

SUCCESSION ACT

CHAPTER 9:02

Act
27 of 1981
Amended by
28 of 2000

Current Authorised Pages

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on section 1(2)

Dates of Commencement

- A. Section 122—(w.e.f. 30.7.1981) (By section 1 of the Act).
- B. Part VIII (sections 94 to 116 inclusive) (w.e.f. 6.11.2000) (By LN 271/2000).
- C. Parts I, II, III, IV, V, VI, VII and IX (On Proclamation) (i.e., These Parts are not yet in operation).

Note on Acts not yet in operation

- (1) In this Act references have been made to the following Acts:
 - (a) Landlord and Tenant Act, 1981 (Act No. 19 of 1981);
 - (b) Land Law and Conveyancing Act, 1981 (Act No. 20 of 1981);
 - (c) Trustee Act, 1981 (Act No. 21 of 1981);
 - (d) Limitation Act, 1981 (Act No. 22 of 1981); and
 - (e) Land Registration Act, 1981 (Act No. 24 of 1981)
- (2) The above-mentioned Acts have not at the date of the revision of this Act been brought into operation.
- (3) The relevant provisions of this Act in which the above Acts are mentioned should be read in the light of paragraph (2) above.

Note on section 65 of the Act

The Estate and Succession Duties Ordinance (Ch. 33 No. 5 -1950 Revised Edition) was revised in 1980 and appeared in the 1980 Revised Edition of the Laws as the Estate and Succession Duties Act, (Chap. 76:02) and was subsequently repealed by section 9(1) of the Finance (Miscellaneous Provisions) Act, 2000 (Act No. 39 of 2000).

Note on section 88(5)

The Separation and Maintenance Ordinance (Ch. 5 No. 15 - 1950 Revised Edition) was repealed by the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981 (Act No. 15 of 1981) which was subsequently revised in 1980 and appeared in the 1980 Revised Edition of the Laws as Chapter 46:08.

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CHAPTER 9:02

SUCCESSION ACT

27 of 1981.

An Act relating to the law of succession.

[ASSENTED TO 30TH JULY 1981]

Short title and commencement.

***1.** (1) This Act may be cited as the Succession Act.

(2) This Act except for section 122 shall come into operation on a date to be fixed by the President by Proclamation published in the *Gazette*.

PART I

INTERPRETATION

Interpretation.

2. (1) In this Act—

“administration” means, in relation to the estate of a deceased person, letters of administration, whether general or limited, or with the Will annexed or otherwise;

“administrator” means a person to whom administration is granted;

“Administrator General” means the person appointed under section 29;

“common form business” means the business of obtaining probate and administration where there is no contention as to the right thereto, including the granting of probates and administrations in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration;

“conveyance” includes any instrument, other than a Will, consisting of or comprising a transfer, mortgage or other charge, lease, assent, vesting declaration, disclaimer, release or other assurance of property or of an interest therein; and “convey” has a corresponding meaning;

*See Note on page 2 for the commencement dates of this Act.

“Court” means the High Court;

“death duties” includes any duty payable on the value of the estate of a deceased person;

“grant” means a grant of representation;

“intestate”, when used as a noun, means a person who leaves no Will or leaves a Will but leaves undisposed of some beneficial interest in his estate;

“land” means the surface of the earth, the airspace above it and the things, other than chattels, below it, and includes—

- (a) buildings on land and parts of buildings whether the division is vertical, horizontal, or made in any other way;
- (b) mines and minerals, whether or not held apart from the surface;
- (c) land covered by water;
- (d) legal estates in land, whether or not they give a right to possession of the soil;
- (e) equitable interests in land;

“leasehold term” has the meaning assigned by section 5 of the Land Law and Conveyancing Act, 1981;

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“mortgage” includes any charge or lien on any property for securing money or money’s worth;

“pecuniary legacy” includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money;

“personal chattels” means carriages, horses, stable furniture and effects, motor cars and accessories, garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use, or of ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business or professional purposes nor money or security for money;

“personal representative” means the executor or the administrator for the time being of a deceased person, and includes the Administrator General;

21 of 1981. “Public Trustee” has the meaning assigned by section 2 of the Trustee Act, 1981;

“real estate” includes chattels real, and land in possession, remainder or reversion, and every estate or interest in or over land (including real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land) to which a deceased person was entitled at the time of his death;

24 of 1981. “registered land” has the meaning assigned by section 2 of the Land Registration Act, 1981;

“Registrar” means the registrar of the Supreme Court and includes any Deputy or Assistant Registrar thereof;

“representation” means probate or administration;

“trust corporation” means the Public Trustee and a trust corporation as defined by section 2 of the Trustee Act, 1981;

“unregistered land” has the meaning assigned by section 2 of the Land Registration Act, 1981.

(2) Subject to section 88(2), in all cases where, after the commencement of this Act, two or more persons have died—

(a) simultaneously; or

(b) in circumstances rendering it uncertain which of them survived the other or others,

for all purposes affecting the title to property such deaths are (unless the Court orders otherwise) presumed to have occurred in order of seniority, the younger being presumed to have survived the elder.

(3) Reference to a “spouse” includes—

(a) a single woman who has been living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death;

- (b) a single man who has been living together with a single woman as her husband for a period of not less than five years immediately preceding the date of her death,

and for these purposes a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced, but only one such relationship as is referred to in paragraph (a) or (b) shall be taken into account for the purposes of this Act.

(4) References to a child or issue living at the death of any person include a child or issue *en ventre sa mère* at the death and a child in respect of whom an adoption order has been made under the Adoption of Children Act.

Ch. 46:03.

(5) The estate or interest of a deceased person under a joint tenancy, where any tenant survives the deceased person, is an estate or interest ceasing on his death.

PART II WILLS

3. (1) Subject to this Part, every person may dispose, by Will executed in accordance with this Part, of all property owned by him at the time of his death, and which, if not disposed of, would fall within his estate to be distributed in accordance with Part VII.

Property
disposable by
Will.

(2) For the removal of doubt, it is hereby declared that (without prejudice to the rights and interests of a personal representative) any person may dispose of land by Will notwithstanding that by reason of not being born in wedlock or otherwise he did not leave an heir or next of kin surviving him.

4. To be valid a Will shall be made by a person who—
- (a) has attained the age of eighteen years or is or has been married; and
 - (b) is of sound disposing mind.

Capacity to
make a Will.

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Formalities for execution.

- 5.** (1) Subject to section 6, no Will is valid unless it is—
- (a) in writing; and
 - (b) signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, in accordance with subsection (2).
- (2) The signature of the testator or other person mentioned in paragraph (b) of subsection (1) is effective—
- (a) only if made or acknowledged by the testator in the presence of two or more witnesses present at the same time, such witnesses attesting and subscribing the Will in the presence of the testator;
 - (b) so far as its position is concerned, if it satisfies subsection (4).
- (3) No particular form of attestation is necessary, nor is it necessary for the witnesses to sign in the presence of each other, nor is publication of the Will necessary.
- (4) So far as regards the position of the signature of the testator, or of the person signing for him—
- (a) a Will is valid if the signature is so placed at, after, following, under, beside or opposite the end of the Will that it is apparent on the face of the Will that the testator intended to give effect, by such signature, to the writing signed as his Will;
 - (b) no Will is affected by the circumstances that—
 - (i) the signature does not follow, or is not immediately after, the foot or end of the Will; or
 - (ii) a blank space intervenes between the concluding word of the Will and the signature; or
 - (iii) the signature is placed among the words of the testimonium clause or of the clause of attestation, or follows or is after or under the clause of attestation, either with or without a blank space intervening, or

- follows or is after, under or beside the names or one of the names of the subscribing witnesses; or
- (iv) the signature is on a side, page or other portion of the paper or papers containing the Will whereon no clause or paragraph or disposing part of the Will is written above the signature; or
 - (v) there appears to be sufficient space to contain the signature on or at the bottom of the preceding side, page or other portion of the same paper on which the Will is written,

and the enumeration of the above circumstances does not restrict the generality of this subsection; but no signature under this section operates to give effect to any disposition or direction which is underneath or follows it, nor does it give effect to any disposition or direction inserted after the signature is made.

(5) No person is a competent witness to the execution of a Will if he attests the Will in any manner other than by signing his name in his own handwriting.

6. (1) The Minister may make Regulations governing the validity and recognition of Wills and other testamentary dispositions with a foreign element or executed on board a vessel or aircraft or which, for any other reason, may not comply with the law of the State.

Wills with a foreign element.

(2) In making Regulations under subsection (1), the Minister may have regard to any convention providing a uniform law on the form of an international Will or otherwise dealing with the conflict of laws relating to testamentary dispositions.

7. (1) No appointment made by Will, in the exercise of any power, is valid unless it is executed in accordance with section 5 or 6.

Testamentary execution of power.

(2) Subsection (1) applies notwithstanding anything to the contrary in the instrument creating the power.

(3) A Will executed in accordance with section 5 or 6 is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by Will, notwithstanding that the instrument creating the power expressly requires that a Will made in exercise of such power should be executed with some additional or other form of execution or formality.

Incompetency of witness.

8. Subject to section 5(5), if any person who attests the execution of a Will is, at the time of the execution, or becomes, at any time afterwards, incompetent as a witness to prove the execution, the Will is not invalid on that account.

Gift to witness.

9. (1) Subject to subsection (2), if a person who attests the execution of a Will is a person to whom any interest is given by the Will (whether by way of gift or by way of exercise of a power of appointment, but other than and except charges and directions for the payment of debts), the gift or appointment is void, so far as it concerns such an attesting witness or any person claiming under the witness; but the attesting witness is competent as a witness to prove the execution, or to prove the validity or invalidity of the Will, notwithstanding the gift or appointment mentioned in the Will.

(2) Attestation of a Will by a person to whom there is given or made any such disposition as is described in subsection (1) shall be disregarded if the Will is duly executed without his attestation and without that of any other such person or if the attesting witness is the testator's spouse.

(3) This section applies to the Will of any person dying after the passing of this Act, whether executed before or after the passing of this Act.

Attestation by creditor.

10. If a Will charges any property with any debt, and—

- (a) any creditor whose debt is so charged; or
- (b) the wife or husband of any such creditor,

attests the execution, such an attesting witness is competent, notwithstanding the charge, as a witness to prove the execution, or to prove the validity or invalidity of the Will.

11. No person is incompetent, on account of his being an executor of a Will, as a witness to prove the execution, or to prove the validity or invalidity of the Will. Attestation by executor.

12. (1) Subject to subsection (2), all Wills, whenever made, are revoked by the marriage of the testator. Revocation by marriage.

(2) Marriage of the testator does not revoke a Will—

(a) whenever made, if the marriage is *in extremis* and solemnised in accordance with the provisions of the Marriage Act; Ch. 45:01.

(b) made on or after 1st January 1928, and in exercise of a power of appointment, whereby the property appointed would not, in default of the appointment, pass to his intestate successors in accordance with Part VII or to his personal representative;

(c) made on or after the said date and expressed to be in contemplation of marriage, whether so expressed in the Will or not;

(d) made as a mutual Will by a survivor of two or more persons who made such Wills, where any such person other than the said survivor has since died without revoking his mutual Will.

13. No Will is revoked by any presumption of an intention on the ground of an alteration in circumstances. Alteration in circumstances.

14. No Will, or any part thereof, is revocable otherwise than— Revocation generally.

(a) in accordance with section 12; or

(b) by another Will; or

(c) by some writing, declaring an intention to revoke the Will, executed in the manner in which a Will is required to be executed; or

(d) by the testator, or some person in his presence and by his direction, burning, tearing or otherwise destroying the Will, with the intention of revoking it.

Alteration after execution.

15. No obliteration, interlineation or other alteration made in any Will, after its execution, is valid, or has any effect so far as the words or effect of the Will before the alteration are not apparent, unless the alteration is executed in the manner in which a Will is required to be executed; but the Will, with the alteration as part of it, is duly executed if the signature of the testator and the subscription of the witnesses are made in the margin, or on some other part of the Will opposite or near the alteration, or at the foot or end of or opposite a memorandum referring to the alteration and written at the end or some other part of the Will.

Revival of revoked Will.

16. (1) No Will, or any part thereof, which has been revoked, is revived otherwise than by—

- (a) re-execution of the revoked Will; or
- (b) a codicil showing an intention to revive the revoked Will.

(2) Where any Will, which has been, first, partly revoked, and later wholly revoked, is revised, the revival does not extend to the part revoked before the revocation of the whole Will unless an intention to revive that part is shown.

Subsequent conveyance or acts.

17. No conveyance or other act, made or done subsequently to the execution of a Will, of or relating to any property referred to in the Will (except an act which revokes the Will in accordance with section 12 or 14), prevents the operation of the Will with respect to the interest in that property of which the testator has power to dispose by Will at the time of his death.

Will speaks from death.

18. Every Will shall be construed, with reference to the property referred to in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears from the Will.

Lapsed and void devises.

19. Unless a contrary intention appears from the Will, if a devise fails or is void by reason of the death of the devisee in the lifetime of the testator, by reason of being contrary to law or otherwise, any property comprised or intended to be comprised in that devise is deemed to be included in the residuary devise (if any) contained in the Will.

20. (1) A disposition by Will of property described as realty in any place, or in the occupation of a person mentioned in the Will or otherwise described in a general manner, or a residuary devise of property described as realty includes—

Meaning of certain expressions.

- (a) any beneficial interest, of which the testator could dispose by Will, in capital money arising under the statutory trusts of a fee simple;
- (b) if the testator dies owning no other property passing under such a disposition, any beneficial interest, of which the testator could dispose by Will, in proceeds of sale under a trust for sale of a fee simple.

(2) A disposition by Will of land in any place, or in the occupation of a person mentioned in the Will or otherwise described in a general manner, or a residuary devise or bequest of land, includes the interests included by paragraphs (a) and (b) of subsection (1) in a gift of property described as realty.

(3) A gift of property described as personalty in a general manner, or a residuary bequest, includes any beneficial interest, of which the testator could dispose by Will, under a trust for sale of land, unless it is included in a disposition by virtue of subsection (1) or (2).

(4) A devise of property described as land in any place, or in the occupation of a person mentioned in the Will or of property otherwise described as land in a general manner, and any other general devise which would describe a leasehold term if the testator had no fee simple (legal or equitable) which could be described by it, includes the leasehold terms of the testator, or any of them to which the description extends, as the case may be, as well as estates in fee simple.

(5) This section takes effect subject to a contrary intention appearing from the Will, and subsections (1) to (3) apply only to Wills coming into operation after the commencement of this Act.

(6) In subsection (1) the expressions “capital money” and “statutory trusts” have the meaning assigned by section 2(1) of the Land Law and Conveyancing Act, 1981.

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Contingent and future testamentary gifts.

21. (1) A contingent or future specific devise or bequest of property, a contingent residuary devise of land and a specific or residuary devise of land to trustees upon trust for persons whose interests are contingent or executory all carry the intermediate income of that property from the death of the testator, except so far as that income, or any part there, may be otherwise expressly disposed of.

(2) This section applies only to Wills coming into operation after the commencement of this Act.

General powers of appointment.

22. A general or residuary disposition of property, or of property described as realty, personalty or by any other general description, or of such property in any place, or in the occupation of a person mentioned in the Will, or otherwise described in a general manner, shall be construed to include any property to which the description extends, which the testator has power to appoint in any manner he thinks proper and operates as an execution of such power, unless a contrary intention appears from the Will.

Words of limitation.

23. A devise of land, or any interest in land, whether beneficially or to any trustee, passes the fee simple absolute in possession, or other whole estate or interest which the testator had power to dispose of or create by Will in the land devised, unless a contrary intention appears from the Will.

Lapsing of gifts to issue.

24. Where property is devised or bequeathed to a child or other issue of the testator, for an estate or interest not determinable at or before the death of the devisee or legatee, and—

- (a) the devisee or legatee dies in the lifetime of the testator, having issue; and
- (b) any such issue are living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if the death of the devisee or legatee had happened immediately after the death of the testator, unless a contrary intention appears from the Will.

25. (1) Where any property is devised or bequeathed to any person on trust but the Will does not specify the trusts upon which the property is to be held, the legatee or devisee shall hold the property on trust to give effect to any instructions given to him by the testator otherwise than by Will and, if inconsistent instructions have been given at different times, to give effect to the last instruction given by the testator. Secret trusts.

(2) Subsection (1) has effect in relation to instructions given before or after the making of a Will, and whether the instructions are in writing or not.

26. The equitable doctrine of conversion is hereby abolished. Abolition of the doctrine of conversion.

27. (1) Extrinsic evidence is admissible to show the intention of the testator and to assist in the construction of or to explain any contradiction in a Will. General rules of construction.

(2) If the purport of a devise or bequest admits of more than one interpretation, then, in the case of doubt, the interpretation according to which the devise or bequest will be operative shall be preferred.

28. (1) Except where otherwise expressly provided, the foregoing provisions of this Part apply to Wills made before or after the commencement of this Act, whether the testator dies before or after such commencement. Application of this Part.

(2) Every Will which is re-executed, re-published or revived by codicil is, for the purposes of this Part, made at the time of the re-execution, re-publication or revival.

PART III

ADMINISTRATOR GENERAL

29. (1) There shall be established the office of Administrator General. Office and functions.

(2) The Administrator General is a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under that name.

Ch. 23:01. (3) The office of Administrator General is a public office within the meaning of the Civil Service Act, and the provisions of the said Act apply accordingly.

(4) A public officer may be appointed to perform the duties of the office of the Administrator General in conjunction with the duties of any other office.

(5) Any other public officer may be appointed to assist the Administrator General in his office or as his agent or delegate in conjunction with the duties of any other office.

(6) Where the Administrator General is the head of a Department of the public service, his powers extend to the clerks and officers of his Department without any special appointment of such clerks or officers to assist him in the discharge of his duties and powers under this Act.

(7) Unless a new person is appointed to hold the office of Administrator General from the commencement of this Act, the person who immediately before the commencement of this Act is performing the functions of the office of Administrator General shall be deemed to have been lawfully appointed to, and shall continue to hold or act in, that office as if he had been appointed under this section.

Security. **30.** The Administrator General shall not be called upon to give security in respect of any property vesting in him or committed to his charge under this Act.

Transitional provisions. Ch. 9:01. **31.** Subject to such regulations as may be made, all property, funds, books, records, documents and accounts held at the commencement of this Act by the Administrator General appointed under the Administration of Estates Act shall be deemed to be transferred to and to be held by any new Administrator General appointed to take office at the commencement of this Act.

Fees. **32.** (1) The Minister may by Order, subject to affirmative resolution of the House of Representatives, prescribe fees to be charged in respect of execution of the duties, and exercise of the

powers of the Administrator General, and such fees shall be collected and accounted for by such persons and in such manner, and shall be paid into such account, as may be prescribed.

(2) Such fees shall be applied as an appropriation in aid of moneys provided for expenses under this Part, and so far as not so applied shall be paid into the Consolidated Fund.

(3) The fees under this section shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the carrying out of the Administrator General's functions under this Act.

33. (1) Where the Administrator General has taken or claims possession of any property on behalf of the State and it is doubtful—

Doubt as to bona vacantia.

- (a) what property was in the possession of the deceased intestate; or
- (b) what are the boundaries or other description of so much of such property as consists of land; or
- (c) whether the intestate died without leaving any next of kin; or
- (d) whether any person is entitled as against the State to any right in or claim to such property; or
- (e) whether any person is entitled as a creditor of the deceased or otherwise to any payment out of or charge upon such property,

he shall, by originating summons to be served upon any person having or claiming to have any adverse right or interest, apply to the Court for directions in respect of such matters and any other matters which the Court considers proper matters to be so determined.

- (2) Upon such application, the Court may—
 - (a) with the consent of the parties claiming to be entitled to such property, determine any such matter summarily without appeal; or
 - (b) at the request of the Administrator General or any person appearing to such summons and claiming to be entitled to such property, direct any such

matter to be tried in the same manner as any question or issue arising in the course of interpleader proceedings.

(3) On the trial of any such matter, any party interested therein may at any time apply to the Court for such judgment or order as he may be entitled to in consequence of the finding on such trial.

Regulations.

34. Without prejudice to the generality of section 120, the Minister may make Regulations for carrying into effect the objects of this Part and other Parts of this Act relating to the Administrator General, and in particular in respect of—

- (a) the duties of the Administrator General, his officers and any persons assisting him or acting for him;
- (b) all applications to be made to and all business to be transacted by or with the Administrator General or such officers and other persons other than proceedings in Court.

PART IV

DEVOLUTION

Realty to devolve as personality.

35. (1) Real estate to which a deceased person was entitled for an estate or interest not ceasing on his death devolves on his death, notwithstanding any testamentary disposition thereof, to and, subject to subsection (3), becomes vested in his personal representatives from time to time as if it were personal estate vested in them.

(2) Probate or Letters of Administration shall be granted in respect of, and take effect to vest in, the personal representatives all real and personal estate of a deceased person.

(3) For the avoidance of doubt, it is hereby declared that, in respect of the real and personal estate of a person dying after the commencement of this Act, such estate does not vest in the personal representatives until Probate or Letters of Administration in respect thereof are granted to them and, pending the grant of such Probate or Letters of Administration, they have no power to deal or interfere with such estate.

(4) On the death of any person, all his real and personal estate vests in law in the Administrator General until the same is divested by the grant of Probate or Letters of Administration to some other person or persons.

(5) The Administrator General shall not, pending the grant of such Probate or Letters of Administration, take possession of or interfere in the administration of any estate save as provided in this Act.

(6) For the avoidance of doubt, it is hereby declared that a notice to determine a tenancy vested in a deceased person to be served under section 63 of the Landlord and Tenant Act, 1981, shall be served on the Administrator General, pending the grant of Probate or Letters of Administration in respect of such person's estate, and such service has the same effect as it would have had if the deceased person were still alive and the service had been on him. ^{19 of 1981.}

(7) This section applies to any real estate over which a person exercises by Will a general power of appointment, as if it were real estate vested in him.

(8) In this section, and elsewhere in this Act—

- (a) "real estate" includes chattels real, and land in possession, remainder or reversion, and every estate or interest in or over land (including real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land) to which a deceased person was entitled at the time of his death;
- (b) an estate or interest vested on any trust in any deceased person solely is not an estate or interest as to which that person dies intestate;
- (c) the estate or interest of a deceased person under a joint tenancy where any tenant survives the deceased person is an estate or interest ceasing on his death which passes by survivorship;

- (d) on the death of a corporation sole, his estate or interest in the corporation's real estate is an estate or interest ceasing on his death which devolves to his successor.

Further assimilation of real and personal estates.

36. (1) All enactments (including this Act) and rules of law relating to—

- (a) the effect of Probate or Letters of Administration as respects personal estate;
- (b) the dealing with personal estate before Probate or Letters of Administration;
- (c) the powers, rights, duties and liabilities of personal representatives in respect of personal estate;
- (d) the payment of costs of administration; and
- (e) all other matters with respect to the administration of personal estate,

extend and apply, so far as the same are applicable, to real estate as if it were personal estate; and the subsequent provisions of this section do not prejudice the generality of this subsection.

(2) All jurisdiction of any Court with respect to appointment of administrators or otherwise with respect to the grant of Probate or Letters of Administration as respects personal estate extend over, and are exercisable in relation to, real estate as if it were personal estate and the rights, as respects citations to see proceedings, of persons interested or claiming to be interested in the real estate of a deceased person are the same as those of persons interested in or claiming to be interested in the personal estate of that deceased person.

(3) A grant of Probate or Letters of Administration, unless it contains an express limitation to the contrary, has effect as well over the real as over the personal estate and, subject to subsection (4), the personal representatives of a deceased person hold his real estate as trustees for the persons by law entitled thereto.

(4) A personal representative in his capacity of personal representative is not, by reason only of subsection (3), a trustee for the purposes of the Limitation Act, 1981.

22 of 1981.

(5) In the administration of assets of a deceased person, his real estate shall be administered, subject to and in accordance with the provisions of Part VI, in the same manner and with the same incidents as if it were personal estate.

37. (1) References in the subsequent provisions of this Act and in any subsequent enactment to the estate of a deceased person shall, unless the contrary intention appears, include references to both the real and personal estate of the deceased person. Construction of certain references.

- (2) In any enactment, deed or instrument—
- (a) passed or executed before or after the commencement of this Act, the word “heir” or “heirs” used as a word of limitation has the same effect as if this Act had not been passed;
 - (b) passed or enacted before the commencement of this Act, the word “heir” or “heirs” used as a word of purchase has the same meaning as if this Act had not been passed;
 - (c) passed or executed after the commencement of this Act, the word “heir” or “heirs” used as a word of purchase means, unless the contrary intention appears, the person or persons, other than a creditor, who would be beneficially entitled under Part VII to the estate of the ancestor if the ancestor had died intestate;
 - (d) passed or enacted before or after the commencement to this Act, and in this Act, subject as aforesaid, references to the heirs of any person include references to his personal representatives.

PART V

GRANT OF REPRESENTATION

38. (1) The Court of jurisdiction in respect of the estate of a deceased person, whether it consists of realty only or of personalty only, or partly of realty and partly of personalty, to— Jurisdiction of Court.

- (a) determine the validity and admissibility to Probate of the Will or the granting of administration of

the estate of any person domiciled in the State and of the estate in the State of any person, wherever domiciled, dying seised or possessed thereof or entitled thereto;

- (b) revoke any Probate or Administration in any suit instituted either—
- (i) by an executor or Administrator or any person claiming under a Will to have it established or to have the trusts of it carried into effect; or
 - (ii) any person claiming adversely to a Will or Administration to have it declared void, and its registration prevented or recalled, or claiming to have Administration revoked.

(2) The jurisdiction of the Court under this section shall be exercised subject to any Rules of Court applicable or made under section 121.

(3) The Court may, at any stage of any proceedings under this Act, direct the Administrator General to be made a party thereto, and may adjourn any hearing, summons or other proceeding to admit service on and appearance by the Administrator General.

Number of
representatives.

39. (1) Probate or Administration shall not be granted to more than four persons in respect of the same estate.

(2) This section applies to grants made after the date of commencement of this Act, whether the testator or intestate died before or after that date.

Trust
corporations.

40. (1) The Court may—

- (a) where a trust corporation is named in a Will as executor, whether alone or jointly with another person, grant Probate to the corporation either solely or jointly with another person, as the case may require;
- (b) grant Administration to a trust corporation, either solely or jointly with another person,

and the trust corporation may act accordingly as executor or administrator, as the case may be.

(2) Probate or Administration shall not be granted to a syndic or nominee on behalf of a trust corporation.

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the Court may require with a view to the grant to the corporation of Probate or Administration, and the acts of any officer so authorised are binding on the corporation.

(4) This section has effect whether the testator or intestate died before or after the commencement of this Act.

41. (1) No Will of any deceased person has any effect whatever in law or in equity, or passes any right, title or interest whatever, until the same has been duly proved in accordance with the provisions of this Act. Proof of Will.

(2) The Administrator General or any person alleging himself to be interested in the estate of any deceased person may, by summons, at any time call upon any person whom he alleges to be in possession of any Will of the deceased to produce the same.

(3) The party upon whom such summons is served shall appear on the day named therein and is bound to produce any such Will, and, if he refuses or omits so to produce any such Will—

(a) no Will afterwards by him shall be admitted to probate at any time thereafter without express leave of the Court;

(b) he is liable to attachment, if it is at any time proved that any such Will was at the time of service on him of such summons in his custody or control.

42. (1) Any person claiming probate in the first instance may, by application, to be heard as an application for grant in solemn form, commence an action to establish the Will against any person with any opposite interest. Solemn form.

(2) In such a case, the Court shall, at the trial not allow the applicant the costs or any part of the costs of such action out of the estate, unless satisfied that the action was necessary.

Cesser of right to prove.

43. Where a person appointed executor by Will—

- (a) survives the testator but dies without having taken out probate of the Will; or
- (b) is cited to take out probate of the Will and does not appear to the citation; or
- (c) renounces probate of the Will,

his rights in respect of the executorship wholly cease, and the representation to the testator and the administration of his real and personal estate devolve and are committed in like manner as if that person had not been appointed executor.

Withdrawal of renunciation.

44. (1) Where an executor who has renounced Probate has been permitted, whether before or after the commencement of this Act, to withdraw the renunciation and prove the Will, the Probate takes effect and shall be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously proved the Will or taken out Letters of Administration, and a memorandum of the subsequent Probate shall be endorsed on the original Probate or Letters of Administration.

(2) This section applies whether the testator died before or after the commencement of this Act.

Executor of executor.

45. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

(2) Subsection (1) does not apply to an executor who does not prove the Will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the Will of that testator, it ceases to apply on such probate being granted.

(3) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

- (4) The chain of such representation is broken by—
- (a) an intestacy; or
 - (b) the failure of a testator to appoint an executor; or
 - (c) the failure to obtain probate of a Will,

but is not broken by a temporary grant of Administration if Probate is subsequently granted.

- (5) Every person in the chain of representation to a testator—
- (a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living; and
 - (b) is, to the extent to which the estate whether real or personal of that testator has come to his hands, answerable as if he were an original executor.

46. (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and are as effectual as if all the persons named as executors had concurred therein.

Proving executor.

(2) This section applies whether the testator died before or after the commencement of this Act.

47. (1) Any executor, notwithstanding that he may have proved the Will of his testator, may at any time before he has intermeddled with the assets or acted as the personal representative of any person (in this section referred to as the “original testator”) of whom his testator was executor, renounce and disclaim being the personal representative of such original testator by making a declaration to that effect in such form as may be prescribed.

Disclaimer of executor.

(2) Such form shall be registered with the Registrar General, and a certified copy thereof shall be filed in the Registry of the Court.

(3) The declaration has effect and validity only when so registered and, on registration, all the estate of the original testator which devolved to and became vested in such executor vests in law in the continuing executor or executors or, if there is none, in the Administrator General.

(4) The registration fee on such declaration shall be as prescribed, but no stamp duty is chargeable thereon.

(5) Any person making a declaration under this section, which contains any false or incorrect particulars, is guilty of an offence and, in addition to any civil liabilities, is liable, on summary conviction, on a complaint by the Administrator General, to a fine of three thousand dollars or to imprisonment for two years.

(6) The Administrator General may take summary proceedings under this section at any time within five years from the time when the cause of the complaint arose.

Grant of
Administration.

48. (1) Subject to subsection (2), where—

- (a) any person dies intestate; or
- (b) any person dies without having appointed any executor or having made an appointment which fails; or
- (c) the executor named in the Will is under the age of eighteen years or is absent from the State without having proved the Will; or
- (d) any person dies out of the State but having any estate within the State,

Administration in respect of the estate shall be granted to the person entitled under this Act.

(2) Where, by reason of the insolvency of the estate or any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would have been entitled to the grant of Administration, the Court may in its discretion, notwithstanding any other provision in this Act, appoint as administrator such person as it thinks expedient, and any Administration granted under this subsection may be limited in any way the Court thinks fit.

49. Applications for Administration may be made by the following persons as of course, and in the following order of preference, that is to say—

Order of person entitled to Administration.

- (a) in cases of intestacy—
 - (i) the surviving spouse of the intestate;
 - (ii) the next of kin;
 - (iii) the Administrator General;
- (b) where no executor has been appointed or the executor is absent from the State, or is unable or unwilling to act—
 - (i) the residuary devisee or residuary legatee;
 - (ii) a devisee or legatee;
 - (iii) the next of kin;
 - (iv) the Administrator General.

50. (1) Where any legal proceedings touching the validity of the Will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the Court may grant Administration of the estate of the deceased person to an administrator, who has all the rights and powers of a general administrator other than a right of distributing the residue of the estate.

Administration *pendente lite*.

(2) Every such administrator is subject to the immediate control of the Court and acts under its direction.

(3) The Court may, out of the deceased's estate, assign to an administrator appointed under this section such reasonable remuneration as the Court thinks fit.

51. If, while any legal proceeding is pending in any Court by or against an administrator to whom a temporary Administration has been granted, that Administration is revoked, that Court may order that the proceeding be continued by or against the new personal representative in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as the Court directs.

Continuance of legal proceedings.

Administration during minority of executor.

52. (1) Where a minor is sole executor of a Will, Administration with the Will annexed shall to his guardian, or to such other person as the Court thinks fit, until the minor attains the age of eighteen years, and on his attaining that age and not before Probate of the Will may be granted to him.

(2) Where a testator by his Will appoints a minor to be an executor, the appointment does not operate to constitute him a personal representative for any purpose, unless and until probate is granted to him under this section.

Administration with Will annexed.

53. In any case where—

- (a) there is an executor of a Will, but he has not proved the Will nor signed a declaration of renunciation; or
- (b) there is any residuary or other devisee or legatee or next of kin who has not signed such a declaration,

the Court may, if such executor, devisee, legatee or next of kin does not appear after citation, or if such person shall appear, but not show any sufficient cause to the contrary, order that administrator with the Will annexed to be granted to the person who would be entitled thereto, if such other person had duly renounced.

Voidable Administration.

54. (1) All Letters of Administration granted at a time when there is an executor who has not proved the Will are voidable only, but they become void as soon as a Will of the deceased person of whose estate such Administration was granted is duly proved by any executor, or when such Administration is revoked by order of the Court.

(2) All acts done by an administrator under such voidable Letters of Administration are valid notwithstanding that the administration later becomes void or is revoked, but persons who have received any property as next of kin are liable to account for and transfer the same to the legatees or devisees or other persons entitled thereto under the Will without prejudice to the rights of purchasers of such property.

55. (1) An applicant for a grant of Administration with the Will annexed or for Administration shall cite all persons having a prior right to apply for a grant of Probate or Administration, as the case may be, and who have not renounced the right to the grant.

Citation of persons with prior right.

(2) The Court may grant Administration to such an applicant in the event of the persons having such prior right failing to appear and to accept the grant after having been cited to do so.

(3) Subject to subsection (4), the Court may grant administration of the estate within the State of any person to any person resident within the State who would otherwise be entitled to the same without any previous citation to or the consent of any other party having a prior right to administration, but not resident or actually living within the State.

(4) Administration granted under subsection (3) shall be with reservation of the right of the party having such prior right.

56. (1) Subject to subsection (2), on production of an affidavit— Creditors.

(a) stating who is the person entitled to Probate or Administration;

(b) showing that such person has renounced the right to the same or has neglected or refused to apply for the same after citation, and that the claim of the applicant is unsatisfied,

but not otherwise, any person proving himself to be a creditor of the testator or intestator or for financial expenses may apply for Administration.

(2) An application made under subsection (1) shall set out and the applicant shall swear therein to the alleged debt and the particulars thereof with the same particularity as is required for the special endorsement of a writ of summons in an action.

(3) In any such application, the Court may, in its discretion, cause to be summoned—

(a) the executor named in the Will, spouse, residuary devisee or the legatee or next of kin, as the case may be, or any person interested in the deceased's estate; or

(b) if there are no persons so entitled or interested, the Administrator General.

Special Administration.

57. (1) If at the expiration of six months from the death of a person any personal representative of the deceased person to whom a grant has been made is residing out of the jurisdiction of the Court, the Court may, on the application of the Administrator General or any creditor or person interested in the estate of the deceased person, grant to him in such form as the Court thinks fit special Administration of the estate of the deceased person.

(2) The Court may, for the purpose of any legal proceedings to which the administrator under the special Administration is a party, order the transfer into Court of any money or securities belonging to the estate of the deceased person, and all persons shall obey any such order.

(3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which a special administrator is a party are pending, that personal representative shall be made a party to the legal proceedings, and the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as the Court in which the proceedings are pending may direct.

Administration by Administrator General.

58. (1) Subject to the foregoing provisions, the Administrator General may apply to the Court for Letters of Administration, general or restricted as the case may be, to the estate and effects of any person, whether domiciled in the State or not, who—

(a) has died intestate; or

(b) has died having made a Will but the executor or executors named therein have renounced and disclaimed execution thereof or, after being duly cited, have refused or neglected to prove it.

(2) In the case of the death of any personal representative of any such deceased person, the Administrator General may apply for a grant of Administration with the Will annexed to the estate unadministered.

59. (1) In any case where—

Small estates.

- (a) no executor has been appointed by the Will of a deceased person or no person has obtained Letters of Administration to his estate; and
- (b) it appears to him to be necessary to do so,

the Administrator General, as such, may, without applying for Probate of any Will or grant of Letters of Administration, take possession of and administer any estate of any person dying in the State or dying possessed of property in the State which is shown not to exceed in gross value the sum of ten thousand dollars.

(2) Subsection (1) does not limit in any way the power to grant Administration conferred by any rule made under this Act and Administration granted under any such rule in respect of any estate so taken in possession shall be deemed equivalent to a grant of Administration of the estate unadministered by the Administrator General.

(3) In any case where—

- (a) it appears that the estate of a deceased intestate does not exceed in gross value the sum of ten thousand dollars; and
- (b) no application has been made by any person entitled under any rule made under this Act,

the Administrator General may make an application under the said rule.

(4) In any case where a person dies intestate without leaving next of kin, the Administrator General—

- (a) may, where the estate does not exceed in gross value the sum of ten thousand dollars without obtaining Letters of Administration;
- (b) shall, in any other case, after obtaining Letters of Administration,

take possession of and administer the estate on behalf of the State.

(5) If, at any time after the Administrator General has taken possession of an estate under subsection (2) or subsection (4)(a), it appears that the estate exceeds in gross value the sum of ten thousand dollars, such possession and any acts done in administration of the estate or any part thereof shall not be invalidated, but the Administrator General shall forthwith apply for Probate or Letters of Administration to be granted to him or to any other person or persons entitled thereto.

(6) On the death of any person beneficially entitled to an estate, or any part (of whatever amount or value) thereof, vested in and administered by the Administrator General, the Administrator General shall, without obtaining proof of any Will of such person or the grant of Letters of Administration to his estate, be deemed the person entitled to represent such person until proof of his Will or the grant of Letters of Administration to his estate by or to some other person.

(7) Where, under the foregoing provisions of this section, possession of any estate has been taken by, or Administration of any estate has been granted to the Administrator General, the Court may on the application of the Administrator General or any other interested person, make an order for—

- (a) the administration of such estate;
- (b) accounts to be taken of the estate;
- (c) the application of the estate in payment of costs of suit of the Administrator General, to be taxed as between Attorney-at-law and client, and of debts and legacies, if any;
- (d) ascertainment of persons beneficially entitled to the residue of such estate,

and such proceedings shall be heard as if an action has been filed for the Administration of the estate.

Form of
application.

60. (1) Applications for Probate or for grant of Administration in solemn form shall be by writ of summons, the endorsement thereof stating the reason for the application being made for proof or grant in solemn form.

(2) The writ shall be served upon any party as against whom the applicant desires to establish his right or, if no such party is alleged, upon the Administrator General, and any party so served may enter appearance thereto in the prescribed manner and may attend the hearing thereof.

61. The following matters shall be deemed contentious business, that is to say—

Contentious business.

- (a) all procedure for obtaining proof of a Will in solemn form;
- (b) all proceedings in any application subsequent to appearance being entered in answer to the warning of a caveat;
- (c) all applications for revocation or amendment of any Probate or Administration on any ground;
- (d) all proceedings by or against personal representatives or the Administrator General.

62. (1) Subject to subsection (2) and (3), every person to whom a grant of Administration is made shall give a bond (in this section referred to as an “Administration bond”) to the Registrar, with one or more sureties, conditioned for duly collecting, getting in and administering the deceased’s estate.

Administration bonds.

(2) The Court may in its discretion and in a fit and proper case dispense with any surety to an Administration bond.

(3) No security shall be required for the due Administration of an estate, unless the Court orders otherwise, where the person applying for Administration is the—

- (a) spouse or only child or sole next of kin of the deceased; or
- (b) Administrator General; or
- (c) Public Trustee.

(4) Where it appears to the satisfaction of the Court that the condition of an Administration bond has been broken, the Court may, on an application in that behalf, order that the bond be assigned to such person as may be specified in the order.

- (5) Upon such assignment, that person is entitled to—
- (a) sue thereon in his own name as if the bond had been originally given to him instead of to the Registrar;
 - (b) recover thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the condition thereof.

Discharge and removal of personal representatives.

63. The Court may, by order—

- (a) discharge, a personal representative from his office and, upon such discharge, grant (if necessary) Administration to any other person or persons, which administration is as valid as if the representative so discharged had died;
- (b) remove a personal representative for disobedience to any of its orders or for any other reason and appoint (if necessary) some other person in his stead and vest such of the deceased's estate as was vested in the personal representative so removed in such other person.

Caveats.

64. Any person claiming, as against the applicant for Administration, to be entitled to Administration, and any person objecting to the proof of the alleged Will, may enter a caveat against the grant of Administration or Probate to the applicant.

Certificate as to death duties.

***65.** No Probate or Administration shall be granted by the Court in respect of the estate of a person dying before 1st January 1981, until the applicant has filed with the Registrar—

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- (a) the certificate mentioned in section 35(3) of the Estate and Succession Duties Ordinance; or
- (b) the certificate mentioned in section 36(3) of the said Ordinance.

Interim orders.

66. (1) Pending the hearing of any action, petition, summons or other proceeding, whether in the nature of contentious or common form business, the Court may, on the application of the

**See "Note on section 65 of the Act" on page 2 re the application of this section.*

Administrator General or of any other party interested and on being shown that the deceased's estate is in danger of spoilation, or for any other reason require steps to be taken for the custody or preservation of any property forming part of such estate —

- (a) appoint an interim receiver; or
- (b) grant an interim injunction; or
- (c) order the sale of any perishable goods to be made by any person; or
- (d) otherwise intervene for the protection of such estate in such manner and on such terms as to security and otherwise as the Court thinks fit.

(2) Any application under subsection (1) may be made in the first instance *ex parte* on affidavit.

(3) In any proceedings in which the validity of a Will is in question, or which are brought to recall any Letters of Administration, the Court may grant an injunction to prevent any personal representative from acting under such Will or Administration.

67. (1) Subject to subsection (2), on a refusal to grant Probate or Administration arising in the course of common form business, the applicant has the same right of appeal as if such refusal had been a refusal to make an order on an interlocutory application in Chambers *ex parte* in an ordinary action. Appeals.

(2) No appeal (other than by action for revocation of Probate or grant) lies on behalf of any party other than the applicant from the decision of the Court.

68. (1) Within twelve months from the date of granting of Probate or Administration, as the case may be, every personal representative shall file with the Registrar an account showing— Filing of accounts.

- (a) his receipts and disbursements of the deceased's estate;
- (b) that all sums due in respect of the said estate for death duties have been duly paid;
- (c) the debts of the deceased and the extent to which they have been paid.

(2) If any personal representative neglects or omits to file an account under subsection (1), the Administrator General or any other person alleging himself to be interested in the deceased's estate may, by summons in the prescribed form, call upon such personal representative to show cause why he should not file such account.

(3) Upon return of such summons, the Court may direct that such account be filed within such time as the Court may specify and, in case of default, the personal representative is liable to attachment.

(4) A personal representative is entitled, as against the estate, to the costs and expenses of and attendant on the rendering and filing of an account under subsection (1), provided it is filed within the twelve-month period specified therein, but not otherwise.

Re-sealing of
Commonwealth
Grants.

69. (1) Subject to subsection (3), where, before or after the commencement of this Act, a Court of Probate in any other Commonwealth country has granted Probate or Letters of Administration in respect of the estate of a deceased person, the Probate or Letters so granted may, on being produced to, and on a copy thereof being deposited with, the Registrar, be sealed with the seal of the Court.

(2) Upon such sealing, the Probate or Letters of Administration have the same force and effect and operation in the State as if granted by the Court.

(3) Before sealing a Probate or Letters of Administration under subsection (1), the Court—

(a) shall be satisfied that—

- (i) all death duties have been paid in respect of so much, if any, of the estate as is liable thereto in the State;
- (ii) in the case of Letters of Administration, security has been given to the Registrar in a sum sufficient in amount to cover the property, if any, in the State to which the Letters of Administration relate,

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person;

- (b) in respect of the estate of a person dying before 1st January 1981, may if it thinks fit, on the application of any creditor, require that adequate security be given for payment of debts due from the estate to creditors residing in the State.

(4) For the purposes of this section, a duplicate of any Probate or Letters of Administration sealed with the seal of the Court granting the same, or a copy thereof certified as correct by or under the authority of the Court granting the same, has the same effect as the original.

(5) In this section—

“Court of Probate” means any Court or authority, by whatever name designated, having jurisdiction in matters of Probate;

“Probate” and “Letters of Administration” include confirmation in Scotland and any instrument having in any other Commonwealth country the same effect which under the law of Trinidad and Tobago is given to Probate and Letters of Administration respectively.

70. (1) There shall remain in the Registry of the Court all Wills of which Probate has been granted or which have been re-sealed under section 69. Custody and registration of Wills.

(2) A certified copy of every such Will and of every administration grant, shall, immediately upon Probate or Administration being granted or re-sealed, be—

- (a) prepared by the Registrar;
- (b) sealed with the seal of the Court;
- (c) transmitted to the Registrar General;
- (d) registered by him in the Protocol of Wills in accordance with subsection (3).

(3) Upon receipt of every such certified copy, the Registrar General shall—

- (a) number the same;

- (b) register it according to the order of time of its receipt by him;
- (c) endorse upon or annex to it a certificate under his hand in such form as may be prescribed.

(4) Subject to any rules or regulations prescribing otherwise, such certified copies shall be registered in each year as they are received by the Registrar General, beginning with the number one and proceeding in a regular numerical series.

(5) The contents of every such certified copy and of any other certified copy of a proved Will under the seal of the Court are conclusive evidence of the due execution and attestation thereof.

- (6) Where in any suit, the Court—
 - (a) declares a Will to be void; or
 - (b) revokes any Administration; or
 - (c) declares one Will to be void and establishes another; or
 - (d) grants a new Administration in lieu of an existing one,

the Registrar shall transmit a sealed copy of the decree to the Registrar General.

(7) Upon receipt of such copy the Registrar General shall enter the same in the Protocol of Wills and note or refer to it in the margin of the copy of the Will or Administration so declared void or revoked, as the case may be.

Depositories.

71. (1) There shall be provided at the registry of the Court at Port-of-Spain and such other places as may be prescribed safe and convenient depositories for the custody of Wills of living persons.

(2) Such depositories are subject to the control and direction of the Court.

(3) Any person may deposit his Will in such a depository, on payment of such fees and subject to such rules as may be prescribed.

PART VI

ADMINISTRATION OF ASSETS

- 72.** The personal representatives are under a duty to—
- (a) collect and get in the real and personal estate of the deceased and administer it according to law;
 - (b) when required to do so by the Court, exhibit on oath in Court a full inventory of the estate and, when so required but without prejudice to section 68, render an account of the Administration of the estate to the Court;
 - (c) when required to do so by the Court deliver up the grant of Probate or Administration to the Court.

General duty of personal representatives.

73. (1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstances whatsoever affecting the validity of the representation.

Protection of persons acting on Probate or Administration.

(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge to the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

74. (1) If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting—

Executor *de son tort*.

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and

(b) any payment made by him which might properly be made by a personal representative.

(2) If any person takes possession of or in any manner administers any part of a deceased person's estate without proving the Will or obtaining administration of the estate, he is guilty of an offence and, in addition to any civil liability, is liable, on summary conviction, on the complaint of the Administrator General, to a fine of five thousand dollars or to imprisonment for two years.

(3) The Administrator General may take proceedings under subsection (2) at any time within five years from the time when the cause of complaint arose.

Liability of estate of personal representative.

75. Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased, and dies, his personal representative is, to the extent of the available assets of the defaulter, liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Assets for payment of debts.

76. (1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power including the statutory power to dispose of entailed interests disposes by his Will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by Will inconsistent with this enactment is void as against the creditors, and the Court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

(2) Subsection (1) takes effect without prejudice to the rights of incumbrancers.

(3) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he is personally liable for the value of the interest so disposed of by him, but that interest is not liable to be taken in execution in the action or under the process.

77. (1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the Schedule.

Administration of assets.

Schedule. Part I.

(2) The right of retainer of a personal representative and his right to prefer creditors are hereby abolished.

(3) Nevertheless a personal representative—

(a) other than one mentioned in paragraph (b) who, in good faith and at a time when he has no reason to believe that the deceased's estate is insolvent, pays the debt of any person (including himself) who is a creditor of the estate; or

(b) to whom administration has been granted solely by reason of his being a creditor and who, in good faith and at such a time pays the debts of another person who is a creditor of the estate,

is not, if it subsequently appears that the estate is insolvent, liable to account to a creditor of the same degree as the paid creditors for the sum so paid.

(4) Where the estate of a deceased person is solvent his real and personal estate shall, subject to Rules of Court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his Will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the Schedule.

Schedule. Part II.

78. (1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his Will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money) and the deceased has not by Will, deed or other document signified a contrary or other intention, the interest so charged is, as between the different persons claiming through the deceased, primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

Charges on property.

(2) Such a contrary or other intention shall not be deemed to be signified by—

- (a) a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or
- (b) a charge of debts upon any such estate,

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

Power of sale.

79. (1) The personal representatives may sell the whole or any part of the estate of a deceased person for the purposes not only of paying debts, but also (whether there are or are not debts) of distributing the estate among the persons beneficially entitled thereto.

(2) Subject to subsection (3), before selling for the purposes of distribution, the personal representatives shall, so far as practicable, give effect to the wishes of the person of full age for the time being beneficially entitled to the property proposed to be sold or, in case of dispute, of the majority (according to the value of their combined interests) of such persons.

(3) Upon such a sale—

- (a) the purchaser is not concerned to see that the personal representatives have complied with subsection (2);
- (b) it is not necessary in any case for any person beneficially entitled to concur in the sale.

(4) A purchaser—

- (a) from personal representatives of a deceased person, of any property, being the whole or part of the estate of that deceased person—
 - (i) holds that property freed and discharged from any debts or liabilities of the deceased

person, except such as are charged thereon otherwise than by the deceased person's Will, and from all claims of the persons beneficially entitled thereto;

- (ii) is not concerned to see the application of the purchase money;
- (iii) is not affected by any subsequent revocation or variation of the grant of representation to such personal representatives;

(b) of any property, being the whole or part of the estate of a deceased person which has been transferred by the personal representatives to the person beneficially entitled thereto, or to the vesting of which in the person beneficially entitled thereto the personal representatives have assented, hold that property freed and discharged from the claims of creditors of the deceased person, except claims of which the purchaser had notice at the time of his purchase.

(5) Subsection (4)(b) applies to all property other than registered land.

80. (1) Without prejudice to any other power conferred by this Act on personal representatives with respect to any land of a testator or intestate, the personal representatives may —

Power to assent or conveyance.

- (a) execute an assent to the vesting of any estate or interest in any such land in the person entitled thereto; or
- (b) convey any such estate or interest to such person,

and may make the assent or conveyance either subject to or free from a charge for the payment of any money which the personal representatives are liable to pay.

(2) Where the assent or conveyance is made subject to a charge for all moneys, if any, which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land cease, except as to any acts done or contracts entered into by them before the assent or conveyance.

(3) At any time after the expiration of one year from the death of an owner of land, if the personal representatives have failed on the request of the person entitled to convey by assent or otherwise, the land to that person, the Court may, if it thinks fit—

- (a) on the application of that person and after notice to the personal representatives, order that the assent or conveyance be made; and
- (b) in default of compliance with that order within the time specified therein by the Court, make an order vesting the land in that person as fully and effectually as might have been done by a conveyance thereof by the personal representatives and such order is subject to the same provisions (including those relating to registration) as a conveyance by the personal representatives.

(4) An assent executed under this section in relation to unregistered land shall be by deed in such form as may be prescribed.

(5) An assent or conveyance is not effectual to pass any estate or interest in land unless and until—

- (a) where it relates to unregistered land, it is registered under Part IV of the Land Registration Act, 1981;
- (b) where it relates to registered land, it is registered under section 82 of the said Act.

24 of 1981.

(6) The statutory covenants implied by a person being expressed in a deed to convey as personal representative are also implied in any assent executed by a personal representative under this section, unless the assent otherwise provides.

(7) An assent or conveyance relating to unregistered land by personal representatives, which has been unregistered under Part IV of the Land Registration Act, 1981, is, in favour of a purchaser, conclusive evidence that the person in whose favour the assent or conveyance is given or made is the person who was entitled to have the estate or interest vested in him, but does not otherwise prejudicially affect the claim of any person originally entitled to that estate or interest or to any charge or incumbrance thereon.

(8) The Court may order land not specifically devised or land vested in a personal representative as such to be sold on such terms and within such period as may appear reasonable, and on failure of the personal representative to comply with such order, may, on the application of the person entitled or any person beneficially interested, direct a sale of the land upon such terms as it thinks fit.

(9) In this section—

- (a) reference to the land of a testator or intestate are references to land to which the testator or intestate was entitled or over which he exercised a general power of appointment by Will;
- (b) the expression “person entitled” includes, in relation to any estate or interest in land of a testator or intestate—
 - (i) the person or persons (including the personal representative of the testator or intestate or any of them) who (whether by devise, bequest, devolution, appropriation or otherwise) may be beneficially entitled to that estate or interest;
 - (ii) the trustee or trustees or the personal representative or representatives of any such person or persons.

81. (1) The personal representatives of a deceased owner of land may, in addition to any other powers conferred on them by this Act—

Powers to deal with land.

- (a) grant such leases of the land as may be reasonably necessary for the due administration of the estate of the deceased owner; or
- (b) with the consent of the beneficiaries, or with the approval of the Court, grant leases of the land for such term and on such conditions as the personal representatives may think proper,

and, where personal representatives lease any land pursuant to any power conferred on them by this subsection, they may sell any rent reserved on such grant or any reversion expectant upon the determination of any such lease.

Ch. 59:50.
Ch. 59:53.

(2) Notwithstanding anything to the contrary contained in the Rent Restriction Act and Agricultural Small Holdings Tenure Act, the right of the personal representatives to obtain possession of any premises demised by them pursuant to the power conferred by subsection (1)(a) is exercisable as if those enactments had not been passed.

(3) The personal representatives of a deceased person may from time to time raise money by way of mortgage for the payment of debts, death duties (in respect of the estate of a person dying before 1st January 1981) or other taxes and, with the approval of all the beneficiaries being *sui juris* or the Court (but not otherwise), for the erection, repair, improvement or completion of buildings, or the improvement of lands forming part of the estate of that deceased person.

24 of 1981.

(4) The personal representatives of a deceased person may distrain upon land for arrears of rent due or accruing to the deceased person in like manner as the deceased person might have done had he been living, and the Landlord and Tenant Act, 1981, applies accordingly.

(5) This section does not prejudice or affect—

- (a) any power or duty of personal representatives to execute any document or do any act or thing for the purpose of completing any transaction entered into by a deceased person before his death;
- (b) any powers conferred by Will on personal representatives, and the powers conferred by this section on the personal representatives of a deceased person who has died testate shall be exercised subject to any provisions contained in his Will with respect to disposal of his estate.

(6) Subject to subsection (7), some or one only of several joint personal representatives may not, without the leave of the Court, exercise any power conferred by this section or section 79 to dispose of any land.

(7) Subsection (6) operates subject to section 46 and, where a disposition of land is made by the proving executor or executors, this section and section 79 have effect as if the references therein to personal representatives were references to the proving executor or executors.

82. (1) An assent or conveyance by personal representatives to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested. Right to follow property.

(2) Notwithstanding any such assent or conveyance the Court may, on the application of any creditor or other person interested—

- (a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the Court considers requisite for the purpose of giving effect to the rights of the persons interested;
- (b) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes;
- (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;
- (d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act, 1981.

21 of 1981.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act.

Powers of appropriation.

83. (1) The personal representatives may appropriate any part of the estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representatives may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that—

- (a) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- (b) an appropriation of property, whether or not being an investment authorised by law or by the Will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents:
 - (i) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
 - (ii) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person, who may for the time being be entitled to the income;
If the person's consent is so required as aforesaid is a minor or is incapable, by

reason of mental illness within the meaning of the Mental Health Act of managing and administering his property and affairs, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, or receiver, or if, in the case of a minor, there is no such parent or guardian, by the Court on the application of his next friend; Ch. 28:02.

- (c) no consent (save of such trustees as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
- (d) if no receiver is acting for a person suffering from mental illness, then, if the appropriation is of an investment authorised by law or by Will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the said person;
- (e) if, independently of the personal representatives, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representatives may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as they may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section binds all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representatives shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, and of any other person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the Will (if any) of the deceased, and takes effect with any extended powers conferred by the Will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated remains subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation has been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section after all requisite consents, if any, had been given.

(8) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, and also any annuity.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

(10) Where any property is appropriated under the provisions of this section, a transfer thereof by the personal representatives to the person to whom it is appropriated—

- (a) on production of such evidence of the appropriation as is considered by the Land Registrar to be sufficient, and subject to any directions of the Court as may be given, authorises the Land Registrar, where the property is registered land, to register that person as proprietor of the said land;
- (b) is not, by reason only that the property is accepted by that person in or towards satisfaction of a legacy or a share in residuary estate, liable to any higher stamp duty than that payable on a transfer of personal property for the like purpose.

84. (1) Where a minor is absolutely entitled under the Will or on the intestacy of a person dying before or after the commencement of this Act (in this subsection called “the deceased”) to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the Will, if any, of the deceased, devised or bequeathed to trustees for the minor, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, residue

Minor’s
property.

20 of 1981.

or share for the minor, and to be trustees of any land devised or any land being or forming part of such residue or share for the purposes of Part III of the Land Law and Conveyancing Act, 1981, and of the statutory provisions relating to the management of land during a minority, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

(2) On such appointment the personal representatives, as such, are discharged from all further liability in respect of such devise, legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money be invested in any authorised investment.

(3) Where a personal representative has before the commencement of this Act retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

Power to give possession of land.

85. (1) The personal representatives before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representatives to take or resume possession nor their power to convey the land as if they were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

(2) This section applies whether the testator or intestate died before or after the commencement of this Act.

Powers of Court.

86. (1) Any person who as against the personal representatives claims possession of real estate, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor thereof under the

Land Registration Act, 1981, may apply to the Court for directions with reference thereto, and the Court may make such vesting order as may be deemed proper, and the provisions of the Trustee Act, 1981, relating to vesting orders and to the appointment of a person to convey, apply thereto.

24 of 1981.

21 of 1981.

(2) This section applies whether the testator or intestate died before or after the commencement of this Act.

87. (1) The personal representatives of a deceased person shall distribute his estate as soon after his death as is reasonably practicable having regard to—

Distribution of estate.

- (a) the nature of the estate;
- (b) the manner in which it is required to be distributed;
- (c) all other relevant circumstances,

but, proceedings against the personal representatives in respect of their failure to distribute shall not, without the leave of the Court, be brought before the expiration of one year from the date of the death of the deceased person.

(2) Nothing in this section prejudices or affects the rights of creditors of a deceased person to bring proceedings against his personal representatives before the expiration of one year from his death.

PART VII

DISTRIBUTION ON INTESTACY

88. (1) All estate to which a deceased person was entitled for an estate or interest not ceasing on his death and as to which he dies intestate after the commencement of this Act shall, after payment of all debts, duties and expenses properly payable thereto, be distributed or held on trust in accordance with this section, namely—

Rules for distribution on intestacy.

- (a) if the intestate leaves a spouse, then in accordance with the following Table:

L.R.O. 1/2006

TABLE

If the intestate—

- | | |
|---|--|
| <p>(1) leaves—</p> <p style="padding-left: 2em;">(a) no issue; and</p> <p style="padding-left: 2em;">(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood.</p> | <p>the estate shall be held in trust for the surviving spouse absolutely.</p> |
| <p>(2) (a) leaves one child (whether or not persons mentioned in sub-paragraph (b) above also survive);</p> <p style="padding-left: 2em;">(b) leaves more than one child (whether or not persons mentioned in subparagraph (b) above also survive).</p> | <p>the surviving spouse shall take one-half absolutely of the estate and the other half shall be held on the statutory trusts for the child.</p> <p>the surviving spouse shall take one-third of the estate absolutely and the remaining two-thirds shall be held on the statutory trust for the children.</p> |
| <p>(3) leaves one or both parents, but leaves no issue (whether or not brothers or sisters of the whole blood, or issue of brothers or sisters of the whole blood survive).</p> | <p>the surviving spouse shall take the personal chattels absolutely and, in addition, the estate of the intestate (other than the personal chattels) shall stand charged with the payment of the sum of \$200,000, or such larger amount as may be prescribed free of death duties and costs, to the surviving spouse with interest thereon from the date of the death at such rate as</p> |

may be prescribed until paid or appropriated, and, subject to providing for that sum and the interest thereon, the estate (other than the personal chattels) shall be held—

- (a) as to one-half in trust for the surviving spouse absolutely; and
- (b) as to the other half, where the intestate leaves one parent, in trust for that parent absolutely, or, if the intestate leaves both parents, for the two parents in equal shares absolutely.
- (b) if the intestate leaves issue but no spouse, the estate of the intestate shall be held on the statutory trusts for the issue of the intestate;
- (c) if the intestate leaves no spouse and no issue but both parents, then the estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;
- (d) if the intestate leaves no spouse and no issue but one parent, then the estate of the intestate shall be held in trust for the surviving father or mother absolutely;
- (e) if the intestate leaves no spouse and no issue and no parent, then, the estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:

First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Fourthly, on the statutory trusts for the issue of the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts;

Fifthly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Sixthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then

Seventhly, on the statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the half blood of a parent of the intestate);

(f) in default of any person taking an absolute interest under the foregoing provisions, the estate of the intestate belongs to the State as *bona vacantia*.

(2) Where an intestate and his spouse have died in such circumstances that, if section 2(3) applied, the spouse would be presumed to have survived the intestate, this section nevertheless has effect as respects the intestate as if the spouse had not survived the intestate.

(3) The interest payable on the sum charged on the estate to the surviving spouse is primarily payable out of income.

(4) Where a decree of judicial separation is in force with respect to an intestate and his spouse and the separation is continuing at the date of death of the intestate, his estate shall be distributed or held on trust as if the other party to the marriage which is the subject of the said decree had been dead at that date.

*(5) Notwithstanding anything in section 4(1)(a) of the Separation and Maintenance Ordinance, a provision in force in an order made, or having effect as if made, under that section that a party to a marriage be no longer bound to cohabit with the other party to the marriage does not have effect as a decree of judicial separation for the purposes of subsection (4).

Ch. 5 No. 15.

89. (1) Where under this Part the estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:

Statutory trusts
for issue and
other relatives.

- (a) in trust, in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of eighteen years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of eighteen years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;
- (b) the statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, apply, but when a minor marries, such minor is entitled to give valid receipts for the income of the minor's share or interest;

*See "Note on section 88(5)" on page 2 *re* the application of this subsection.

- (c) where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;
- (d) the personal representatives may permit any minor contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—

- (a) the estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Part as if the intestate had died without leaving issue living at the death of the intestator;

- (b) reference in this Part to the intestate “leaving no issue” shall be construed as “leaving no issue who attain an absolutely vested interest”;
- (c) references in this Part to the intestate “leaving issue” or “leaving a child or other issue” shall be construed as leaving issue who attain an absolutely vested interest.

(3) Where under this Part the estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

(4) References in paragraph (a) of subsection (1) of the last foregoing section to the intestate leaving, or not leaving, a member of the class consisting of brothers and sisters of the whole blood of the intestate and issue of brothers or sisters of the whole blood of the intestate shall be construed as references to the intestate leaving, or not leaving, a member of that class who attains an absolutely vested interest.

90. (1) Where a surviving spouse is entitled to a life interest in part of the estate, and so elects, the personal representative shall purchase or redeem the life interest by paying the capital value thereof to the tenant for life, or the persons deriving title under the tenant life, and the costs of the transaction; and thereupon the estate of the intestate may be dealt with and distributed free from the life interest.

Redemption of surviving spouse's life interest.

(2) The said capital value shall be reckoned in accordance with such rules as may be prescribed.

(3) An election under this section is exercisable only if at the time of the election the whole of the said part of the estate consists of property in possession, but, for the purposes of this

section, a life interest in property partly in possession and partly not in possession shall be treated as consisting of two separate life interests in those respective parts of the property.

(4) If the tenant for life dies after the exercise of the election under this section but before effect is given to that election, the date of redemption shall be taken for the purposes of subsection (2) to be the date immediately before the death of the tenant for life.

(5) An election under this section is exercisable only within the period of twelve months from the date on which representation with respect to the estate of the intestate is first taken out.

Provided that if the surviving spouse satisfies the Court that the limitation to the said period of twelve months will operate unfairly—

- (a) in consequence of the representation first taken out being Probate of a Will subsequently revoked on the ground that the Will was invalid; or
- (b) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out, or
- (c) in consequence of some other circumstances affecting the administration or distribution of the estate,

and the Court may extend the said period.

(6) An election under this section is exercisable, except where the tenant for life is the sole personal representative, by notifying the personal representatives (or, where there are two or more personal representatives of whom one is the tenant for life, all of them except the tenant for life) in writing; and a notification in writing under this subsection is not revocable except with the consent of the personal representatives.

(7) Where the tenant for life is the sole personal representative, an election under this section is not effective unless written notice thereof is given to the Registrar within the period within which it must be made; and provision may be made by Rules for keeping a record of such notices and making that record available to the public.

(8) An election under this section by a tenant for life who is a minor is as valid and binding as it would be if the tenant for life were of age; but the personal representatives shall, instead of paying the capital value of the life interest to the tenant for life, deal with it in the same manner as with any other part of the estate to which the tenant for life is absolutely entitled.

(9) In considering for the purposes of the foregoing provisions of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

91. The personal representatives may raise—

- (a) the sum charged on the estate or any part thereof and the interest thereon payable to the surviving spouse of the intestate on the security of the whole or any part of the estate of the intestate (other than the personal chattels) so far as that estate may be sufficient for the purpose of the said sum and interest may not have been satisfied by an appropriation under the statutory power available in that behalf; and
- (b) in like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving spouse of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate,

Powers in respect of surviving spouse's interests.

and in either case the amount, if any, properly required for the payment of the costs of the transaction.

Partial intestacy.

92. (1) Where any person dies leaving a Will effectively disposing of part of his property, this Part shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the Will and subject to the following modifications:

- (a) where the deceased leaves a spouse who acquires any beneficial interest under the Will of the deceased (other than personal chattels specifically bequeathed) the references in this Part to the sum payable to a surviving spouse, and to the interest on that sum, shall be taken as references to the said sum diminished by the value at the date of death of the said beneficial interests, and to interest on that sum as so diminished, and, accordingly, where the said value exceeds the said sum, this Part shall have effect as if references to the said sum, and interest thereon, were omitted;
- (b) the requirements of section 89 as to bringing property into account apply to any beneficial interests acquired by any issue of the deceased under the Will of the deceased, but not to beneficial interests so acquired by any other persons;
- (c) the personal representatives, subject to their rights and powers for the purposes of administration, are trustees for the persons entitled under this Part in respect of the part of the estate not expressly disposed of unless it appears by the Will that the personal representatives were intended to take such part beneficially.

(2) References in the foregoing provisions of this section to beneficial interests acquired under a Will be construed as including a reference to a beneficial interest acquired by virtue of the exercise by the Will of a general power of appointment, but not of a special power of appointment.

(3) For the purposes of paragraph (a) in the foregoing provisions of this section, the personal representatives shall employ a duly qualified valuer in any case where such employment may be necessary.

(4) The references in subsection (3) of section 90 to property are references to property comprised in the estate and, accordingly, where a Will of the deceased creates a life interest in property in possession, and the remaining interest in that property forms part of the estate, the said references are references to that remaining interest (which, until the life interest determines, is property not in possession).

93. Where any property belongs to the State as *bona vacantia*, it may be used or disposed of in accordance with such provisions as may be prescribed.

Disposition of
bona vacantia.

PART VIII

FAMILY PROVISION

94. (1) In this Part—
“beneficiary”, in relation to the estate of a deceased person,
means—

Interpretation of
this Part.
[28 of 2000].

- (a) a person who, under the Will of the deceased or under the law relating to intestacy, is beneficially interested in the estate or would be so interested if an Order had not been made under this Part; and
- (b) a person who has received any sum of money or other property, which by virtue of section 102(1) or (2) is treated as part of the net estate of the deceased, or would have received that sum or other property if an Order had not been made under this Part;

“cohabitant” or “cohabiting partner” means—

- (a) in relation to a man, a woman who has been living with or who has lived together with a man in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of his death;
- (b) in relation to a woman, a man who has been living with or has lived together with a woman

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in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of her death,

but only one such relationship shall be taken into account for the purposes of this Part;

“cohabitational relationship” means the relationship between cohabitants, who not being married to each other, have lived together in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the death of either cohabitant;

“conveyance” includes any instrument, other than a Will, consisting of or comprising a transfer, mortgage or other charge, lease, assent, vesting declaration, disclaimer, release or other assurance of property or of an interest therein and “convey” has a corresponding meaning;

“Court” means the High Court;

“deceased” or “deceased person” includes a person who is not of full age and capacity who is, for the purposes of this Part, treated as having power to dispose of by Will all property of which he would have had power to dispose had he been of full age and capacity;

“former spouse” means a person whose marriage was, during the deceased’s lifetime, dissolved or annulled by a decree of divorce or of nullity of marriage made under the Matrimonial Proceedings and Property Act;

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“grant” means a grant of probate or administration;

“net estate” in relation to a deceased person means—

- (a) all property of which the deceased had power to dispose by his Will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities;
- (b) any property in respect of which the deceased held a general power of appointment (not being a power exercisable by Will) which has not been exercised;

- (c) any sum of money or other property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of section 102(1) or (2);
- (d) any property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of an Order made under section 103;
- (e) any sum of money or other property which is by reason of a disposition or contract made by the deceased, ordered under section 104 or 105 of this Act to be provided for the purpose of the making of financial provision under this Part;

“real estate” includes chattels real, and land in possession, remainder or reversion, and every estate or interest in or over land, including real estate held on trust or by way of mortgage or security, to which a deceased person was entitled at the time of his death;

“reasonable financial provision” means—

- (a) in the case of an application made by a person described in section 95(1)(a) and 95(1)(aa), except where, in case of a spouse of the deceased, the marriage was the subject of a decree of judicial separation and at the date of the death the decree was in force and the separation was continuing, such financial provision as would be reasonable in all the circumstances for a spouse or cohabitant to receive, whether or not that provision is required for his or her maintenance;
- (b) in the case of any other application made by a person described in section 95(1)(b) to (e), such financial provision as would be reasonable in all the circumstances for the applicant to receive for his or her maintenance;

“relevant property” means the income from that part of the net estate used for the purpose of providing periodic payments or a lump sum payment to the person in whose favour an Order is made under section 4;

“spouse” means a husband or wife and in relation to a deceased person a widow or widower;

“valuable consideration” does not include marriage or a promise of marriage;

(2) For the purposes of paragraph (a) of the definition of “net estate” in subsection (1), a person who is not of full age and capacity shall be treated as having power to dispose by Will of all property of which he would have had power to dispose by Will if he had been of full age and capacity.

(3) Any reference in this Part to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.

(4) For the purposes of this Part, any reference to a spouse shall be treated as including a reference to a person who in good faith entered into a void marriage with the deceased unless either—

(a) the marriage of the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of the State; or

(b) that person has during the lifetime of the deceased entered into a later marriage.

(5) Any reference in this Part to remarriage or to a person who has remarried includes a reference to a marriage which is by law void or voidable or to a person who has entered into such a marriage as the case may be, and a marriage shall be treated for the purposes of this Part as a remarriage, in relation to any party thereto, notwithstanding that the previous marriage of that party was void or voidable.

(6) Any reference in this Part to an order or decree made under the Matrimonial Proceedings and Property Act, or under any section of that Act shall be construed as including a reference to an order or decree which is deemed to have been made under that Act or under that section thereof, as the case may be.

Ch. 45:51.

(7) Any reference in this Part to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

(8) A reference to a child includes a child *en ventre sa mere* and a child in respect of whom an Adoption Order has been made under the Adoption of Children Act.

Ch. 46:03.

(9) A reference to a Will includes the disposition of the deceased's estate by his Will or under the law relating to intestacy or to a combination of the deceased's Will and that law.

95. (1) Where after the commencement of this Act a person dies domiciled in the State or dies outside the State leaving any estate in the State and is survived by any of the following persons:

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- (a) the spouse of the deceased;
- (aa) a cohabitant;
- (b) a former spouse of the deceased who has not remarried;
- (c) a child of the deceased;
- (d) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;
- (e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased,

that person may apply to the Court for an order under section 96 on the ground that the disposition of the deceased's estate effected by his Will or the law relating to intestacy, or the combination of his Will and that law, is not such as to make reasonable financial provision for the applicant.

(2) *(Repealed by Act No. 28 of 2000).*

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(3) For the purposes of subsection (1)(e), a person shall be treated as being maintained by the deceased, either wholly or partly, as the case may be, if the deceased, otherwise than for full valuable consideration, was making a substantial contribution in money or money's worth towards the reasonable needs of that person.

Court orders.

96. (1) Subject to the provisions of this Part, where an application is made for an order under this section, the Court may, if it is satisfied that the disposition of the deceased's estate effected by his Will or the law relating to intestacy, or the combination of his Will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:

- (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;
- (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;
- (c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;
- (d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;
- (e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;
- (f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by Will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that

marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.

(2) An order under subsection (1)(a) providing for the making out of the net estate of the deceased of periodical payments may provide for payments—

- (a) of such amount as may be specified in the order;
- (b) equal to the whole of the income of the net estate or of such portion thereof as may be so specified;
- (c) equal to the whole of the income of such part of the net estate as the Court may direct to be set aside or appropriated for the making out of the income thereof of payments under this section,

or may provide for the amount of the payments or any of them to be determined in any other way the Court thinks fit.

(3) Where an order under subsection (1)(a) provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be so specified shall be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or apportioned than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(4) An order under this section may contain such consequential and supplemental provisions as the Court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection—

- (a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;

- (b) vary the disposition of the deceased's estate effected by the Will or the law relating to intestacy, or by both the Will and the law relating to intestacy, in such manner as the Court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;
- (c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the Court to be necessary or expedient.

Matters to be considered.
[28 of 2000].

97. (1) Where an application is made for an order under section 96, the Court shall, in determining whether the disposition of the deceased's estate effected by his Will or the law relating to intestacy, or the combination of his Will and the law, is such as to make reasonable financial provision for the applicant and, if the Court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say:

- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which any other applicant for an order under section 96 has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 96 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased;
- (f) any physical or mental disability of any applicant for an order under section 96 or any beneficiary of the estate of the deceased;

- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the Court may consider relevant.

(2) Without prejudice to the generality of paragraph (g) of subsection (1), where an application for an order under section 96 is made by virtue of section 95(1)(a) or (b), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

- (a) the age of the applicant and the duration of the marriage or the cohabitational relationship;
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution by looking after the home or caring for the family,

and in the case of an application by the spouse of the deceased, the Court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree or divorce.

(3) Without prejudice to the generality of paragraph (g) of subsection (1), where an application for an order under section 96 is made by virtue of section 95(1)(e) or (d), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 95(1)(d), the Court shall also have regard to—

- (a) whether the deceased had assumed any responsibility for the applicant's maintenance and, if so, to the extent to which and the basis upon which the deceased assumed that responsibility and to the length of time for which the deceased discharged that responsibility;

- (b) whether in assuming and discharging that responsibility the deceased did so knowing that the applicant was not his own child;
- (c) the liability of any other person to maintain the applicant.

(4) Without prejudice to the generality of paragraph (g) of subsection (1), where an application for an order under section 96 is made by virtue of section 95(1)(e), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the extent to which and the basis upon which the deceased assumed responsibility for the maintenance of the applicant and to the length of time for which the deceased discharged that responsibility.

(5) In considering the matters to which the Court is required to have regard under this section, the Court shall take into account the facts as known to the Court at the date of the hearing.

(6) In considering the financial resources of any person for the purposes of this section the Court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the Court shall take into account his financial obligations and responsibilities.

Time limit for applications.

98. An application for an order under section 96 shall not, except with the permission of the Court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out.

Interim orders.

99. (1) Where on an application for an order under section 96 it appears to the Court that—

- (a) the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made under that section; and
- (b) property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant,

the Court may order that, subject to such conditions or restrictions, if any, as the Court may impose and to any further order of the Court, there shall be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals as the Court thinks reasonable; and the Court may order that, subject to the provisions of this Part, such payments are to be made until such date as the Court may specify, not being later than the date on which the Court either makes an order under the said section 96 or decides not to exercise its powers under that section.

(2) Subsections (2), (3) and (4) of section 96 apply in relation to an order under this section as they apply in relation to an order under that section.

(3) In determining what order, if any, should be made under this section the Court shall, so far as the urgency of the case admits, have regard to the same matters to which the Court is required to have regard under section 97.

(4) An order made under section 96 may provide that any sum paid to the applicant by virtue of this section shall be treated to such an extent and in such manner as may be provided by that order as having been paid on account of any payment provided for by that order.

100. (1) Subject to the provisions of this Part, where the Court has made an order under section 96(1)(a) (in this section referred to as “the original order”) for the making of periodical payments to any person (in this section referred to as “the original recipient”), the Court, on an application under this section, may by order vary or discharge the original order or suspend any provision of it temporarily and revive the operation of any provisions so suspended.

Variation and
discharge of
orders.
[28 of 2000].

(2) Without prejudice to the generality of subsection (1), an order made on an application for the variation of the original order may provide for the—

- (a) making out of any relevant property of such periodical payments and for such terms as may be specified in the order to any person who has applied, or would but for section 98 be entitled to

apply, for an order under section 96 whether or not, in the case of any application, an order was made in favour of paragraph (a);

- (b) payment out of any relevant property of a lump sum of such amount as may be so specified to the original recipient or to any such person as is mentioned in paragraph (a);
- (c) transfer of the relevant property, or such part thereof as may be so specified, to the original recipient or to any such person as is so mentioned.

(3) Where the original order provides that any periodical payments payable thereunder to the original recipient are to cease on the occurrence of an event specified in the order (other than the marriage of a former spouse) or on the expiration of a period so specified, then, if before the end of the period of six months from the date of the occurrence of that event or of the expiration of that period, an application is made for an order under this section, the Court may make any order which it would have had power to make if the application had been made before that date (whether in favour of the original recipient or any such person as is mentioned in subsection (2)(a) and whether having effect from the date or from such later date as the Court may specify).

(4) Any reference in this section to the original order includes a reference to an order made under this section and any reference in this section to the original recipient includes a reference to any person to whom periodical payments are required to be made by virtue of an order under this section.

(5) An application under this section may be made by any of the following persons, that is to say:

- (a) any person who by virtue of section 95(1) has applied, or would but for section 98 be entitled to apply, for an order under section 96;
- (b) the personal representatives of the deceased;
- (c) the trustees of any relevant property;
- (d) any beneficiary of the estate of the deceased.

- (6) An order under this section may only affect—
- (a) property the income of which is at the date of the order applicable wholly or in part for the making of periodical payments to any person who has applied for an order under this Part; or
 - (b) in the case of an application under subsection (3) in respect of payments which have ceased to be payable on the occurrence of an event or the expiration of a period, property the income of which was so applicable immediately before the occurrence of that event or the expiration of that period, as the case may be,

and any such property as is mentioned in paragraph (a) or (b) is in subsections (2) and (5) above referred to as “relevant property”.

(7) In exercising the powers conferred by this section the Court shall have regard to all the circumstances of the case, including any change in any of the matters to which the Court was required to have regard when making the order to which the application relates.

(8) Where the Court makes an order under this section, it may give such consequential directions as it thinks necessary or expedient having regard to the provisions of the order.

(9) No such order as is mentioned in section 96(1)(d), (e) or (f), 103, 104 or 105 shall be made on an application under this section.

(10) For the avoidance of doubt it is hereby declared that, in relation to an order which provides for the making of periodical payments which are to cease on the occurrence of an event specified in the order (other than the remarriage of a former spouse) or on the expiration of a period so specified, the power to vary an order includes power to provide for the making of periodical payments after the expiration of that period or the occurrence of that event.

101. (1) An order under section 96(1)(b) or 100(2)(b) for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Payment by
instalments.

(2) Where an order is made by virtue of subsection (1), the Court may, on an application made by the person to whom the lump sum is payable, by the personal representatives of the deceased or by the trustees of the property out of which the lump sum is payable, vary that order by varying the number of instalments payable, the amount of any instalment and the date on which any instalment becomes payable.

Property — part
of net estate.

102. (1) Where a deceased person has in accordance with the provisions of any enactment nominated any person to receive any sum of money or other property on his death and that nomination is in force at the time of his death, the sum of money, or that other property, to the extent of the value thereof at the date of the death of the deceased shall be treated for the purposes of this Part as part of the net estate of the deceased; but this subsection does not render any person liable for having paid that sum or transferred that other property to the person named in the nomination in accordance with the directions given in the nomination.

(2) Where any sum of money or other property is received by any person as a *donatio mortis causa* made by a deceased person, that sum of money, or that other property, to the extent of the value thereof at the date of the death of the deceased shall be treated for the purposes of this Part as part of the net estate of the deceased; but this subsection does not render any person liable for having paid that sum or transferred that other property in order to give effect to that *donatio mortis causa*.

Property held
on a joint
tenancy.

103. (1) Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, then, if before the end of the period of six months from the date on which representation with respect to the estate of the deceased was first taken out, an application is made for an order under section 96, the Court for the purpose of facilitating the making of financial provision for the applicant under this Act may order that the deceased's severable share of that property, at the value thereof immediately before his death, shall, to such extent as appears to the Court to be just in all the circumstances of the case, be treated for the purposes of this Act as part of the net estate of the deceased.

(2) Where an order is made under subsection (1), the provisions of this section do not render any person liable for anything done by him before the order was made.

(3) For the avoidance of doubt it is hereby declared that for the purposes of this section there may be a joint tenancy of a chose in action.

104. (1) Where an application is made to the Court for an order under section 96, the applicant may, in the proceedings on that application, apply to the Court for an order under subsection (2). Anti-avoidance provisions.

(2) Where on an application under subsection (1) the Court is satisfied that—

- (a) less than six years before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Part made a disposition;
- (b) full valuable consideration for that disposition was not given by the person to whom or for the benefit of whom the disposition was made (in this section referred to as “the donee”) or by any other person;
- (c) the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Part,

then, subject to the provisions of this section and of sections 106 and 107, the Court may order the donee (whether or not at the date of the order he holds any interest in the property disposed of to him or for his benefit by the deceased) to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order.

(3) Where an order is made under subsection (2) as respects any disposition made by the deceased which consisted of the payment of money to or for the benefit of the donee, the amount of any sum of money or the value of any property ordered to be provided under that subsection shall not exceed the amount of the payment made by the deceased.

(4) Where an order is made under subsection (2) as respects any disposition made by the deceased which consisted of the transfer of property (other than a sum of money) to or for the benefit of the donee, the amount of any sum of money or the value of any property ordered to be provided under that subsection shall not exceed the value at the date of the death of the deceased of the property disposed by him to or for the benefit of the donee (or if that property has been disposed of by the person to whom it was transferred by the deceased, the value at the date of that disposal thereof) after deducting therefrom any death duties borne by the donee in respect of the transfer of that property by the deceased.

(5) Where an application (in this subsection referred to as “the original application”) is made for an order under subsection (2) in relation to any disposition, then, if on an application under this subsection by the donee or by any applicant for an order under section 96 the Court is satisfied that—

- (a) less than six years before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Act made a disposition other than the disposition which is the subject of the original application;
- (b) full valuable consideration for that other disposition was not given by the person to whom or for the benefit of whom that other disposition was made or by any other person,

the Court may exercise in relation to the person to whom or for the benefit of whom that other disposition was made the powers which the Court would have had under subsection (2) if the original application had been made in respect of that other disposition and the Court had been satisfied as to the matters set out in paragraphs (a), (b) and (c) of that subsection; and where any application is made under this subsection, any reference in this section [except in subsection (2)(b)] to the donee includes a reference to the person in whom or for the benefit of whom that other disposition was made.

(6) In determining whether and in what manner to exercise its powers under this section, the Court shall have regard to the circumstances in which any disposition was made and any valuable consideration which was given therefor, the relationship, if any, of the donee to the deceased, the conduct and financial resources of the donee and all the other circumstances of the case.

(7) In this section “disposition” does not include—

- (a) any provision in a Will, any such nomination as is mentioned in section 102(1) or any *donatio mortis causa*; or
- (b) any appointment of property made, otherwise than by Will, in the exercise of a special power of appointment,

but, subject to these exceptions, includes any payment of money (including the payment of a premium under a policy of assurance) and any conveyance, assurance, appointment or gift of property of any description, whether made by an instrument or otherwise.

(8) The provisions of this section do not apply to any disposition made before the commencement of this Act.

105. (1) Where an application is made to a Court for an order under section 96, the applicant may, in the proceedings on that application, apply to the Court for an order under this section.

Contracts to leave property by Will.

(2) Where on an application under subsection (1) the Court is satisfied that—

- (a) the deceased made a contract by which he agreed to leave by his Will a sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate;
- (b) the deceased made that contract with the intention of defeating an application for financial provision under this Part;
- (c) when the contract was made full valuable consideration for that contract was not given or

promised by the person with whom or for the benefit of whom the contract was made (in this section referred to as “the donee”) or by any other person;

- (d) the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Part,

then, subject to the provisions of this section and of sections 106 and 107, the Court may make any one or more of the following orders, that is to say:

- (i) if any money has been paid or any other property has been transferred to or for the benefit of the donee in accordance with the contract, an order directing the donee to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order;
- (ii) if the money or all the money has not been paid or the property or all the property has not been transferred in accordance with the contract, an order directing the personal representatives not to make any payment or transfer any property, or not to make any further payment or transfer any further property, as the case may be, in accordance therewith or directing the personal representatives only to make such payment or transfer such property as may be specified in the order.

Notwithstanding anything in subsection (2), the Court may exercise its powers thereunder in relation to any contract made by the deceased only to the extent that the Court considers that the amount of any sum of money paid or to be paid or the value of any property transferred or to be transferred in accordance with the contract exceeds the value of any valuable consideration given or to be given for that contract, and for this purpose the Court shall have regard to the value of the property at the date of the hearing.

(4) In determining whether and in what manner to exercise its powers under this section, the Court shall have regard to the circumstances in which the contract was made, the relationship, if any, of the donee to the deceased, the conduct and financial resources of the donee and all the other circumstances of the case.

(5) Where an order has been made under subsection (2) in relation to any contract, the rights of any person to enforce that contract or to recover damages or to obtain other relief for the breach thereof are subject to any adjustment made by the Court under section 106(3) and survive to such extent only as is consistent with giving effect to the terms of that order.

(6) The provisions of this section do not apply to a contract made before the commencement of this Act.

106. (1) Where the exercise of any of the powers conferred by section 104 or 105 is conditional on the Court being satisfied that a disposition or contract was made by a deceased person with the intention of defeating an application for financial provision under this Part, that condition shall be fulfilled if the Court is of the opinion that, on a balance of probabilities, the intention of the deceased (though not necessarily his sole intention) in making the disposition or contract was to prevent an order for financial provision being made under this Part or to reduce the amount of the provision which might otherwise be granted by an order thereunder.

Supplementary provisions.

(2) Where an application is made under section 105 with respect to any contract made by the deceased and no valuable consideration was given or promised by any person for the contract then, notwithstanding anything in subsection (1), it shall be presumed, unless the contrary is shown, that the deceased made that contract with the intention of defeating an application for financial provision under this Part.

(3) Where the Court makes an order under section 104 or 105, it may give such consequential directions as it thinks fit (including directions requiring the making of any payment or the transfer of any property) for giving effect to the order or for securing a fair adjustment of the rights of the persons affected thereby.

(4) Any power conferred on the Court by the said section 104 or 105 to order the donee, in relation to any disposition or contract, to provide any sum of money or other property is exercisable in like manner in relation to the personal representatives of the donee, and—

- (a) any reference in section 104(4) to the disposal of property by the donee includes a reference to disposal by the personal representatives of the donee;
- (b) any reference in section 104(5) to an application by the donee under that subsection includes a reference to an application by the personal representatives of the donee,

but the Court may not under section 104 or 105 make an order in respect of any property forming part of the estate of the donee which has been distributed by the personal representatives and the personal representatives are not liable for having distributed any such property before they have notice of the making of an application under section 104 or 105 on the ground that they ought to have taken into account the possibility that such an application would be made.

Provisions as to trustees.

107. (1) Where an application is made for an order under—

- (a) section 104 in respect of a disposition made by the deceased to any person as a trustee; or
- (b) section 105 in respect of any payment made or property transferred, in accordance with a contract made by the deceased, to any person as a trustee,

the powers of the Court under section 104 or 105 to order that trustee to provide a sum of money or other property are subject to the following limitation (in addition, in a case of an application under section 104, to any provision regarding the deduction of death duties) namely, that the amount of any sum of money or the value of any property ordered to be provided:

- (i) in the case of an application in respect of a disposition which consisted of the payment

of money or an application in respect of the payment of money in accordance with a contract, shall not exceed the aggregate of so much of that money as is at the date of the order in the hands of the trustee and the value at that date of any property which represents that money or is derived therefrom and is at the date in the hands of the trustee;

- (ii) in the case of an application in respect of a disposition which consisted of the transfer of property or an application in respect of the transfer of property (other than a sum of money) in accordance with a contract, shall not exceed the aggregate of the value at the date of the order of so much of that property as is at that date in the hands of the trustee and the value at that date of any property which represents the first-mentioned property or is derived therefrom and is at that date in the hands of the trustee.

(2) Where any such application is made in respect of a disposition made to any person or in respect of any payment made or property transferred in pursuance of a contract to any person as a trustee, the trustee is not liable for having distributed any money or other property on the ground that he ought to have taken into account the possibility that such an application would be made.

(3) Where any such application is made in respect of a disposition made to any person as a trustee or in respect of any payment made or property transferred in accordance with a contract to any person as a trustee, any reference in the said section 104 or 105 to the donee shall be construed as including a reference to the trustee or trustees for the time being of the trust in question and any reference in subsection (1) or (2) to a trustee shall be construed in the same way.

Provisions after
divorce or
separation.

108. (1) Where, within twelve months from the date on which a decree of divorce or nullity of marriage has been made absolute or a decree of judicial separation has been granted, a party to the marriage dies and—

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- (a) an application for a financial provision order under section 24 or 25 of the Matrimonial Proceedings and Property Act, or a property adjustment order under section 26 of that Act has not been made by the other party to the marriage; or
- (b) such an application has been made but the proceedings thereon have not been determined at the time of the death of the deceased,

then, if an application for an order under section 96 of this Act is made by that other party, the Court may, notwithstanding anything in section 95 or section 97 of this Act, if it thinks it just to do so, treat that party for the purposes of that application as if the decree of divorce or nullity of marriage had not been made absolute or the decree of judicial separation had not been granted, as the case may be.

(2) This section does not apply in relation to a decree of judicial separation unless at the date of the death of the deceased the decree was in force and the separation was continuing.

Restrictions on
divorce and
separation
proceedings.

109. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, the Court may, if the Court considers it just to do so and the parties to the marriage agree, order that either party to the marriage shall not be entitled on the death of the other party to apply for an order under section 96.

(2) In the case of a decree of divorce or nullity of marriage an order may be made under subsection (1) before or after the decree is made absolute, but if it is made before the decree is made absolute it does not take effect unless the decree is made absolute.

(3) Where an order made under subsection (1) on the grant of a decree of divorce or nullity of marriage has come into force with respect to a party to a marriage, then, on the death of the other party to that marriage, the Court shall not entertain any application for an order under section 96 made by the first-mentioned party.

(4) Where an order made under subsection (1) on the grant of a decree of judicial separation has come into force with respect to any party to a marriage, then, if the other party to that marriage dies while the decree is in force and the separation is continuing, the Court shall not entertain any application for an order under section 96 made by the first-mentioned party.

110. (1) Where an application for an order under section 96 is made to the Court by any person who was at the time of the death of the deceased entitled to payments from the deceased under a secured periodical payments order made under the Matrimonial Proceedings and Property Act, then, in the proceedings on that application, the Court may, if an application is made under this section by that person or by the personal representatives of the deceased, vary or discharge that periodical payments order or revive the operation of any provision thereof which has been suspended under section 31 of that Act.

Variation and discharge of periodical payments orders.
Ch. 45:51.

(2) In exercising the powers conferred by this section, the Court shall have regard to all the circumstances of the case, including any order which the Court proposed to make under section 96 or section 99 and any change (whether resulting from the death of the deceased or otherwise) in any of the matters to which the Court was required to have regard when making the secured periodical payments order.

(3) The powers exercisable by the Court under this section in relation to an order are exercisable also in relation to any instrument executed in pursuance of the order.

111. (1) Where an application for an order under section 96 is made to the Court by any person who was at the time of the death of the deceased entitled to payments from the deceased

Variation and revocation of maintenance agreements.

under a maintenance agreement which provided for the continuation of payments under the agreement after the death of the deceased, then, in the proceedings on that application, the Court may, if an application is made under this section by that person or by the personal representatives of the deceased, vary or revoke that agreement.

(2) In exercising the powers conferred by this section the Court shall have regard to all the circumstances of the case, including any order which the Court proposes to make under section 96 or section 99 and any change (whether resulting from the death of the deceased or otherwise) in any of the circumstances in the light of which the agreement was made.

(3) If a maintenance agreement is varied by the Court under this section the like consequences shall ensue as if the variation had been made immediately before the death of the deceased by agreement between the parties and for valuable consideration.

(4) In this section “maintenance agreement” in relation to a deceased person, means any agreement made, whether in writing or not and whether before or after the commencement of this Act, by the deceased with any person with whom he entered into a marriage, being an agreement which contained provisions governing the rights and liabilities towards one another when living separately of the parties to that marriage (whether or not the marriage has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the deceased or a person who was treated by the deceased as a child of the family in relation to that marriage.

Availability of powers under this Part in other proceedings. Ch. 45:51.

112. (1) Where—

- (a) a person against whom a secured periodical payments order was made under the Matrimonial Proceedings and Property Act, has died and an application is made under section 31(6) of that Act for the variation or discharge of that order or for the revival of the operation of any provision thereof which has been suspended; or

- (b) a party to a maintenance agreement within the meaning of section 38 of that Act has died, the agreement being one which provides for the continuation of payments thereunder after the death of one of the parties, and an application is made under section 40(1) of that Act for the alteration of the agreement under section 39 thereof,

the Court may direct that the application made under the said section 31(6) or 40(1) shall be deemed to have been accompanied by an application for an order under section 96 of this Act.

(2) Where the Court gives a direction under subsection (1), it may, in the proceedings on the application and under the said section 31(6) or 40(1), make any order which the Court would have had power to make under the provisions of this Act if the application under the said section 31(6) or 40(1), as the case may be, had been made jointly with an application for an order under the said section 96; and the Court may give such consequential directions as may be necessary for enabling the Court to exercise any of the powers available to the Court under this Act in the case of an application for an order under section 96.

(3) Where an order made under section 109(1) of this Act is in force with respect to a party to a marriage, the Court shall not give a direction under subsection (1) with respect to any application made under the said section 31(6) or 40(1) by that party on the death of the other party.

113. (1) Where an order is made under section 96 then for all purposes, including the purposes of the enactments relating to death duties, the Will or the law relating to intestacy, or both the Will and the law relating to intestacy, as the case may be, shall have effect and be deemed to have had effect as from the deceased's death subject to the provisions of the order.

Effect, duration
and form of
orders.
[28 of 2000].

(2) Any order made under section 96 or 94 in favour of an applicant who was—

- (a) the former spouse of the deceased; or

- (b) the spouse of the deceased in a case where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing,

ceases, in so far as it provides for the making of periodical payments, to have effect on the remarriage of the applicant, except in relation to any arrears due under the order on the date of the remarriage.

(3) The Registrar shall transmit an office copy of every order made under this Part to the Registrar General, who shall forthwith register it in the Protocol of Wills and make reference to the order in the margin of the certified copy of the grant registered by him.

Provisions as to
personal
representatives.

114. (1) The provisions of this Part do not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased, after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that he ought to have taken into account the possibility that—

- (a) the Court might permit the making of an application for an order under section 96 after the end of that period; or
- (b) where an order has been made under the said section 96, the Court might exercise in relation thereto the powers conferred on it by section 100,

but this subsection does not prejudice any power to recover, by reason of the making of an order under this Act, any part of the estate so distributed.

(2) Where the personal representatives of a deceased person pay any sum directed by an order under section 99 to be paid out of the deceased's estate, they are not under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment they have reasonable cause to believe that the estate is not sufficient.

(3) Where a deceased person entered into a contract by which he agreed to leave by his Will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if the personal representatives of the deceased have reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Act, they may, notwithstanding anything in the contract, postpone the payment of the sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under section 96, until the determination of the proceedings on that application.

115. In any proceedings under this Part a statement made by the deceased, whether orally or in a document or otherwise, shall be admissible under section 37 of the Evidence Act as evidence of any fact stated therein in like manner as if the statement were a statement falling within section 37 (1) of that Act; and any reference in that Act to a statement admissible, or given or proposed to be given, in evidence under section 37 thereof or to the admissibility or the giving in evidence of a statement by virtue of that section or to any statement falling within section 37 (1) of that Act shall be construed accordingly.

Admissibility of evidence.
[28 of 2000].
Ch. 7:02.

116. In consideration for the purposes of this Part when representation with respect to the estate of a deceased person was first taken out, a grant limited to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Date of grant of representation.

PART IX

GENERAL PROVISIONS

117. Nothing in this Act affects in any way the powers—
(a) under the Post Office Savings Bank Act to pay, apply and distribute money standing to the credit of a depositor to the several classes of persons specified in the said Act;

Savings Bank Deposits and insurance policies.
Ch. 79:04.

L.R.O. 1/2006

- Ch. 84:01. (b) under the Insurance Act, to pay moneys, including bonuses (if any), to the person specified in sections 139 and 140 of the said Act.
- Access to documents. **118.** (1) The Commissioner of Inland Revenue, the Accountant General and the Administrator General have at all times free access to all probate documents in the registry of the Court.
- (2) Any other person may, on payment of the prescribed fee—
- (a) examine any Will or other document deposited in the said registry;
- (b) obtain an office copy of any such document.
- Rules or Regulations. **119.** The Minister may make Rules or Regulations governing any matter to be prescribed under this Act or respecting any matter necessary or convenient to carry out effectively the intent and purpose of this Act.
- Rules of Court. Ch. 4:01. **120.** Rules of Court may be made by the Rules Committee under section 76 of the Supreme Court of Judicature Act, for regulating the practice and procedure in respect of any proceedings of any kind under this Act.
- Fees. **121.** The Minister may by Order, subject to affirmative resolution of the House of Representatives, prescribe fees to be charged for the following matters, that is to say—
- (a) the various matters and things to be done or permitted to be done under Part V;
- (b) the administration of assets under Part VI;
- (c) the distribution on intestacy under Part VII;
- (d) the applications for family provision under Part VIII;
- (e) the examination and obtaining of copies of documents under section 118.
- Abolition of estate duty. **122.** Estate duty is abolished in respect of the estate of any person dying on or after 1st January 1981.

123. (1) Except to the extent to which any provision of this Act expressly provides to the contrary, the provisions of this Act do not apply to the estate of any person dying before the commencement of this Act. Application of Act.

(2) Nothing in this Act affects the operation of any rule of law whereby a person may, by reason of his own criminal act, be precluded from taking any benefit either under the Will or on the intestacy of that other.

(3) Subject to section 194(2) of the Land Law and Conveyancing Act, 1981, which shall apply to this Act as it applies to that Act, this Act binds the State. 20 of 1981.

124. (1) *[This subsection specified (in the Second Schedule which has been omitted) the Acts repealed by this Act].* Repeals and amendments. Second Schedule. Third Schedule.

(2) *[This subsection specified (in the Third Schedule which has been omitted) the Acts amended by this Act].*

(3) All statutes of general application of the Imperial Parliament relating to the subject matter of this Act and still in force in the State by virtue of section 12 of the Supreme Court of Judicature Act, are repealed to the extent that they so relate. Ch. 4:01.

125. References in any document to any provision repealed by this Act shall be construed as references to the corresponding provision of this Act. Adaptation of references.

[Section 77(1)
and (4)].

SCHEDULE

ADMINISTRATION OF ASSETS

PART I

**RULES AS TO PAYMENTS OF DEBTS WHERE
THE ESTATE IS INSOLVENT**

1. The funeral, testamentary, and administration expenses have priority.
2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

PART II

**ORDER OF APPLICATION OF ASSETS WHERE
THE ESTATE IS SOLVENT**

1. Property of the deceased undisposed of by Will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided aforesaid.
3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.
4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.
5. The fund, if any, retained to meet pecuniary legacies.
6. Property specifically devised or bequeathed, rateably according to value.
7. Property appointed by Will under a general power rateably according to value.

