

Position of malaysia in privileged wills law land property essay

Law



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\n[toc title="Table of Contents"]\n

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1. [Introduction](#) \n \t
2. [Contents](#) \n \t
3. [Position of Malaysia In Privileged Wills](#) \n \t
4. [Privileged wills in Singapore](#) \n \t
5. [Position of Privileged Wills in United Kingdom](#) \n \t
6. [Analysis, compares and conclude](#) \n \t
7. [Recommendation and opinion parts](#) \n

\n[/toc]\n \n

Introduction

Privileged wills are known as last wills or testaments that which are made at or under circumstances which is impossible to comply with those usual legal requirements and formalities of an ordinary wills. Basically, such type of wills has been considered legal if made by anyone that is currently engaged with military service, or at sea. Nations vary on exact circumstances that have to and must exist purposely for the privileged will to be considered as legally binding document. One of time-honored situations that which privileged will is considered legal is situations when individual is actively engaged in military situation, for example a war. Should individual be serving on war front, or in care facility which located near field of battle, person highly unlikely to have an easy access to the legal counsel, and may not be in position to secure the witnesses to the will. Depending on laws that which applied in that nation where the individual listed as citizen, handwritten will

be considered perfectly legal, and exempt from any others requirements that pertaining to wills that currently in effects in that country. Privileged will remains valid after war has ended or even after maker of will has left those forces or has been removed from dangers of the military operational duties. Under S26 of the Wills Act 1959, a member of the armed forces of Malaysia being in actual military service, and a mariner or seaman being at sea may dispose of his property or of the guardianship, custody and tuition of a child or may exercise a power of appointment exercisable by will by a privileged will. For the purposes of this section a privileged will means any declaration or disposition, oral or in writing, made by or at the directions of the testator which he desires to be carried or to the guardianship, custody and tuition of a child or to the exercise of a power of appointment. A declaration maybe valid privileged will notwithstanding that it was not executed in the manner appearing to have been intended by the testator subsequently to execute a formal will to give effect to his testamentary dispositions, unless it appears that the failure to execute such declaration in such manner or such formal will was due to the abandonment by such declaration. Section 4, 5, 6 shall not apply to privileged wills, nor is it necessary for a written privileged will to be signed by the testator. A privileged will other than a will which apart from the provisions of this section would have been valid under this Act shall be null at the expiration of one month after the testator being still alive has ceased to be entitled to make a privileged will.[1]

Contents

Position of Malaysia In Privileged Wills

The law of wills in West Malaysia is governed by the Wills Act 1959, which the statute itself is largely based on the English Wills Act of 1837. The Wills Act 1959 therefore, does not apply to Sabah and Sarawak, and also does not apply to persons professing the religion of Islam.[2] However, some people may find themselves be in circumstances which they cannot comply with those formal requirements for valid will. The law has been long recognized such concern in case of those soldiers and also sailors by allowing them to create their privileged wills. Many of the jurisdictions, including Malaysia, have legislation to this effect. Firstly, what is meant by a privileged wills? Privileged wills are being known as those last wills and testaments that are made under circumstances where it is impossible to comply with the usual legal requirements of an ordinary will. Historically, this type of will has been considered legal when made by anyone who is currently engaged in military service, or is at sea. The privilege is allowed to two categories of testator, which is the soldier in the actual military service and the mariners or seamen at sea.[3] A privileged will can address all the factors found in any type of will and last testament. This includes directing the distribution of real property, providing for the establishment of trusts, designating an executor to the estate, and in general settling the affairs of the deceased in accordance with the wishes expressed in the text of the document. However, a privilege will shall be null or invalid at expiration of one month after execution of the will, if the testator is still alive and the testator has ceased entitled to make privileged will.[4] The reason for allowing the privilege was that soldiers and

seamen are likely by reason of their occupation to be outside the routine of civilian life and thus they have a less opportunity and fewer facilities to make a properly executed will, as emphasized by Henn Collins J in the case of *Re Gibson*,^[5] where he stated that the foundation of the rules is that a man is parted from the civil surroundings. The concept of allowing soldier to make a privileged will however was derived from the Roman Law where they allowed their soldiers to make an informal will while they're on the campaign as they were bereft of advice at that particular time. In *Drummond v Parish*,^[6] Fust J suggested that resort should be had to Roman law in order to interpret the English statutes. However, the position in English Law shows many significant differences. For example, the English privileged wills does not lapse after the end of the military service while the Roman privileged wills will lapse after a year from their discharge from the army. Nations vary on the exact circumstances that must exist in order for a privileged will to be considered a legally binding document. One of the time-honored situations in which a privileged will is considered legal is when the individual is actively engaged in a military situation, such as a war. Should the individual be serving on a war front, or in a care facility located near a field of battle, he or she is highly unlikely to have easy access to legal counsel, and may not be in a position to secure witnesses to the will. In country like Malaysia, privileged will means that any declaration and disposition, oral or by writing, made by at the directions of testator that which manifests intentions of testator that which he wishes to or desires to make or be carried or to guardianship and custody and tuition of child or to exercise of power of an appointment.^[7] Individuals who are at sea are sometimes able to create a privileged will.

This includes people who serve as merchant seamen or who are otherwise employed on vessels that spend a great deal of time at sea. Once again, these individuals have historically been able to draft a will without the need for legal counsel, witnesses, or any of the other requirements that are usually necessary for a will to be considered legal. Under S. 26(1) of the Wills Act 1959, a member of armed forces in Malaysia being in the actual military service, or a mariner or seaman, including member of naval forces in Malaysia which is said to being at sea can and may dispose of his property or the guardianship or custody and tuition of a child or may exercise power of an appointment which exercisable by will and by privileged will. The judges have generally shied away from defining the meaning of a 'soldier', being most content to decide in individual cases such as whether the testator has qualified as such. In the case of *In the Estate of Rowson*,^[8] it was held that a member of the Women's Royal Auxiliary Air Force serving in the balloon command was privileged. Civilians who work with the armed forces will be recognized as a soldier. Also, mariner or seaman was included in the categories which will be able to make a privilege will. As in the case of *In the Estate of Knibbs*,^[9] a barman on a liner was held to be entitled to make privileged will, although it in the event that he failed to make the privilege will. However, it was being considered and said that a declaration that may be a valid privileged will which notwithstanding that it was not executed in manner appearing that have been intended by testator or which it was intended by testator subsequently execute the formal will to give an effect to his own testamentary dispositions, unless it is appears that those failure to execute such as declaration in such manner and those or such formal will

was due to abandonment by testator of testamentary intentions that expressed by such declaration.[10]Some countries however, there are restrictions on the legality of a privileged will, even if the writer is under military service or at sea. For example, some countries require that military personnel be actively engaged in a war effort, and thus have limited access to legal counsel. In like manner, sailors who are not currently at sea cannot draft a privileged will while on land, since there is a good chance he or she does have access to legal counsel and can meet the requirements associated with making a will with relative ease. While some nations recognize a verbal expression of last wishes to constitute a privileged will, others require that the will be presented as a document that at least carries the signature of the individual who is making the will. As for the situation in Malaysia, there is generally no restrictions being imposed as even an oral will without any witnesses or attestation is considered to be perfectly valid privilege will in the eyes of the law. The question now arose as to whether the privilege should be retained or abolished? Well it could be argued that the privilege is an anachronism, originally allowed in circumstances which no longer apply. Soldiers and seamen now are far more literate now compared with the past generations of soldiers and seamen. They are now more likely or more easily to obtain a legal advice and be away for a far shorter periods. Moreover, it is also arguable that by allowing the privilege to persons in certain occupations, an arbitrary division results whereby certain other possibly deserving categories are excluded. Another point would be why would the privilege not be allowing others which engaged for a lengthy period in work being ' parted from the civil surroundings', for example, the scientist on the

polar expeditions? Referring to the earlier question, the Law Reform Committee considered the abolition of the privilege but recommended the retention at last. It was being said that "... even if not many privileged wills are submitted for probate at present, circumstances can be envisaged when the privilege may again be needed. The Ministry for Defense for example, was strongly in favor of its retention unaltered for this reason. They also pointed out that even in a peaceful period there were occasional cases of servicemen making privileged wills in the course of certain military operations." [11] Nevertheless, there is much to be said for restricting the present scope of the privilege. Such wills are, after all an exception to the fundamental requirement that wills should be made in writing, signed by the testator and duly attested. Therefore, it is good to insist on such minimum formalities, not least as they reduce the potential for argument about whether a will was made and what is the content about. It follows that if an exception is to be allowed, then it must be carefully circumscribed. Relating the above statements to the situations in Malaysia, the privilege wills should not be abolished for the good reasons stated by the Law Reform Committee as an example was given in the statement where a soldier in Northern Ireland was fatally injured by terrorists and he then gave an oral instruction as to the disposal of his property. This should be allowed too if the same situation happens to our country as an oral instruction of distributing his property should suffice in that particular circumstance. As a conclusion, the privilege wills should not be abolished in Malaysia because there may be circumstances where it is impossible to comply with the usual legal requirements of an ordinary will and privilege wills intervenes as an

exception to the normal wills to suffice the circumstances arose at that particular period of time.

Privileged wills in Singapore

In Singapore, the minimum age to write a valid will is 21 years old. Writing a will is important as it enables a person to distribute his assets to the important person according to his wishes. A person who dies without leaving written will, any assets left will be distributed according to the Intestate Succession Act after paying debts.[12]However, many people choose not to make a will. Some of people may be in those circumstances which or where they cannot comply with those formal requirements for valid will.

[13]However, there is exception to the requirements of formalities of the wills to those who are employed in the high-risk professions such as member of armed forces. These wills are known as privileged wills.[14]None of the normal formalities are required for privileged wills. The general provision for privileged wills in the English Wills Act 1837 was adopted with minor alterations in s 28 of the Indian Act XXV of 1838. The effect of this Act extended to Singapore, for during this period it was the Governor-General of India in Council who was explicitly empowered to legislate for the Straits Settlements, which included Singapore.[15]The Singapore provision was amended by s 4 of the Wills (Amendment) Ordinance 1938 (Act 21 of 1938) in an identical manner to the UK Wills (Soldiers and Sailors) Act 1918. It exists in s26 (1) of the Wills Act today. This section provides that "

Notwithstanding anything in this Act that any soldier being in the actual military service, or that any mariner or seaman being at the sea, can and may dispose of his property and personal estate as he maybe have or might

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have done before making of this Act and may do so even though under the age of 21 years." [16] Despite having been on the statute books for more than 150 years, Section 26(1) has yet to be considered judicially in Singapore. But since it is identical in all material respects to the corresponding United Kingdom provision, the law in England and Singapore is probably the same. The law of Singapore has legislation concerning the effect of privileged wills. Today, "soldiers being in actual military service" and "mariners or seamen at sea" can make privileged wills using any form of written or oral words, provided that they are a deliberate expression of the testator's wishes and are intended to have testamentary effect. [17] The word soldier encompasses any person working as a soldier, and not just members of the official armed forces. It was also held to include persons undergoing military training, members of forces who work both at their jobs and man defences, and auxiliary personnel serving with armed forces such as doctors, nurses and chaplains. [18] The concept of privileged wills in Singapore basically originated from English law. However, the origin of this concept actually derived from Roman law. During Roman times, the privilege was restricted to soldiers who were in expeditione, ie living in camp on actual military service after receiving orders to proceed to the battlefield. [19] It was once thought that a soldier on actual military service was in the same position as a Roman soldier in expedition. He or she had to be either serving overseas in a campaign, or be mobilized and about to serve overseas. However, Denning LJ added that this would include all kinds of people whether "in the field or in the barracks, in billets or also sleeping at home. It was includes them although they might be captured by enemies or also interned by neutrals". In

recent years, academics and also law reform commissions which from various jurisdictions have been called for abolition of the privileged wills. In the days past, most of population, including those soldiers and also sailors, were poorly in education or educated and lacked with those knowledge and also those skill required to make a wills. Today, general level of the education or literacy in society is quite high, and soldiers have the ample opportunity to make the formal wills when or while undergoing training. Therefore It has been suggested that right to create privileged wills is that no longer necessary. In country like Singapore, Ministry of Defence does provide Will Preparation Service operate and run by those volunteer lawyers for members of the armed forces. These service personnel are expected to appreciate importance of the will-making and also to avail themselves of service as there is still no policy and directive which requires military authorities to advise them for execute the formal wills, or of their own capacity to make the privileged wills, before start embarking on the tours of the duty such as United Nations peacekeeping missions. However, it's not available to the full-time national servicemen and operationally-ready national servicemen (formerly called reservists) or the civilian staff, but was only to regular uniformed servicemen and also women. Beside, formerly, privileged wills needed because large proportion of those soldiers and also sailors were minors so that lacked the capacity to make a formal wills even they were engaged in defense of their own country. In Singapore, most of men are enlisted for the full-time national service at age of 18.[20] The Wills Act stated that age of majority for purpose of the making valid and enforceable will is 21 years old.[21] It has been suggested that it does not

matter if testator dies and without making will, since legislation is dealing with the intestacy and also provision for family will secure and ensure family members will be cared for. By the way, these overlooks the most vital and important reason for will is to give an effect to the testators' wishes. They might want to leave or give their property and also possessions to fiancée, a trusted friend or maybe charity instead of to give family members, or to bequeath some and certain personal effects of the sentimental values to the specific persons. For will to properly executed, there must be at least two witnesses required. But the testators in life-threatening circumstances can and may find themselves only presence of one witness. In such cases, privileged will is only way for testator's wishes able be made known. In conclusion, privileged wills have to and should be retained in Singapore for benefits of those soldiers.

Position of Privileged Wills in United Kingdom

Privileged will is exempt from the complying with Wills Act 1837 of United Kingdom and just can only be made by member of the HM Forces which engaged in the actual military services or in the conditions similar with the actual military services. Merchant seamen and also others in the conditions which similar to the actual military services can make the privileged Wills.

[22]Wills Act 1837 does not apply to the country like Scotland, but those Roman law in a favour of testamentum militare, which dispenses with the formalities for wills executed with the conditions of the military service, may be part of law in Scotland. Section 11 stated " Any soldier that being in the actual military services, or that any mariner and also seaman being at the sea, may dispose of his own personal estate as that he might already done

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before making of this Act".[23]This means any personnel in Army, Navy, Merchant Navy or Royal Air Force may and can make oral will to a witness and that it will be seen to be valid. This also means that if soldier, sailor or airman tries to or manages to write will in pencil but with no or just few witnesses, will be upheld.[24]In addition, the Soldier and also Sailors Act 1918 secure and ensures that those personnel can and able make oral will which is valid even though if they under age of 18 as the section 7 of Wills Act 1837 states that no will that made by someone under age of 18 is valid. A will of personality can be made in oral declaration or in writing before the United Kingdom government imposed the Statute of Frauds in 1677. Statute of Frauds in 1677 introduced formalities required to be followed in making a valid will, but exception was given to 3 categories of testators: both soldiers and Royal marine forces members, who is in actual military service, and mariners or seamen at sea. Parliament affirmed this privilege by the passing of Wills Act 1837. They are exempted from following Section 9 to make a valid will.[25]The reason for allowing privileged wills for soldiers and seaman are likely by the reason by their occupation to be outside the routine of civilian life and thus have less opportunity and fewer facilities to make a proper executed will, as emphasized by Henn Collins J in *Re Gibson*. [26]The test in examining the term of 'actual military service' had laid down by Bucknill J in *Re Wingham* by asking questions,[27]was the testator 'on the military service' and was such service 'active'? In his opinion, active military activities mean activities directly concerning with operations in an active warfare and it may has been in process or believed to be imminent.' Soldier' was defined not only as armed forces who fight in war, but includes doctors,

nurses, and chaplains serving with the forces. In the Estate of Rowson[28], a Woman's Royal Auxiliary Air Force's member, who worked in the balloon command, was held that she is allowed to make privilege will. An ordinary civilian worked with the armed forces, even his certificate or agreement stating he was a 'Noncombatant', will also be considered as 'soldier'. In the Goods of Donaldson,[29]it was held that surgeon in the military service of the East India Company was entitled to making a privileged will. In the Estate of Stanley,[30]a nurse contracted to work in the War Office in hospital ships was held as 'soldier'. Mariner or seaman stated in Section 11 not only includes merchant navy and Royal navy, but also a civilian serving in the merchant navy.[31]In the Goods of Hale,[32]a typist regularly employed on liners was held to be a 'seaman'. She was on the Lusitania, which later sunk by a German Submarine during the beginning of the First World War. It is important to know that the reason of one's occupation should be considered in order to determine whether he entitled to be privileged. A seaman's sailing must be part of his occupation, privileged wills are not entitled if it is merely a hobby. On top of that, the terms of 'at sea' has been interpreted including the maritime service on lakes, rivers, and canals. In some of the case, a will was also valid although it was made on land. In the Goods of Hale[33], the testatrix made her will in her office after being notified of her next voyage. As such her conducts are ruled by court as preparation for the voyage, she was hence 'at sea'. Royal naval's members were being privilege through Section 2 of the Wills (Soldiers and Sailors) Act 1918. Even he was not at sea, he will be considered as the 'soldier in actual military service'. In the Estate of Yates,[34]after receiving orders to join ship, the testator made

his will in a railway station. It was held that the will is a valid privileged will. They are exempted from following Section 9 to make a valid will.[35]In other words, a privileged will can be made either in writing or orally without witness' attestation. Practically, witness will be needed in proving an oral will had been made. This is because normally the 3 categories of people are privileged as they are always under circumstances that unable to make a properly executed written will even they attempted to. Since the privileged will not required witness, the S. 15 of the Wills Act 1837, where a witness cannot be benefited in a will, does not apply. Thus the only requirement for making a privileged will is that the testator must have animus testandi, to have clear intention in making such will. Nowadays, the court restricted the present scope of the privileged will in upholding equity. The privileged will is only allowed only if the testator had no reasonable chance to make an ordinary will, which following the formalities under S. 9 of the Wills Act 1837.

Analysis, compares and conclude

It is important to write a will as it shows the intention of a person on how to distribute his or her property. If a person dies without leaving will, he is said that died intestate. However, even a person had made a will, he is still possible to die intestate if the will made is invalid. To make a will valid, certain formalities should be followed. Firstly, a will must be in writing. Next, it must be signed or also acknowledged by testator with the presence of the two witnesses. Besides, the beneficiaries and their spouses cannot be the witnesses.[36]1.(Wills Act, s5)The exception to this is privileged wills.

Privileged wills are last wills and testaments that are made under circumstances where it is impossible to comply with the usual legal

requirements of an ordinary will. This type of will applied to those who are in high-risk professions as mariner, soldier on active duty or seaman at sea. In UK, privileged will is exempt from the complying with Wills Act 1837 of United Kingdom and also can only made by member of the HM Forces which engaged in the actual military services or in the conditions which similar to the actual military service. Wills Act 1837 does not apply to the Scotland, but Roman law in favor of testamentum militare, that dispenses with the formalities for the Wills executed in the conditions of the military services, may be the part of law of Scotland. Section 11 stated " Any soldier that being in the actual military services, and any mariner or seaman that being at the sea, can and may dispose of his own personal estate as that he might have done before making of this Act". This means any personnel in the Army, Navy, Merchant Navy and Royal Air Force may and can make oral will to witness and it will be seen as valid. This Act also means if soldier, sailor or airman tries to or manages to write will in pencil but no or just few witnesses, this will upheld. On the other hand, in Malaysia, the law of wills in West Malaysia is governed by the Wills Act 1959. Therefore, it does not apply to Sabah and Sarawak, and also does not apply to Muslims. Under section 26 (1) of the Wills Act 1959, it provided that " A member of the armed forces of Malaysia being in actual military service, and a mariner or seaman (including a member of the naval forces of Malaysia) being at sea may dispose of his property or of the guardianship, custody and tuition of a child or may exercise a power of appointment exercisable by will by a privileged will. Next, in Singapore, the law of wills is governed by Wills Act. Section 26(1) of the Wills Act of Singapore provides that " Notwithstanding anything in this

Act any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act and may do so even though under the age of 21 years." The concept of privileged will in UK can be traced back the privileged of Roman law. During Roman times, the privilege was restricted to soldiers who were in expeditione, ie living in camp on actual military service after receiving orders to proceed to the battlefield. On the other hand, in Malaysia, the law on privileged wills is based on English law. Besides, the general provision for privileged wills in the English Wills Act 1837 was adopted in Singapore with minor alterations in s 28 of the Indian Act XXV of 1838. The effect of this Act extended to Singapore, for during this period it was the Governor-General of India in Council who was explicitly empowered to legislate for the Straits Settlements, which included Singapore. Since the concept of privileged wills in Malaysia and Singapore are based on UK law, therefore, the position of privileged wills in this three countries are quite similar. Firstly, in these countries, the privileged wills is applied to member of armed forces such as mariner, soldier on active duty or seaman at sea. The word soldier has long been given a wide definition. It appears that the word encompasses any person working as a soldier, and not just members of the official armed forces. In the Goods of Donaldson.[37]it was held that a soldier employed by the East India Company was entitled to the privilege. In Andrews v Wingham, in addition to army soldiers, the word was held to include persons undergoing military training, members of forces who work both at their jobs and man defences (a local equivalent would be members of the Singapore Joint Civil Defence Forces), and auxiliary personnel serving

with armed forces such as doctors, nurses and chaplains.[38] In *Re White's Application*, British subject domiciled in New South Wales was employed during World War II by the United States Army as a civilian engineer. He was issued with papers which showed he had a status equivalent to that of a major in the United States Army, and that in the event of capture he was entitled to be treated as an officer prisoner-of-war. The court held he was entitled to make a privileged will.[39] Besides, "Mariner or seaman" has been held to mean all ranks of naval forces. Next, in three of the countries, all give rights to the members of armed forces to make will without the need to follow formalities. This means that these people can make will orally and the will can be made in front of single witness. The testator does not need to sign the will. However, many commentators have called for privileged wills to be abolished. In days past most of the population, including soldiers and sailors, were poorly educated and lacked the knowledge and skill required to make wills. Today the general level of education and literacy in society is high, and soldiers have ample opportunity to make formal wills while undergoing training. It has therefore been suggested that the right to create a privileged will is no longer necessary. This is true in UK as the people in UK generally tend to be more aware of their legal rights. Soldiers in particular are well informed of their legal rights by military authorities, and may even be more knowledgeable than civilians. The situations are different in Singapore and Malaysia. There is probably a significant number of ordinary soldiers who are unaware of how to create a formal will. Therefore, the privileged wills may be abolished in UK but should be retained in Malaysia and Singapore. Next, formerly, privileged

wills were needed because a large proportion of soldiers and sailors were minors and lacked the capacity to make formal wills even though they were engaged in the defense of their country. In these countries, most men are enlisted for full-time national service at the age of 18. According to the Wills Act of these three countries, a person must reach the age of majority in order to write a valid will. The age of majority in Malaysia and Singapore referred to 21 years old. Therefore, many of them who are in the National Service are not entitled to write a valid will. Therefore, the privileged wills must be retained in Malaysia and Singapore. However, in UK, the general age of majority has been lowered by statute from 21 to 18. Therefore, even if the privileged wills are abolished in UK, the members of armed forces are still able to write a valid will. In conclusion, the position of privileged wills in Malaysia, UK and Singapore are quite similar. However, this concept may be abolished in UK but not in Malaysia and Singapore.

Recommendation and opinion parts

Several Law Reform Commission in United Kingdom and Canada when recommending reforms to the laws of the wills, have considered whether the privilege shall be abolished, retained or even being restricted in some ways. Some legal academics have referred to privileged wills as having become obsolete and an 'outdated anachronism'. The main question now that is posed is whether it is appropriate for the privilege to be retained as a part of the law of succession in Malaysia in this 21st century? Well due to many reasons many commentators have called for privileged wills to be abolished. However, there are to be said some convincing grounds to retain the privilege itself in this modern era. In days past most of the population,

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including soldiers and sailors, were poorly educated and lacked the knowledge and skill required to make wills. Today the general level of education and literacy in society is high, and soldiers have ample opportunity to make formal wills while undergoing training. It has therefore been suggested that the right to create privileged wills is no longer necessary. Soldiers in particular are well informed of their legal rights by military authorities, and may even be more knowledgeable than civilians. Legal advice is also available before and after moving into a combat zone. The situation in Malaysia is different. No such arrangements exist, so there is probably a significant number of ordinary soldiers who are unaware of how to create a formal will. These service personnel are also expected to appreciate the importance of will-making and to avail themselves of the service as there is as yet no policy or directive that requires military authorities to advise them to execute formal wills, or of their capacity to make privileged wills. Therefore the privilege is still needed to protect personnel who have not executed a formal will but are in circumstances of danger without legal advice. Also, it has been suggested that it does not matter if a testator dies without making a will, since legislation dealing with intestacy and provision for the family will ensure that family members will be cared for. However this overlooks the most important reason for a will, which is to give effect to testators' wishes. They may want to leave their real property and possessions to a fiancée, trusted friend or charity instead of to family members, or to bequeath certain personal effects of sentimental value to specific persons. For a will to be properly executed, at least two witnesses are required. But testators in life-threatening circumstances may find

themselves with only one witness present. In such cases, a privileged will is the only way the testator's wishes can be made known. Therefore, the privilege should be retained instead of abolished as it may come in circumstances where it is impossible to comply with the usual legal requirements of an ordinary will and privilege will shall comply at this particular period. But still, improvement would have to be made to the privilege and perhaps, expanding the categories that are being allowed to make a privilege wills during their service or work? Many people in Singapore argued that the privileged wills should be abolished. In days past most of the population, including soldiers and sailors, were poorly educated and lacked the knowledge and skill required to make wills. Today the general level of education and literacy in society is high, and soldiers have ample opportunity to make formal wills while undergoing training. Therefore, if the authorities wish to abolish the privileged wills, they must ensure that the soldiers and other members of armed forces are given education on the knowledge and importance of making wills. Formerly, the privileged wills were introduced because majority of soldiers and sailors were minors and lacked the capacity to make formal wills even though they were engaged in the defense of their country. In Singapore, a person must reach the age of majority in order to make a valid will. In Australia and the United Kingdom the general age of majority has been lowered by statute from 21 to 18. Thus, the special privilege is no longer needed since testators who are under 21 can now make valid wills in those countries. However, in Singapore, the age of majority is 21 years old. Most of the men are enlisted for full-time national service at the age of 18. Therefore, many of them who are in National

Service cannot make a valid will as they are still minors. Therefore, if the authorities wish to abolish privileged wills in Singapore, they should first lower the age of majority to 18 years old. This enables majority of the men who are in National Service will be capable of making a valid will. Thus, the privileged wills are no longer needed. Besides, the aim of the privileged wills is to enable those who are in high danger profession to make a will when the circumstances do not allow them to make a valid will. For example, if a soldier is on battle, he may not be able to write down his will properly. He may also not be able to get two witnesses to prove his will. Therefore, if the authorities wish to abolish the privileged wills in Singapore, they must convey the importance of making a will to the members of armed forces. Lawyers should be provided to help them in making wills that follow formalities. The authorities have to ensure that the soldiers had made a valid will before embarking on tours of duty. Some of the commentators argued there is no longer rational basis for conferring status of the privileged testator upon the segment of community. In the past, those privileges that conferred on this class of the testators have been justified with various grounds. There are relatively low level of the education of the privileged testators, an unavailability of consultation and also professional advice to those military personnel, especially they were on the campaign or also in combat, high risk of death that faced by the testators when in the combat or at the sea in comparison with community generally, privilege is conferred as reward or incentive which to engage in socially beneficial occupation, soldiers and also others facing battle need comfort of knowing those thing, shall they not return, arrangements that have made for their affairs and also

the need to ensure minors who called upon to serve in military capacity and have to risk early death had "adult" privilege to make and revoke wills. Many of reasons, if ever fully justified, will quite inappropriate to the modern conditions of the warfare, service that in defence or the merchant marine forces, or the sea travel. The concept of special class of the persons that who alone are exposed to dangers of the active services that is no longer true. Many civilians placed in the positions which would call forth one or more of justifications enumerated in previous paragraph, and that not necessarily in the time of war (eg policemen and firefighters). Sea travel in the peace time is relatively free from the danger. General level of the literacy and also education in community as a whole is markedly higher compared in 1677. Will-making, nowadays regarded as relatively simple activity and also the ready availability of the printed will forms those attests to a widespread belief in community which there is no necessary needs for skilled advice. Now persons over age of 18 can make own wills the need to conferring privilege upon the infant testators those are to go for war already largely passed and also, in any events, s6 of Wills, Probate and Administration Act, 1898 expressly permits and allows wills to be made (subject to the compliance with due to formalities) by minors those are soldiers, members of the naval, marine or the air force, mariners or the seamen. In any event, the modern rules are governing succession of persons that who die intestate when coupled with Family Provision Act, 1982 purposely and tend to ensure that failure to make and revoke will does not necessarily defeat proper moral and also social obligations of the deceased persons. The broad options for the reform are abolition of privilege, narrowing of benefits of privilege,

curtailing privilege, broadening privilege, extending privilege to civilians placed in the emergency situations and also clarifying aspects of privilege. Before stating the recommendation, there are four preliminary matters that should be addressed. Firstly, the needs for the uniformity. Several of authors and Law Reform Commissions have raised up the issue, with suggesting that in federation such as Australia, there is a need for the uniformity between States and also Territories. Whilst there are some of valid arguments in favour of uniformity, fact remains that in Australia there is large measure of lack of the uniformity. There has been reluctances in several of the jurisdictions to alter status quo, notwithstanding the appreciation of the lack of adequate rationale that for allowing the privileged wills, even though the moves in other states to introduce several sort of the general dispensing power applicable to all the classes of wills that may be seen as trend towards the uniformity in the area which is not entirely unrelated with privileged wills. Furthermore, if as think, privilege is rather illusory and also in any event that serves poorly the proper interests of the testators and also the administration of the justice, the time has come for the New South Wales to prove and show the way that in proposing clear-cut reform. Secondly, whether privilege should be extended? There occurs and appears to be no any cogent reason for the extending of privilege to the other situations of danger, and there would be practical difficulty of the legislating adequately to cover those relevant situations by the way without giving rise to the unnecessary opportunities for the legal disputes. If rationale for the privileged wills is unsound, as argue, then privilege should be either abolished or be extensively restricted. Thirdly, if the recommendation for the

introduction of general dispensing power adopted, then all the classes of the testators will be given an opportunity, in an appropriate case, to make it informal yet valid wills. Subject to those threshold terms and requirements of document no departure from standard formalities will fatal if court can be satisfied that particular will of that particular testator represents his or her own testamentary intentions. In the conclusion, the privilege is still needed to protect personnel who have not executed a formal will but are in circumstances of danger without legal advice. Therefore, the privilege should be retained instead of abolished as it may comes circumstances where it is impossible to comply with the usual legal requirements of an ordinary will and privilege will shall comply at this particular period. But the improvement must have to be made to the privilege and perhaps, expanding the categories that are being allowed to make a privilege wills during their service or work.