise. It has also been discovered that most law books in the market are written mainly with the legally-trained professionals in mind. The series is written for YOU, in a language you can easily understand, devoid of legal terms and technical details.

What is a civil matter? How does it differ from a criminal one? What is 'presumption of innocence', 'jurisdiction', 'locus standi', etc? When do you need a lawyer and when can you do it yourself? Can a non-lawyer write his will? What are the limits to the powers of the police? These and many more are

questions that the series is poised to provide answers to. It is a well-conceived strategy to simplify the Law and bring it to the doorstep of every non-lawyer. Without mincing words, the maiden edition, I mean the copy in your hand, is a proof to this claim.

It should however be pointed out that it is never the intention of this author to substitute this book for legal consultation. Legal advice should be sought and obtained where necessary in order to treat each matter with its own peculiarities as no two matters are entirely the same.

Kehinde Adegbite

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NOTICE!

In this book, the use of 'he' dominates as if the writer is gender-biased but he is not. 'He' is used only for the sake of convenience and no prejudice is intended.

Foreword

It gives me a great pleasure and indeed an honour to be requested by Kehinde Adegbite Esq., the author of this book, to write foreword to the book.

The subject-matter of the book –‘WILL’- is a very rare law subject, which most law students try to avoid as a chosen subject in the course of their studies. The writing of wills is, again unfortunately, what learned, well-educated, semi-educated people and even the generality of people never wish to engage in while still living. But, viewed objectively and reasonably too, will provides the maker (often called the TESTATOR) a highly privileged opportunity to continue to direct how all he had acquired on this side of the divide should be run and distributed even after he has answered the call of nature- he is dead. With a will in place, a dead person can properly be said to be speaking from his grave. The directives contained in the will made by the testator before his death remain binding and must be followed after his departure, provided, as emphasized by the author in his book, that the will is written strictly in accordance with the dictates of the law.

I have painstakingly gone through the manuscript handed over to me by the author- Kehinde Adegbite, Esq. The book is written in the simplest, most understandable and lucid language. It covers, practically, every aspect of the law of wills which must not only be borne in mind but at one’s finger tips when preparing the important legal document.

This book, although written by a practicing lawyer of considerable years of experience, is not addressed to lawyers. Nonetheless, lawyers too can find it useful. It does not purport to be a legal textbook. It is addressed to those who should necessarily have something to do with wills, to those who would not like to have labored in vain while sojourning on this side of the divide by ensuring that from their graves, they would still be directing how the affairs of their material wealth should be handled even when they are no longer physically present on earth. Indeed, the book is written for all those who are literate and can carefully follow the guidelines set out in the book when personally writing their own wills.

It remains for me to appreciate Kehinde Adegbite, Esq., for the efforts he put in getting the book written in the manner he has done. It is a book worth having and reading from time to time. Let it adorn any library.

Hon Justice Pius Olayiwola Aderemi, JSC (Rtd), CON.

Acknowledgements

I give glory to God for the inspiration and enablement to write this book.

In the course of writing the book, many people played different roles and these people are so many that I cannot afford to mention all of them. I am grateful to all, especially my professional colleagues.

I must, however, single out some names for mention for their outstanding roles. I appreciate the contributions of Hon. Justice P. O. Aderemi (JSC, rtd.), Justice A. A. Kolajo (retired Justice of the High Court of the Federal Capital Territory, Abuja), Mr. Seun Abimbola (Principal Partner, Prime Solicitors, Ibadan), my good "Egbon", Dcn. Ademola Adeyanju for his editorial role, Mr. S. O. Imhanobe (my former lecturer at the Nigerian Law School) who I had to consult from time to time on phone, Mr. Jide Okunoye and my mentor, Dr. 'Bode Ayorinde (the Pro-chancellor, Achievers University, Owo) for his all-time support.

Also significant are the following authors, Prof. M. I. Jegede, Nigerian Law of Succession; T.O.G. Animashaun and A. B. Oyeneyin, Law of Succession, Wills and Probate in Nigeria; Dr. Kole Abayomi, Wills: Law and Practice; Imhanobe S.O., Understanding Legal Drafting and Conveyancing; Jide Okunoye, Esq., Wills & Estate Planning and F. J. Oniekoro, Wills, Probate Practice and Administration of Estates in Nigeria. I found all these resource materials very useful and helpful in writing the book. I equally acknowledge numerous internet sources that I had to visit and most importantly, the two cartoons retrieved online which I adopted in Parts IV and V of the book.

I must confess that I am greatly impressed by the quality of editorial inputs of my publishers, Agbo Areo Publishers, without which it would have been impossible for me to avoid some errors whether in grammar or presentation of ideas. I am grateful to them for their excellent job.

I am equally grateful to my siblings for their contributions to my life at different times.

The endurance and understanding of my wife, Oluwakemi Bolatito, in the course of writing the book must not go unappreciated. I am proud of her and our children.

However, any defects that may be found in the book are entirely mine and should be seen as part of my imperfections as human.

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Readers Comments

'The main purpose of this book is to make it easy for a non-lawyer to write his own will. This is a laudable purpose. This is a unique book written in a painstaking manner. The style is hard to beat. It is easy to read. It is a must for all libraries. Please go ahead and get your own copy.'

Justice A.A. Kolajo

'The book is well written and makes the subject-matter of last will and testament better understood.'

Professor Akinwunmi Isola

'The book is very informative. It is easily readable to ordinary citizens. Generally, this book is a useful companion to all and sundry and a 'must-read' to non-lawyers'

Dr. Saka A. Balogun
Former Chief of Staff
to the Oyo State Government

'I consider it a must-have, and a must-read, by everyone that aspires a life of greatness and fortune. I congratulate you for the great work. I recommend it most highly.'

Dr. Abib Olamitoye, Founder,
Ibadan Central Hospital, Ibadan

'One of the distinct features of HOW TO WRITE YOUR WILL WITH EASE is Adegbite's ability to communicate and connect in a language devoid of technical jargon or legal ambiguity, yet drive the message home in a practical and personal way. It will definitely add to you.'

Victor Ogbemor, ACA, MBA, M.Ed, B.Sc

Introduction

- What is a will?
- Who can make a will?
- Who cannot make a will?
- Who needs a will?
- How much does it cost to make a will?
- What will happen if I die without a will?
- Where should I keep my will?
- Should I let my spouse know the contents of my will?
- What can I do to prevent my will from being challenged in court?
- How often should I review my will?
- Does a will bring early death?
- How can I write my will without a lawyer?

These are just 12 out of 149 mind–boggling questions about a will. They are all answered in the book in simple and clear language. The book sets out essentially to educate a non-lawyer concerning all you need to know about a will and how you can, without a lawyer, if you choose to do so, write your will that is both valid and free from common pitfalls. And if you already have a will, it contains guides on the next line of actions.

Apart from providing A to Z information on a will, the book also contains a sample will which you can adapt to your needs.

After reading the book, you are most likely to take either of these two decisions:

- i. to start preparing your will by yourself, or
- ii. to review it, if you already have a will.

But one thing is certain, you cannot afford to take none of the decisions above after reading the book. This is because you would have known, more than ever before, the likely consequences of your inaction.

We assure you that what you read in this book is as objective as possible, in opening your eyes also to other alternatives to a will. So, it is for you to decide what is best for you as to which method you will use to leave inheritance for your loved ones.

Part I

Wills and Other Means of Passing Inheritance

'Bear in mind that the wonderful things you learn in your schools are the work of many generations. All this is put in your hands as your inheritance in order that you may receive it, honour it, add to it, and one day faithfully hand it on your children.'

- Albert Einstein

1. What is a will?

You may think you know what a will is but time will tell whether you rightly do or not.

To you, a will is a document where you write how you want your property shared among your loved ones after you die.

Yes, as popular as that definition is, it is not complete.

To have a complete picture, it should be known that a will is a legal document where a person (called 'testator') clearly states how he wants his possessions (called 'estate') shared among his loved ones otherwise known as beneficiaries through his executors (i.e. people who oversee the sharing) after he dies.

If you write your will and fail to appoint people or institutions that are to act as your executors, you are just a little better than another person who does not write his. It is now the court that will appoint administrators for your will which means they may not be people that you want.

NOTE: *A person that dies leaving a will behind is said to have died testate, while one that dies without a will dies intestate. A male will-maker is called testator, while female is testatrix.*

2. Which law controls how a will is made in Nigeria?

The English Wills Act of 1837 controls the making of wills in the Northern and Eastern parts of the country, while all the states in the South-West and some in the South-South have modified this imported law to suit their local peculiarities in some ways.

For example in Oyo State, there is Wills Law of 2000 and Lagos State also has its own version.

But note that some states in the North have also opted out of the use of the English Wills Act. Kwara State and Plateau State are typical examples.

Members of the armed forces have the Armed Forces Decree No. 105 of 1993 for their wills.

You have to note, in addition to what you have above, that a will can also be made under the Islamic law and Customary law of different ethnic groups in Nigeria. While the issue of making either written or oral will under the Customary law is still a subject of debate among legal scholars, the law is rather clear and settled in relation to the making of wills under the

Islamic law. Under the Islamic law, it may be oral or written. However, the will that forms the focal point of attention in this book is the one you can make under the English law* (also known as the statutory will).

NOTE: *Even states that have altered their Wills Laws to suit their local circumstances do not have the provisions of their laws radically different from the provisions of the English Wills Act which was inherited from the colonial rulers. What most of these states have done is to accommodate the customs or religious beliefs of their people concerning the preparation of their wills. For instance, in Edo State, a testator must give consideration to a traditional practice called **Igiogbe** in his will (this will be explained later) while the right of a Muslim in Oyo State to make his will in line with the tenets of his faith is also taken care of.*

3. What makes a will valid?

A will is valid if it is made in line with the provisions of law. In Nigeria, the general requirements for a valid will are these:

1. it must be in writing
2. a will-maker (testator) must sign it
3. the signature must be made in the presence of at least two witnesses
4. each of the witnesses must sign (i.e. attest) the will in the presence of the testator
5. the will must have been made by a person who has come of age
6. the person making a will must be of sound mind.

NOTE: *The two witnesses must be present together while the testator appends his signature on the will or where the will is signed by another person on behalf of a testator, it must be at the testator's request and in his presence. The testator must thereafter confirm that other person's signature to the two witnesses. Having done that, the two witnesses would now sign. A breach of this procedure constitutes a very strong ground to attack the validity of a will.*

4. Who can make a will?

In Nigeria, there are 2 tests for anybody who wishes to make a will:

1. **Age:** Under the Wills Act, 1837, you must not be less than 21 years, while under the Wills Laws of some states like Oyo and Lagos, from 18 years you can write your will.

* The English law here includes Wills Laws of different states that have domesticated the English Wills Act of 1837, e.g. Oyo State, as well as Wills Act of 1837 itself.

2. **Mental Health:** The law generally requires anybody who wants to write a will to be mentally stable. This means that a mentally deranged person, a person who does not have control over his state of mind or a drunkard while in his state of drunkenness cannot make a will. You should be able to think freely without any form of undue influence or force exercised on you while you write your will.

In law, a testator is said to possess testamentary capacity if he passes the mental health test. The mental state of the testator at the time he prepares and signs (executes) his will is what is important and not what happens before or after.

Therefore, all persons who pass the two tests can make a will including a blind, dumb or deaf and dumb person. But for the will of this class of persons to be valid, a clause must be inserted into their will to show that the contents of the will have been read or explained to their understanding before they sign just like in the case of an illiterate testator.

5. **Who cannot make a will?**

Any person who fails the two tests in Number 4 above cannot make a will. A company, though regarded as a person in law, cannot make a will. However, a person under 18 years can make a will in Oyo State and many states, if he is a seaman, mariner or a member of crew of a commercial airline. Such wills do not have to comply with the requirements listed out in Number 3 above, but it must still be in writing. The Wills Act, 1837, however, allows oral wills for members of the armed forces.

6. **Who needs a will?**

If you are one of the following categories of people, the truth is that you need a will:

- any person who owns assets and has people that depend on him or has people who may have conflicting claims over his assets needs a will;
- a husband needs to make a will to provide for his wife, children and relations when he dies; most especially, if the wife is not working;
- a wife needs a will to provide for her husband, children and relations when she dies.
- a single person needs a will to provide for his loved ones or for charity;

- any person without relations needs a will to ensure that his assets are distributed according to his wishes;
- any person whose children are quite young in age needs a will to protect the interests of his under-aged dependants;
- any person suffering from a serious ailment needs to make a will in case of premature death;
- any person whose children come from a woman not legally married to him or a full-fledged polygamist needs a will;
- any person who is more or less the sole financier of his immediate and extended family members needs a will;
- every person who works to acquire his assets and does not have control over tomorrow needs a will.

Above all, having a will enables you determine a number of things by yourself instead of other people deciding for you after you have passed on. For example, in your will, you can clearly spell out who are to take benefit of your assets and what each person gets. You can also appoint your executors and even decide how, when and where you want to be buried. You can also put a bar on how much should be spent on your funeral.

7. When am I supposed to make my will?

You can start writing your will as soon as you are gainfully employed or have a stable source of income coupled with the fact that you have acquired certain assets you can call your own or have some entitlements. This also presupposes that you have attained 18 or 21 years of age.

A will is not only needful when you are old or sick. In fact, when you wait to make your will only at either of these occasions, you prepare grounds for aggrieved people to question the validity of your will in court.

8. Do I need a will when I have a next of kin?

Yes, you need a will. Your next of kin may be contacted for your retirement benefits and other terminal entitlements, where there is no will; but what about money in your bank

accounts, your cars, land and stocks? Your next of kin cannot claim such assets without a will. It is only a will or Letters of Administration that can settle these.

In fact, many organisations do not reckon with a next of kin again even in respect of retirement benefits and the likes unless the next of kin produces a will or Letters of Administration. The gist of this is that it is more beneficial for people to think of having personal representatives* survive them rather than a next of kin.

9. Must a will be in writing?

Yes, it must be in writing. If your will is not in writing that means it is oral. An oral will (called nuncupative will) is invalid under the law. However, a Muslim who wants to make a will under the Islamic law need not put it in writing. Unless you are a Muslim, you are not permitted to make a will under the Islamic law. An oral will can also be made under Customary law but difficulty may arise in relation to landed property with title document over it.

10. What are the common mistakes that can render a will invalid?

These are the common mistakes that can render your will invalid:

- if a will is not properly signed*
- if it is not properly witnessed
- if the testator is not in a sound state of mental health when he writes or signs his will
- if the testator is forced or writes his will out of undue influence
- if the testator's signature is forged
- if the testator is not of age
- if the testator is a Muslim (especially in Oyo State).

11. Is a will worth making?

12. What if I die without a will?

* Personal representatives could be executors or administrators.

* This means it must be signed as explained in Number 3 above. In addition, the testator must sign FIRST with at least two witnesses who are present together when he signs.

13. **Is there any property I cannot transfer through my will?**
14. **What if people get to know how I desire my property shared even before I die?**
15. **I am terminally ill, can I make a will?**
16. **Can I still claim ownership over what I have already given as a gift in my will?**
17. **Does a will bring early death?**
18. **Should husband and wife make a separate or joint will?**

Where husband and wife acquire their property jointly, they can make a joint will. But even if they do not make a will and one of them dies leaving the other alive, the living spouse becomes a sole owner automatically and can make a will over the property. It is generally advisable that couples acquire assets separately and also make separate wills to avoid some legal complications.

19. **Should I let my spouse know the contents of my will?**
20. **I live abroad but have property in Nigeria, how can I make my will?**

Distance is not a barrier. What is important is to make your will in line with the law that operates in the country you reside. Such a will has to be resealed in Nigeria on your death.

21. **Can I include property I own abroad in my will?**
22. **What if I have property in other states of Nigeria?**

Even if you have property in all the states in Nigeria, all you have to do is to make your will where you reside in line with its law and to cover your assets in other states. At appropriate time, your executors will have to register (resealing) your will in all other states, so that your property in those states could legally come under the will. Therefore, you do not need more than a will.

NOTE: *Resealing your will in another state is only necessary, if the assets you own there cannot be physically removed. Apart from land or house, any other asset may be gathered and brought to your place of final rest by your executors.*

23. Can a woman make a will?

24. Why is it that many people do not make a will?

Frankly speaking, the idea of making a will is still unpopular, especially in Nigeria. Despite the fact that a will is a method of planning your estate and a wealth transfer tool which is universally recognized, many Nigerians still see it as an imported idea that is alien to our culture. But one thing is this, a will may be called different names in different places, the idea of transferring a deceased person's property to those alive is a practice that is embraced everywhere. No culture or people bury their dead with their earthly possessions. In addition to this, other reasons many people do not make wills are the following:

1. **Ignorance:** Many people think that having a will is not everybody's business. It is wrongly believed that only the rich need it. Whereas anybody having some assets like a house, a car, money in the bank and other personal effects ought to make a will. You can never tell who is interested in what you have at the expense of people you care for.
2. **Cost of making a will:** Some people think it costs so much to write a will, especially the cost of hiring a lawyer to do it. Surprisingly, to write a will is not that expensive. The cost also depends on the size of your possessions. As well, it is possible to write your will by yourself. Above all, when the cost of dying intestate is compared to having a will, it is obvious that the latter is still cheaper.
3. **Fear of death:** Some people also believe that by writing your will you are more or less wishing yourself dead. This is not true. It is rather a wise decision to prepare your affairs properly against the inevitability of death.
4. **Privacy:** Some people believe that by writing your will, you will have to expose yourself to a lawyer by disclosing everything that you possess. But unknown to them, they may not have to use a lawyer to write their will. But even if they do, a lawyer has a professional duty to keep his client's affairs confidential.

5. **Fear of court cases:** To some people, writing a will is like leaving a legacy of unending court cases to your loved ones. But the truth is that a lot of wills have been successfully implemented without the members of the public hearing anything about them.
6. **Lack of financial literacy and estate planning knowledge:** Many people are not aware that a will is an instrument of transferring and sustaining wealth through generations and also a reliable estate planning option.
7. **Economic reason:** Prevailing poor economic condition and poverty in Nigeria appears to be a genuine reason for some people not to give the idea of having a will any thought at all. So many people do not really have tangible assets even at their old age to pass to their heirs. Apart from personal belongings, many do not have assets that require legal documents for a beneficiary to inherit.
8. **Religious factor:** Some believe that they are destined to live to their old age and for that reason, they think they do not have to write their will now until later in their lives- when it might be too late to do so.
9. **Lack of information:** There is a general scarcity of information about the importance of making wills. A vast majority of people do not know what they stand to gain, if they make their will or lose if they fail to do so. People need to know what is required to make a valid will. As a matter of fact, there is need for some public enlightenment campaign in this direction.

25. **What can I do to prevent a court action over my will?**
26. **What happens if a dispute arises out of my will?**
27. **What if my will is not obeyed?**
28. **Can my will be amended after my death?**
29. **Is the making of a will avoidable?**
30. **Are there other ways my family can inherit my property without a will?**

31. Can my will be read in my lifetime?

Yes, it can. But this is very much not advisable and not proper at all. After all, a will (testament) does not have any meaning while the maker lives.

32. What if I leave some dependants out of my will, what can they do?

33. Can I include a charity in my will?

34. Can I give property to my under-aged child through my will?

35. When can I change my will?

36. What will happen to my will if I have children in future or after my death?

37. I am in the process of getting a divorce, can I write a will?

38. Must I amend my will after a divorce?

It is not a must that you amend your will after a divorce. It all depends on you. You may amend and you may not. But if you do not amend your will by removing the name of your former spouse, then the person receives anything you give to him or her upon your death just like other beneficiaries.

39. What if I have more than one wife?

40. What if I have children from a woman not married to me?

41. What do I do about my business interests in my will?

42. What should be named in my will?

43. Where should I keep my will?

44. What if I do not have an estate?

45. What is the effect of a “No Contest” or “No Litigation” clause in a will?

46. Can I make an online will?

47. How can my will be located after my death?

48. Does a united and loving nuclear family need a will?

Yes, it needs a will. As a matter of fact, every family needs a will- whether nuclear or extended, monogamous or polygamous. When a person dies, assets acquired in his sole name does not automatically pass to his heirs unless there is a will. Where there is no will, your heirs would be faced with more challenges in order to step into your shoes over such assets.

A will, therefore, simplifies the process by which your heirs take over the ownership of your assets upon your death. In fact, to keep the unity and love in a nuclear family intact, for instance, the best thing is to make a will for the interests of your loved ones.

So a will is needed by everyone even by people without an immediate family of their own.

49. What are the uses of a will?

50. Is a life insurance policy a substitute for a will?

51. How can I amend my will?

52. How can I cancel my will?

53. What information should I include in my funeral wishes?

54. Must a will be lodged at the Probate Registry and what is the effect of failure?

55. Must a will be read in court, any public place or could it be read at home?

56. How often should I review my will?

57. Can I make a video recording of my will?

58. How many copies of my will should I make?

59. Can a will be handwritten?

The law says a will must be in writing but does not indicate whether typed or handwritten. So a handwritten will is not invalid. However, it is advisable to have a typed will for the sake of durability and security from easy interference.

60. Can I write my will in plain English?

61. Has any will ever been implemented without a court action?

62. **What are the pros and cons of a will?**
63. **What is a codicil?**
64. **What is a beneficiary?**
65. **What is a living trust?**
66. **What is Letters of Administration?**
67. **How does a will differ from Letters of Administration?**
68. **If I have a living trust, do I still need a will?**
69. **Is a living trust recognized in Nigeria?**
70. **What should I do after I have written my will?**
71. **Is my will a document of title?**

In case what is meant by a document of title appears strange to you, some examples may assist. Certificate of Occupancy, deed of assignment and deed of conveyance are all examples of documents of title but not so with a will.

A will is not a document that clothes a beneficiary with legal ownership over his gift but another document does that. This other document is called a Deed of Assent*.

A will itself is just a legal document that expresses how the testator wants his assets shared. It does not confer title (ownership) on the beneficiary.
72. **When will my will be read?**
73. **Who is an administrator?**
74. **What are the pros and cons of Letters of Administration?**
75. **When should I appoint a guardian in my will?**
76. **Who is disqualified from inheriting under my will?**
77. **Are there conditions I cannot attach to gifts under my will?**

* A Deed of Assent is a legal document of title usually prepared after assets given through a will have been shared among named beneficiaries. The assignment for the preparation of this Deed is better handled by a lawyer.

78. Is will making only a man's affairs?

79. What happens if a testator's death is caused by a beneficiary?

80. Does everybody need a will?

81. Who needs a will most?

82. Is will making part of the African culture?

The idea of writing a will and the freedom to give your assets to whoever you want is not part of the African culture.

In Africa, a deceased person may leave oral instructions as to how he wants his property shared. The property may also be shared in line with the customs and practices of different ethnic groups.

Our perspective as Africans manifests in our attitude to the issue of making wills as we see it as a reminder of death. And in fact, reasons for conflicts over some wills can also be traced to our culture as different from where the idea of a will comes.

83. Should Africans make wills?

84. How can I know if my deceased relative leaves a will?

85. How will my funeral wishes be carried out?

86. How much does it cost to make a will?

87. Are there lawyers who specialise in the drafting of wills?

88. Must I write my will on a particular legal paper?

89. Must a lawyer sign my will?

90. How can I revive my will?

91. Which means of passing inheritance to one's heirs is the most desirable?

92. Can I make provisions for my debts in my will?

93. What if a beneficiary dies in my lifetime?

94. **How can I challenge a will that is unfair to me, or that needs to be challenged in court?**
95. **What if my lawyer discloses the contents of my will to my beneficiaries?**
96. **If I want to keep the contents of my will to myself alone, is it possible?**
97. **Must I make my will according to the law of my state of origin?**
98. **Do I need a will if my spouse and I hold all our assets in joint names?**
99. **How can I revoke my will?**
100. **Can I make two wills – one under the Islamic law and the second under the English law?**
101. **How does a will differ from a living trust?**

102. Can a Muslim make a will under the English Law?

Remember that M.K.O. Abiola made a will and Gani Fawehinmi too did. Both of them were Muslims. Yes, a Muslim can. But this also depends on each state. In some states in the North, this is not possible. Surprisingly too, a Muslim cannot make his will under the Wills Law in Oyo State.

Just have a look at this statement of law in section 3(1) (b) of the Wills Law of Oyo State:

3(1) It shall be lawful for every person to bequeath or dispose of, by his will executed in accordance with this law, all property to which he is entitled, either in law or in equity, at the time of his death:

Provided that the provisions of this law shall not apply:

(b) to the will of a person who immediately before his death was subject to Islamic law.

Or what do you understand by that provision? You may check *Ajibaiye v. Ajibaiye* (2007) All FWLR Pt. 359, 1321 in addition to the law quoted above.

Now, let us assume that you defy this law and go ahead to make your will under the English law, even though you are a Muslim who is subject to the Oyo State law, what will happen to your will?

If your people do not challenge your will, there is no problem. But if they do, your will would be invalid.

So, that section expects you to make your will not under the English law but in line with the Islamic doctrines of sharing inheritance. Therefore, you have a choice either to make your will under the Islamic law or not to make a will at all.

103. Should a Christian make a will?

Of course, he should. Remember that the Scriptures represent the will of God to mankind. So we, as His children and stewards of whatever God has entrusted us with, have a duty to pass our assets to other responsible stewards that come after us.

Look at the following Bible verses:

A good man leaveth an inheritance to his children's children... (Proverbs 13:22).

For where a testament is, there must also of necessity be the death of the testator. For a testament is of force after men are dead: otherwise it is of no strength at all while the testator liveth. (Hebrews 9: 16-17).

One thing that is clear from the Bible is that as Christians, it is not enough that we make our wills but that the wills should conform with God's words. Our wills give us an opportunity to make our final statement, to provide for our dependants, help the needy and promote the work of God. Now, if you have not made your will already, you have got to do so very fast!

104. What types of wills exist in Nigeria?

105. Do I need a lawyer to write my will?

106. Can I make a joint will with my spouse?

Part II

Witnesses

**'You never know how much a man cannot
Remember until he is called as a witness'**

- Will Rogers

107. Who are witnesses?

Witnesses are persons that have two important roles to perform to ensure that your will is valid.

The two roles are:

1. they must not be less than two persons and both of them must be present at the same time and watch you as you sign your will.
2. they must equally sign against their names in your will after you have signed.

108. Who can be a witness?

Although these two roles above are the primary purposes of witnesses in your will, you may still need them after your death.

For example, your will may be challenged on the basis that you are mentally incapable when you sign.

So it is advisable that persons who have the following qualities should be your witnesses:

1. an adult (not a person under 18 or 21 years)
2. a person of integrity
3. a person younger than you who is likely to outlive you
4. a non-beneficiary in your will
5. a person who is not suffering from any known ailment
6. a professional like a medical doctor, lawyer etc. is highly recommended.

109. Who cannot be a witness?

110. Can my spouse witness my will?

111. How many witnesses must my will have?

112. Should a witness know what is in my will?

113. Can an executor also be a witness?

Part III

Executors and Trustees

'It is impossible to go through life without trust: that is to be imprisoned in the worst cell of all, oneself.'

- Graham Greene

114. Who is an executor?

An executor is a person appointed by a testator in his will who is to step into the testator's shoes upon his death and manage his estate and to distribute it among named beneficiaries.

115. Must I appoint an executor in my will?

You are supposed to appoint executors for your will so that what you want in the will can be carried out by your executors.

But if you fail to appoint executors in your will, the court will appoint for you persons who will be called administrators. Even though these administrators have a duty to carry out your wishes, they may not be people you would have chosen.

116. Who can be an executor?

117. Who cannot be an executor?

118. Who should be my executor?

119. Can my executor also be a beneficiary?

120. Can I change my executor?

121. Should I tell my executors that I have appointed them?

122. How many executors should I have?

123. Can I have an executor who lives abroad?

124. What if an executor dies?

125. What are the functions of my executors?

126. Will my executors charge fees for their services?

127. When does the work of an executor end?

128. What can be done if an executor has not carried out your instructions?

- 129. Can an executor decline to act after the death of a testator?**
- 130. Who is an executor *de son tort*?**
- 131. Who are trustees?**
- 132. How many trustees should I appoint in my will?**
- 133. Must I appoint trustees in my will?**
- 134. What are the functions of trustees?**
- 135. Can a bankrupt be a trustee?**
- 136. Does a trustee differ from an executor?**
- 137. When does the work of a trustee end?**
- 138. Should a trustee be paid?**
- 139. What is a trust?**

Part IV

Probate



"He left his body to you and his money to medical science."

140. What is probate?

Probate is simply the official recognition of your will. It is a means by which the authenticity of your will is confirmed by court after your death.

141. What is a grant of probate?

It is a certificate that is issued to your executors which shows that they now have the official approval of the court to deal with your estate in line with your wishes.

142. What does it mean to prove a will?

143. What is the procedure for proving a will?

144. When should my will be proved after my death?

145. Does the Probate Registry have to know the contents of my will before it is read?

146. What is involved in grant of probate?

147. How safe is my will at the Probate Registry?

Part V

How to Write Your Will by Yourself



Where there's a will, there's a way.

148. How can I write my will without a lawyer?

With care and attention, you can write your own will by yourself without hiring a lawyer, but only if your estate is not large.

So all a moderate estate requires is a simple will.

What you have below is a step-by-step guide to write your will including the clauses to be contained in a will and the manner of writing them:

149. What are the important parts of my will?

Part VI

Sample Will

**'A son can bear with equanimity the loss of his
father, but the loss of his inheritance may drive
him to despair.'**

- Niccolo Machiavelli

SAMPLE WILL

THIS IS THE LAST WILL

OF

TIMOTHY MUHAMMED UCHE

OF

No. 25 Shomolu Street, Zamfara State.

Made thisday of2013

Appendix

FURTHER READINGS

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Index

How To Write Your Will With Ease

This book contains A to Z of everything you need to know about a will. The book explains to you how to write your will using a lawyer, or writing it yourself. It is about how to rewrite your story through your will and immortalise your name.

The book is written in simple language, avoiding legal jargon, thus making it very easy to read, to follow and understand.

The Author



Kehinde Adegbite, a lawyer, attended the University of Ilorin, Kwara State, and was called to the Nigerian Bar in 2003. Since his call, he has remained in active legal practice. He had worked with Olalekan Ojo & Co., Ibadan; Bode Ayorinde & Co., Ibadan, and the Chambers of Chief Wole Olanipekun, SAN, Lagos. He is at present a Senior State Counsel, Ministry of Justice, Ibadan, Oyo State.

He is happily married to Oluwakemi Bolatito with children.

'How To Write Your Will With Ease is a fascinating book. The question and answer format is novel and lends itself to a simplification and easy understanding of the complex legal issues of wills and inheritance. The book is an important contribution to legal literature and the author's professional resolve to embark on a 'Series' called 'Law for non-lawyers' is laudable. That notwithstanding, I make bold to say that, while non-lawyers will certainly find the book instructive, lawyers should also find it illuminating.'

Chief 'Folake Solanke SAN, CON



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