

CHAPTER 249

SUCCESSION

1975-46

This Act came into operation on 13th November, 1975.

Amended by:

1979-3

1981-41

1979-41

1983-5

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1978

1985

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 249

**SUCCESSION
1975-46**

Arrangement of Sections

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

DEVOLUTION OF REAL AND PERSONAL ESTATE ON DEATH

3. Devolution of real and personal estate
4. Abolition of descent to heir, curtesy, dower and escheat
5. Further assimilation of law respecting real and personal estates of deceased persons
6. Vesting of estate between death and grant of administration
7. Construction of references to estates of deceased persons

PART III

EXECUTORS AND ADMINISTRATORS

8. Summons to executors to prove or renounce
9. Cesser of right of executor to prove
10. Withdrawal of renunciation
11. Death of sole or last surviving executor
12. Rights of proving executors to exercise powers
13. Executor not to act while administration is in force
14. Protection of persons acting in probate or administration
15. Liability of person fraudulently obtaining or retaining estate of deceased
16. Liability of estate of personal representative
17. Validity of conveyance not affected by revocation of representation

PART IV

GRANTS OF REPRESENTATION

18. Grants of probate
19. Grants of administration
20. Representation of real and personal estate separately or together
21. Power to grant representation where no estate

-
22. Power to grant representation to a trust corporation
 23. Grant of special administration where personal representative is abroad
 24. Powers of attorney from absent executor valid
 25. Administration during minority of executor
 26. Continuance of legal proceedings after revocation of temporary administration
 27. Administration bonds

PART V

ADMINISTRATION OF ASSETS

28. Estate of deceased to be assets for payment of debts and legal rights
29. Administration of assets
30. Charges on the property of deceased to be paid primarily out of the property charged
31. *[Repealed]*
32. Powers of personal representatives to sell and to act as trustees
33. Protection of purchasers
34. General provisions as to assent or transfer by personal representatives
35. Power of personal representatives as to appropriation

- 36. Right of surviving spouse to require dwelling and household chattels to be appropriated
- 37. Application to the Court in respect of appropriation
- 38. *[Repealed]*
- 39. *[Repealed]*
- 40. Right to follow property
- 41. Powers to deal with estate, etc.
- 42. Purchasers from personal representatives
- 43. Time allowed for distribution
- 44. Payment without representation
- 45. Advancements to children to be brought into account
- 46. Duty of personal representatives as to inventory
- 47. Administration on behalf of the Crown

PART VI

DISTRIBUTION ON INTESTACY

- 48. Rules for distribution on intestacy
- 49. Shares of surviving spouse and of children and their issue
- 50. Shares of mother and father

-
51. Shares of brothers and sisters and their children
 52. Shares of next-of-kin
 53. Ascertainment of next-of-kin
 54. Half-blood
 55. Crown's right to property as *bona vacantia*
 56. Partial intestacy

PART VII

PROVISION FOR DEPENDANTS

57. Meaning of dependant
58. Provision for dependants on intestacy

PART VIII—A

WILLS GENERALLY

59. Property which may be disposed of by will
60. Capacity to make a will
61. Signing and witnessing will
62. Appointments by will
63. Holograph will
64. Publication of will not necessary

65. Will not void on account of incompetency of witness
66. Gift to an attesting witness or spouse of witness to be void
67. Creditor attesting will admissible as a witness
68. Executor admissible as a witness
69. Revocation of will
70. Alterations of will after execution
71. Revoked will not revived otherwise than by re-execution or codicil
72. Subsequent conveyance or other act not to prevent operation of will
73. Will to speak from death of testator
74. Extrinsic evidence as to will
75. Residuary devise or bequest to include estate comprised in lapsed and void gifts
76. General devise of land to include leasehold as well as freehold
77. General gift of realty or personalty to include property over which the testator has general power of appointment
78. Devise of real estate without words of limitation to pass the whole estate
79. Creation of estates tail
80. Meaning of “die without issue”
81. Entitlement of trustee under an unlimited devise

- 82.** Devise of estate tail not to lapse where inheritable issue survives
- 83.** Gifts to children or other issue who leave issue living at testator's death
- 84.** Interpretation of devise or bequest in case of doubt
- 85.** Restriction on executory limitations

PART VIII—B

SOLDIERS AND SAILORS WILLS

- 85A.** Soldiers wills
- 85B.** Validity of testamentary dispositions of real property made by soldiers and sailors
- 85C.** Power to appoint testamentary guardians

PART IX

CONFLICT OF LAWS RELATING TO TESTAMENTARY DISPOSITIONS

- 86.** Testamentary disposition and validity as regards form
- 87.** Dispositions made on board vessels or aircraft
- 88.** Exercise of power of appointment
- 89.** Joint dispositions
- 90.** Effect of restrictions on capacity
- 91.** Effect of testamentary disposition

PART X

TESTATOR'S SPOUSE'S LEGAL RIGHT AND PROVISION FOR CHILDREN

- 92. Application of Part X
- 93. Right of surviving spouse
- 94. Priority of legal right
- 95. Renunciation of legal right
- 96. Effect of devise or bequest to spouse
- 97. Election between legal rights under a will and on partial intestacy
- 98. Provision in satisfaction of legal right
- 99. Estate Duty
- 100. Provision for children
- 101. Proceedings to be in chambers

PART XI

EXCLUSION FROM SUCCESSION AND DISINHERITANCE

- 102. Exclusion of spouse from succession
- 103. Disposition for the purpose of disinheriting spouse and children
- 104. Proceedings to be in chambers

PART XII

MISCELLANEOUS

105. Presumption of simultaneous death in cases of uncertainty

106. Savings

FIRST SCHEDULE

RULES AS TO APPLICATION OF ASSETS

SECOND SCHEDULE

*ANNEX TO THE CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN
INTERNATIONAL WILL*

**BARBADOS****SUCCESSION
1975-46**

An Act to amend and consolidate the law relating to succession to the property of deceased persons, and, in particular, the devolution, administration, testamentary disposition and distribution on intestacy of such property, and to provide for related matters.

[Commencement: 13th November, 1975]

**PART I
PRELIMINARY****Short title**

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

Interpretation

- 2.(1) For the purposes of this Act

“administration”, in relation to the estate of a deceased person, means letters of administration, whether with or without a will annexed and whether granted for special or limited purposes;

[1979-41]

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

“an intestate” means a person who leaves no will or leaves a will but leaves undisposed of some beneficial interest in his estate, and “intestate” shall be construed accordingly;

“conveyance” includes a mortgage, charge, lease, assent, transfer, disclaimer, release and any other assurance of property or of an interest therein by an instrument except a will;

“Court” means the High Court;

“grant” means grant of representation;

“minor” means a person under the age of 18 years;

“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, including all death duties free from which any devise, bequest, or payment is made to take effect;

“personal representative” means the executor or administrator for the time being of a deceased person;

[1979-41]

“possession” includes the receipt of, or the right to receive, rents and profits, if any;

“property” includes all property both real and personal;

“Public Trustee” means the person appointed as such by section 3 of the *Public Trustee Act*, Cap. 248;

“purchaser” means a grantee, lessee, assignee, mortgagee, chargeant or other person who in good faith acquires an estate or interest in property for valuable consideration;

“Registrar” means Registrar of the Supreme Court;

“representation” means probate or administration;

“share” in relation to the estate of a deceased person includes any share or interest, whether arising under a will or on intestacy or as a legal right, and includes also the right to the whole estate;

“soldier” includes a member of the Air Force;

[1979-41]

“spouse’s legal right” means the right of a spouse under section 93 to share in the estate of a deceased person;

“trust corporation” has the meaning assigned to it by section 22 (4);

“will” includes a codicil.

(2) For the purposes of this Act

(a) descendants and relatives of a deceased person begotten before his death but born alive thereafter shall be regarded as having been born in the lifetime of the deceased and as having survived him;

(b) where a deceased person’s estate or any share therein is to be distributed *per stirpes* among his issue, any issue more remote than a child of the deceased shall take through all degrees, according to their stocks, in equal shares if more than one, the share which the parent of such issue would have taken if living at the death of the deceased, and no issue of the deceased shall take if the parent of such issue is living at the death of the deceased and so capable of taking.

(3) For the purposes of this Act, reference to a “spouse” includes

(a) a single woman who was living together with a single man as his wife for a period of not less than 5 years immediately preceding the date of his death;

[1979-41]

(b) a single man who was living together with a single woman as her husband for a period of not less than 5 years immediately preceding the date of her death.

(4) For the purposes of subsection (3), 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.

(5) Notwithstanding subsection (3), only one such relationship as referred to in paragraph (a) or (b) of that subsection shall be considered for the purposes of benefit under this Act.

(6) For the purposes of 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 by way of mortgage or security, but not including money to arise under a trust for sale of land, or money secured or charged on land);
- (b) the estate of a deceased person in an estate tail shall be deemed to be an estate or interest ceasing on his death, but any further or other estate or interest of the deceased person in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an estate or interest so ceasing;
- (c) the estate of a deceased person under a joint tenancy where any tenant survives the deceased person shall be deemed to be an estate or interest ceasing on his death;
- (d) on the death of a corporator sole his estate or interest in the corporation's real estate shall be deemed to be an estate or interest ceasing on his death and shall devolve to his successor, and this paragraph applies on the demise of the Crown as respects all property vested in the Crown as a corporation sole.

PART II

DEVOLUTION OF REAL AND PERSONAL ESTATE ON DEATH

Devolution of real and personal estate

3.(1) The real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve and become vested in his personal representatives.

(2) The personal representatives for the time being of a deceased person shall be the representatives of the deceased in regard to his real and personal estate, and shall hold the estate as trustees for the persons by law entitled thereto.

(3) The references in this section to the real and personal estate of a deceased person are to property to which he was entitled for an estate not ceasing on his death, and include property over which he exercised by will a general power of appointment.

(4) This section shall apply to property vested on any trust in a deceased person solely as it applies to his real and personal estate.

Abolition of descent to heir, curtesy, dower and escheat

4.(1) With regard to the real and personal estate of a person dying intestate there shall be abolished

- (a) all existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, whether operating by the general law or by custom of any locality or otherwise howsoever;
- (b) tenancy by curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or by custom or otherwise;
- (c) dower and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or by custom or otherwise;

(d) escheat to the Crown.

(2) Nothing in this section shall affect the descent or devolution of an entailed interest.

Further assimilation of law respecting real and personal estates of deceased persons

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

- (a) the effect of representation in respect of personal estate;
- (b) the dealing with personal estate before representation;
- (c) the powers, rights, duties and liabilities of personal representatives in respect of personal estate;
- (d) the payment of cost of administration; and
[1979-41]
- (e) all other matters with respect to the administration of personal estate,

shall, so far as applicable, apply to real estate as if it were personal estate.

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

(3) A grant of representation shall, unless containing an express limitation to the contrary, have effect as well over the real as over the personal estate.

Vesting of estate between death and grant of administration

6. Where a person dies intestate or dies testate but leaving no executor surviving him, his real and personal estate, until administration is granted in respect thereof, shall vest in the Public Trustee.

Construction of references to estates of deceased persons

7. References in this Act and in any enactment passed after 13th November, 1975 to the estate of a deceased person shall include references to both the real and personal estate of that person.

PART III

EXECUTORS AND ADMINISTRATORS

Summons to executors to prove or renounce

8. The Court may summon any person named as executor in a will to prove the will or renounce probate.

Cesser of right of executor to prove

9. Subject to section 10, where a person appointed executor by a will
- (a) survives the testator but dies without having taken out probate; or
 - (b) is cited to take out probate and does not appear to the citation; or
[1979-41]
 - (c) renounces probate,

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

Withdrawal of renunciation

10. Where an executor who has renounced probate has been permitted, whether before or after 13th November, 1975 to withdraw the renunciation and prove the will, the probate shall take 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 taken out representation,

and a memorandum of the subsequent probate shall be endorsed on the original of the grant.

Death of sole or last surviving executor

11.(1) Where the sole or last surviving executor of a testator dies after 13th November, 1975, the executor of such executor shall not be the executor of that testator.

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

Rights of proving executors to exercise powers

12.(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 other or others to prove, all the powers which are by this Act or otherwise by law conferred on the personal representatives may be exercised by the proving executors or the survivors of them and shall be as effectual as if all the persons named as executors had concurred therein.

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

Executor not to act while administration is in force

13. Where administration has been granted in respect of the estate, or any part of the estate, of a deceased person, no person may bring any action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been revoked, cancelled or recalled or has expired.

Protection of persons acting in probate or administration

14.(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 circumstance whatsoever affecting the validity of the representation.

(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.

Liability of person fraudulently obtaining or retaining estate of deceased

15.(1) If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any part of the 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 estate received or coming to his hands, or the debt or liability released after deducting—

- (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) For the purposes of this section, “full valuable consideration” means such valuable consideration as amounts or approximates to the value of that for which it is given.

Liability of estate of personal representative

16. Where a person as a personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the estate of the deceased, and dies, his personal representative shall, to the extent of the available assets of the defaulter, be liable and chargeable in

respect of such waste or conversion in the same manner as the defaulter would have been if living.

Validity of conveyance not affected by revocation of representation

17.(1) All conveyances of any estate or interest in the estate of a deceased person made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the grant.

(2) This section takes effect without prejudice to any order of the Court made before the commencement of this Act, and applies whether the deceased died before or after such commencement.

PART IV

GRANTS OF REPRESENTATION

Grants of probate

18.(1) The Court may grant probate to one or more, but not exceeding four, executors of a deceased person, and the grant may be limited in any way the Court thinks fit.

(2) The Court may revoke, cancel or recall any grant of probate.

Grants of administration

19.(1) The Court may grant administration (with or without the will annexed) of the estate of a deceased person, and a grant may be limited in any way the Court thinks fit.

(2) The Court may revoke, cancel or recall any grant of administration.

(3) The Court shall have a discretion as to the person to whom administration may be granted.

(4) A person to whom administration (with or without the will annexed) is granted shall, subject to any limitation contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

(5) Where any legal proceedings are pending touching the validity of the will of a deceased person or for obtaining, revoking or recalling any grant, the Court may grant administration of the estate of the deceased to an administrator who shall have all the rights and powers of a general administrator other than the right of distributing the estate of the deceased, and every person to whom such administration is granted shall be subject to the immediate control of the Court and act under its direction.

(6) The Court may, out of the estate of the deceased person, assign to an administrator appointed under subsection (5) such reasonable remuneration as the Court thinks fit.

(7) Where a person has died (whether before or after the commencement of this Act) and because of the circumstances it appears to the Court to be necessary or expedient to do so, the Court may, notwithstanding any enactment or rule of law to the contrary, grant administration of the estate of the deceased (with or without the will annexed) to an administrator upon his giving such security, if any, as the Court directs, and such grant may be limited in any way the Court thinks fit.

(8) On administration being granted, no person may be or become entitled without a grant to administer any estate to which that administration relates.

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

Representation of real and personal estate separately or together

20.(1) Representation may be granted either separately in respect of real estate and in respect of personal estate, or in respect of real estate together with personal estate, and may be granted in respect of real estate although there is no personal estate, or in respect of personal estate although there is no real estate.

(2) Where the estate of the deceased person is known to be insolvent, the grant shall not be severed except as regards a trust estate.

Power to grant representation where no estate

21. The Court shall have jurisdiction to make a grant of representation in respect of a deceased person, notwithstanding that the deceased left no estate in Barbados, and to make a *de bonis non* or other form of grant in respect of the administered estate notwithstanding the fact that there is no unadministered estate of the deceased in Barbados.

Power to grant representation to a trust corporation

22.(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; and
- (b) grant administration to a trust corporation, either solely or jointly with another person,

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

(2) Representation shall not be granted to any person 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 representation, and the acts of an officer so authorised shall be binding on the corporation.

(4) For the purposes of this section, “trust corporation” means the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee or authorised by rules made under section 14 of the *Public Trustee Act*, Cap. 248 to act as custodian trustee.

Grant of special administration where personal representative is abroad

23.(1) If at the expiration of 12 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 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 moneys 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 out of such fund as the Court directs.

Powers of attorney from absent executor valid

24.(1) A power of attorney from an absent personal representative who has duly qualified himself to act as such residing outside of Barbados shall be good and valid to all intents and purposes as if the personal representative had been qualified in Barbados.

(2) All such persons residing out of Barbados as personal representatives shall be amenable themselves or by their attorneys to all the courts in Barbados as if they personally resided here, and service of any writ, *subpoena* or process on their attorneys shall be deemed good service on the principals to all necessary legal and equitable purposes.

[1979-41]

Administration during minority of executor

25.(1) Where a minor is sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the Court thinks fit, until the minor attains the age of 18 years and applies for and obtains a grant of probate or letters of administration with the will annexed, 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 shall not operate to transfer any interest in the property of the deceased to the minor or constitute him a personal representative for any purpose unless and until probate is granted to him under this section.

Continuance of legal proceedings after revocation of temporary administration

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

Administration bonds

27.(1) 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, and, subject to this section, if the Registrar so requires, with one or more sureties conditioned for duly collecting, getting in and administering the estate of the deceased.

(2) The Registrar shall have power to enforce any administration bond or to assign it in accordance with the provisions of this section to some other person.

(3) An administration bond shall be in such form as may be prescribed by rules of court.

(4) Where it appears to the satisfaction of a Judge of the Court that the condition of an administration bond has been broken, the Judge may, on an application in that behalf, order the bond to be assigned to such person as may be specified in the order; and the person to whom the bond is assigned in pursuance of the order shall be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Registrar, and to recover thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the conditions thereof.

(5) Nothing in this section shall require the Public Trustee when applying for or obtaining administration to give an administration bond.

(6) Where administration has been granted to the Public Trustee, he shall, notwithstanding that he does not give the bond which, if such administration had been granted to him as a private individual he would be required by law to give, be subject as regards the administration to the liabilities and duties imposed by such bond.

PART V

ADMINISTRATION OF ASSETS

Estate of deceased to be assets for payment of debts and legal rights

28.(1) Notwithstanding section 94 of the *Insurance Act*, Cap. 310, and subject to this section the estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the estate of which a deceased person in pursuance of any general power disposes by his will, are assets for the payment of the funeral, testamentary and administration expenses, debts (whether by specialty or simple contract) and liabilities, and any legal right, and any disposition by will inconsistent with this section is void as against the creditors and any person entitled to a legal right, and the Court shall, if necessary, administer the property for the payment of the expenses, debts and liabilities and any legal right.

[1979-41; 1983-5]

(2) This section takes effect without prejudice to the rights of encumbrancers.

(3) Notwithstanding anything contained in this Act, in the administration of the assets of the estate of a deceased person all taxes, duties and other payments due and owing to the Crown in respect of that estate shall rank in priority over all other debts; and no personal representative may proceed to distribute the assets of such an estate unless the Commissioner of Inland Revenue has certified that all such taxes, duties and other payments due to the Crown have been discharged.

[1983-5]

Administration of assets

29.(1) Where the estate of a deceased person is insolvent it shall be administered in accordance with the rules set out in Part I of the First Schedule.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person, and shall not be exercisable where the estate is insolvent.

(3) Subject to subsection (2), nothing in this Act affects the right of retainer of a personal representative or his right to prefer creditors.

(4) Where the estate of a deceased person is solvent, it shall, subject to the rules of court and to the provisions of this Act relating 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, and any legal right in the order specified in Part II of the First Schedule.

(5) Nothing in subsection (4) affects the right of any creditor of the deceased or the legal right of a spouse.

(6) Where a creditor, a person entitled to a legal right or a personal representative applies an asset out of the order specified in Part II of the First Schedule, the persons entitled under the will or on intestacy shall have the right to have the assets marshalled so that a beneficiary whose estate or interest has been applied out of its order shall stand in the place of that creditor or person *pro tanto* as against any property that, in the said order, is liable before his own estate or interest.

(7) A claim to a share as a legal right or on intestacy in the estate of a deceased person is a claim against the assets of the estate to a sum equal to the value of that share.

Charges on the property of deceased to be paid primarily out of the property charged

30.(1) Where a person

- (a) dies possessed of or entitled to; or
- (b) 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 or equitable mortgage or charge or otherwise (including a lien for unpaid purchase money) and the deceased person has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased person, be 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.

(2) Such contrary intention shall not be deemed to be signified

- (a) by a general direction for the payment of debts or of all the debts of the testator out of his estate, or any part thereof; or
- (b) by 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 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 person or otherwise.

31. *[Repealed.]*

Powers of personal representatives to sell and to act as trustees

32.(1) The personal representatives may sell the whole or any part of the estate of a deceased person for the purpose not only of paying debts but also (whether there are or are not debts) of distributing the estate among the persons entitled thereto, but before selling for the purposes of distribution, the personal representatives shall, so far as practicable, give effect to the wishes of the persons of full age entitled to the property proposed to be sold, or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons.

(2) A purchaser of the estate or part thereof to which subsection (1) refers shall not be concerned to see that the personal representatives have complied with the wishes of those persons referred to in subsection (1), and it shall not be necessary for any person beneficially entitled to concur in such sale.

Protection of purchasers

33.(1) A purchaser from the personal representatives of a deceased person of any property, being the whole or any part of the estate of the deceased, shall be entitled to hold that property freed and discharged from any debts or liabilities of the deceased, except such as are charged otherwise than by the will of the deceased, and from all claims of the persons entitled to any share in the estate, and shall not be concerned to see to the application of the purchase money.

(2) A purchaser of any property to which this subsection applies, being the whole or part of the estate of a deceased person, which has been conveyed by the

personal representatives to any person, shall be entitled to hold that property freed and discharged from the claims of creditors of the deceased person and from any claims of the persons entitled to any share in the estate.

General provisions as to assent or transfer by personal representatives

34.(1) For the purposes of this section

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

(2) Without prejudice to any other power conferred by this Act on personal representatives with respect to any land of a deceased person, the personal representative may, at any time after the death of the deceased person

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

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

(3) Where an assent or transfer under subsection (2) 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 shall cease, except as to any acts done or contracts entered into by them before the assent or transfer.

(4) At any time after the expiration of 1 year from the death of an owner of land, if the personal representatives have failed on the request of the person entitled to transfer, by assent or otherwise, the land to the person entitled, the Court may, if it thinks fit, on the application of the person entitled, and after notice to the personal representatives, order that the transfer be made, and in default of compliance with that order within the time specified therein by the Court, may make an order vesting the land in the person entitled as fully and effectually as might have been done by a transfer thereof by the personal representatives.

(5) An assent not in writing shall not be effectual to pass any estate or interest in land.

(6) An assent to the vesting of any estate or interest in land of a deceased person in favour of the person entitled thereto shall

(a) be in writing;

(b) be signed by the personal representatives;

(c) be deemed for the purposes of the *Property Act*, Cap. 236, to be a conveyance of that estate or interest from the personal representatives;
[1979-41]

(d) be deemed (unless a contrary intention appears therein) for all purposes necessary to establish the title of the person entitled to intervening rents and profits to relate back to the death of the deceased person, but nothing in this section shall operate to enable any person to establish a title inconsistent with the will of the deceased person.

(7) Any person in whose favour an assent or conveyance of any land is made by personal representatives may at his own expense require the personal representatives to record that assent or conveyance in the Registration Office pursuant to the *Property Act*, Cap. 236.

(8) An assent or conveyance of land by a personal representative shall, in favour of a purchaser, be 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 shall not otherwise prejudicially affect

the claim of any person originally entitled to that estate or interest or to any mortgage or encumbrance thereon.

(9) This section applies to assents and conveyances made after 13th November, 1975, whether the deceased died before or after that date.

Power of personal representatives as to appropriation

35.(1) The personal representatives may, subject to this section, appropriate any part of the estate of a deceased person in its actual condition or state of investment at the time of appropriation in or towards satisfaction of any share in the estate, whether settled or not, according to the respective rights of persons interested in the estate.

(2) Except in a case to which section 36 applies, an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest.

(3) Except in a case to which section 36 applies, an appropriation shall not be made under this section unless notice of the intended appropriation has been served on all parties entitled to a share in the estate (other than persons who may come into existence after the time of the appropriation or who cannot after reasonable enquiry be found or ascertained at that time) any one of which parties may, within 6 weeks from the service of such notice on him, apply to the Court to prohibit the appropriation.

(4) An appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased shall not (save as is mentioned in this section) be made under this section except with the consent of the following

- (a) when made for the benefit of a person absolutely and beneficially entitled to possession, the consent of that person;
- (b) when made in respect of any settled share, 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.

- (5) If the person whose consent is so required is a minor or person of unsound mind, the consent shall be given
- (a) on behalf of the person of unsound mind by his parent, guardian, committee or receiver;
 - (b) on behalf of the minor by his parent or guardian, or, if there is no such parent or guardian, by the Court on the application of his next friend.
- (6) Subject to paragraph (b) of subsection (4), no consent shall be required on behalf of a person who may come into existence after the time of the appropriation, or who cannot after reasonable enquiry be found or ascertained at that time.
- (7) If no committee or receiver of a person of unsound mind has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased, no consent shall be required on behalf of the person of unsound mind.
- (8) If, independently of the personal representatives, there is no trustee of a settled share, 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 share, provided the appropriation is of an investment authorised by law or by the will, if any, of the deceased.
- (9) Any property duly appropriated under the powers conferred by this section shall be treated as an authorised investment, and may be retained and dealt with accordingly.
- (10) For the purposes of such appropriation, the personal representatives may make any conveyance which may be requisite for giving effect to the appropriation.
- (11) Unless the Court on an application made to it under subsection (4) otherwise directs, an appropriation made under this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(12) The personal representatives shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot after reasonable enquiry be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.

(13) 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 share, the property appropriated shall remain 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 share in respect of which the appropriation is made, if no such appropriation had been made.

(14) If, after any property 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 and after all requisite notices and consents, if any, had been given.

(15) For the purposes of this section, a settled share includes any share to which a person is not absolutely entitled in possession at the date of the appropriation, and an annuity.

(16) This section applies whether or not the deceased died intestate, and extends to property over which the testator exercised 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.

(17) Where any property is appropriated under this section, a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, because the property so conveyed is accepted by the person to whom it is conveyed in or towards satisfaction of a legacy or a share in the residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for the like purpose.

Right of surviving spouse to require dwelling and household chattels to be appropriated

36.(1) Where the estate of a deceased person includes a dwelling in which, at the time of the deceased's death, the surviving spouse was ordinarily resident, the surviving spouse may, subject to subsection (5), require the personal representatives in writing to appropriate the dwelling under section 35 in or towards satisfaction of any share of the surviving spouse.

(2) The surviving spouse may also require the personal representatives in writing to appropriate any household chattels in or towards satisfaction of any share of the surviving spouse.

(3) If the share of a surviving spouse is insufficient to enable an appropriation to be made under subsection (1) or (2), as the case may be, the right conferred by the relevant subsection may also be exercised in relation to the share of any minor for whom the surviving spouse is a trustee under section 38 or otherwise.

(4) The personal representatives shall, within 3 months from the first taking out of representation of the deceased's estate, notify the surviving spouse of the rights conferred by this section.

[1979-41]

(5) A right conferred by this section shall not be exercisable

(a) after the expiration of 6 months from the receipt by the surviving spouse of such notification or 1 year from the first taking out of representation of the deceased's estate, whichever is the later;

(b) in relation to a dwelling which is the subject of a specific devise to a child of the deceased; or

(c) in relation to a dwelling in any of the cases mentioned in subsection (6),

unless the court, on application made by the personal representative or the surviving spouse, is satisfied that the exercise of that right is unlikely to diminish the value of the assets of the deceased, other than the dwelling, or to make it more

difficult to dispose of them in due course of administration, and authorises its exercise.

[1979-41]

(6) Paragraph (c) of subsection (5) of this section and subsection (4) of section 37 apply to the following cases

- (a) where the dwelling forms a part of a building, and an estate or interest in the whole building forms part of the estate;
- (b) where the dwelling is held with agricultural land an estate or interest in which forms part of the estate;
- (c) where the whole or part of the dwelling was, at the time of death, used as an hotel, guest house or boarding house; and
- (d) where a part of the dwelling was at the time of the death used for purposes other than domestic purposes.

(7) Nothing in section 35 (12) shall prevent the personal representatives from giving effect to the rights conferred by this section.

(8) Subject to subsection (9), so long as a right conferred by this section continues to be exercisable, the personal representatives shall not, without the written consent of the surviving spouse or the leave of the Court given on the refusal of an application under paragraph (c) of subsection (5), sell or otherwise dispose of the dwelling or household chattels except in the course of administration owing to want of other assets.

(9) Subsection (8) shall not apply where the surviving spouse is a personal representative.

(10) Nothing in subsection (8) shall confer any right on the surviving spouse against a purchaser from the personal representatives.

(11) The rights conferred by this section on a surviving spouse include a right to require appropriation partly in satisfaction of a share in the deceased's estate and partly in return for a payment of money by the surviving spouse on the

spouse's own behalf and also on behalf of any minor for whom the spouse is a trustee under section 38 or otherwise.

(12) Where the surviving spouse is a person of unsound mind, a requirement or consent under this section may, if there is a committee of the spouse's estate, be made or given on behalf of the spouse by the committee by leave of the Court, or, if there is no committee, be given or made by the Court.

Application to the Court in respect of appropriation

37.(1) In addition to the rights to require appropriation conferred by section 35, the surviving spouse may, so long as a right conferred by this section continues to be exercisable, apply to the Court for appropriation on the spouse's own behalf and also on behalf of any minor for whom the spouse is a trustee under section 38 or otherwise.

(2) On any such application referred to in subsection (1), the Court may, if it is of the opinion that, in the special circumstances of the case, hardship would otherwise be caused to the surviving spouse or to the surviving spouse and such minor, order that appropriation to the spouse shall be made without the payment of money provided for in section 36 (11), or subject to the payment of such amount as the Court considers reasonable.

(3) The Court may make such further order in relation to administration of the deceased's estate as may appear to the Court to be just and equitable having regard to this Act and to all the circumstances.

(4) The Court shall not make an order under this section in relation to a dwelling in any of the cases mentioned in section 36 (6) unless it is satisfied that the order would be unlikely to diminish the value of the assets of the deceased, other than the dwelling, or to make it more difficult to dispose of them in due course of administration.

(5) Proceedings under this section and section 36 shall be heard before a Judge in chambers.

(6) For the purposes of this section and section 35

“dwelling” means an estate or interest in a building occupied as a separate dwelling or part so occupied, of any building, and includes any garden or portion of ground attached to and usually occupied by the dwelling or otherwise required for the amenity or convenience of the dwelling;

“household chattels” means furniture, linen, china, glass, books or other chattels of ordinary household use or ornament, and also consumable stores, garden effects and domestic animals, but does not include any chattels used at the death of the deceased for business or professional purposes, or money or security for money.

38. *[Repealed by 1979—41.]*

39. *[Repealed by 1979—41.]*

Right to follow property

40.(1) Property which has been conveyed by personal representatives to any person (other than a purchaser) shall, so long as it remains vested in that person or in any other person claiming under him (not being a purchaser), continue to be liable to answer the debts of the deceased and any share in the estate to the extent to which it was liable when vested in the personal representatives.

(2) In the event of a sale or mortgage of the property by a person (not being a purchaser) to whom it was conveyed by the personal representatives, or by any person claiming under him (not being a purchaser), the seller or mortgagor shall continue to be personally liable for such debts and for any share in the estate to the extent to which the property was liable when vested in the personal representatives.

Powers to deal with estate, etc.

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

- (a) grant such leases of the land or such licences to use any such 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
 - (i) leases of the land for such terms and on such conditions,
 - (ii) licences to use such land for any purpose mentioned in the licence, as the personal representatives may think proper.

(2) The personal representatives of a deceased person may from time to time raise money by way of mortgage or charge for payment of expenses, debts and liabilities, and any legal right, and, with the approval of all the beneficiaries being *sui juris*, or of the Court, (but not otherwise), for the erection, repair, improvement or completion of buildings, or the improvement of lands or any other property forming part of the estate of the deceased.

[1979-41]

(3) This section shall not prejudice or affect any power or duty of personal representatives to execute any document or do any other act or thing for the purpose of completing any transaction entered into by a deceased person before his death.

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

(5) Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made

- (a) within 6 months after the termination of the lease or tenancy;

- (b) during the continuance of the possession of the lessee or tenant from whom the arrears were due.
- (6) The enactments relating to distress for rent apply to any distress made pursuant to this subsection.
- (7) The personal representatives may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rentcharge or of the person deriving title under him, and in like manner as the deceased might have done had he been living.
- (8) This section shall not prejudice or affect any powers conferred by will on personal representatives, and the powers conferred by this section on personal representatives of a deceased person who has died testate shall be exercised subject to any provisions contained in his will with respect to the disposal of his estate.

[1979-3]

Purchasers from personal representatives

42. A purchaser from personal representatives shall be entitled to assume that the personal representatives have acted and are acting correctly and within their powers.

Time allowed for distribution

43.(1) The personal representatives of a deceased person shall distribute his estate as soon after his death as is reasonably practicable having regard to the nature of the estate, the manner in which it is required to be distributed, and all other relevant circumstances, but proceedings against personal representatives in respect of their failure to distribute shall not, without leave of the Court, be brought before the expiration of 1 year from the date of the death of the deceased.

(2) Nothing in this section shall prejudice or affect the right of creditors of a deceased person to bring proceedings against the personal representatives before the expiration of 1 year from the date of the death of the deceased.

(3) Where a person is deceased for a period of 1 year or more and no person has started proceedings for the grant of probate or administration in respect of the deceased's estate, the Public Trustee may apply for a grant of administration, and on receiving a grant shall distribute the estate of the deceased in accordance with the terms of the will or under this Act.

Payment without representation

44.(1) Where the gross capital value of the estate of a person who dies without leaving a will does not exceed \$15 000, the Public Trustee may, on the application of the person or persons who have prior entitlement to a grant of administration, and without a grant of administration, administer the estate of the deceased person and distribute that estate in accordance with this Act on the expiration of 3 months from the date of the death of the intestate.

(2) Subject to subsection (4), where, on the death of any person on whose life a policy of insurance within the meaning of the *Insurance Act*, Cap. 310 has been issued by an insurance company, a sum of money has become payable to the personal representatives of the deceased person, it shall be lawful for the insurance company, without requiring probate of the will or administration of the estate of the deceased person to be obtained, and with the consent of the Public Trustee, to pay such sum of money or any part thereof to the person who has prior entitlement to administer the estate of the deceased person, for the purpose of paying the funeral, testamentary and administration expenses, of the deceased person, or of refunding the amount of such expenses to any person who has paid them.

[1979-41; 1981-41]

(3) Subject to subsection (4), in the event of the death of any person to whom any sum of money is payable by the trustee of a superannuation fund, a society, a bank, an employer of the deceased person or the Crown, it shall be lawful for the trustees of the superannuation fund, society, bank, employer or the Crown, as the case may be, without requiring probate of the will or administration of the estate of the deceased person to be obtained, and with the consent of the Public Trustee, to pay such sum of money or any part thereof to the person who has prior

entitlement to administer the estate of the deceased, for the purpose of paying the funeral, testamentary and administration expenses, of the deceased person, or of refunding the amount of such expenses to any person who has paid them.

[1981-41]

(4) No payment may be made under subsection (2) or (3) to any person unless he applies for or consents to receive that payment.

(5) For the purposes of subsections (3) and (9)

“bank” means a bank within the meaning of the *Banking Act*, Cap. 322, and includes the bank established by the *Barbados National Bank Act*, Cap. 322A;

“society” means

(a) any building society within the meaning of the *Building Societies Act*, Cap. 377,

(b) any industrial and provident society registered or deemed to be registered under the *Industrial and Provident Societies Act*, Cap. 380,

(c) any friendly society registered or deemed to be registered under the *Friendly Societies Act*, Cap. 379, or

(d) any co-operative society registered or deemed to be registered under the *Co-operative Societies Act*, Cap. 378;

[1979-41]

“trustees of a superannuation fund” means the trustee or administering body of any pension plan or superannuation fund.

(6) Any payment made in good faith pursuant to this section shall be valid against all persons whomsoever, and the person making the payment shall be absolutely discharged from all liability in respect of money paid by him under this section.

(7) Every person to whom money is paid pursuant to subsection (2) or (3) shall be liable to apply the money in due course of administering the estate, and the person making the payment may, if he thinks fit, without being liable to see to

the application of the money, require any such person to give sufficient undertaking, by bond or otherwise, that the money so paid will be so applied.

(8) Nothing in this section shall prevent any person to whom the money to which this section applies or any part thereof ought to be paid from pursuing and exercising any remedy for recovery thereof against the person or persons to whom the money has been paid.

(9) Nothing in this section shall affect the power of any bank or society or of any person or body to make payment of any money or to transfer any property in accordance with a nomination made by any person pursuant to any other enactment or in accordance with any other enactment for the time being in force authorising the payment of money belonging to the estate of a deceased person without requiring probate or administration of the estate to be obtained.

Advancements to children to be brought into account

45.(1) Subject to subsection (9), any advancement made to the child of a deceased person during his lifetime shall, subject to any contrary intention expressed by the deceased or appearing from the circumstances of the case, be taken as being so made in or towards satisfaction of the share of such child in the estate of the deceased person or the share which such child would have taken if living at the death of the deceased, and as between the children shall be brought into account in distributing the estate.

(2) The advancement shall, for the purposes of this section only, be reckoned as part of the estate of the deceased, and its value shall be reckoned as at the date of its advancement.

(3) If the advancement is equal to or greater than the share which the child is entitled to receive under the will or intestacy, the child or the issue of the child, as the case may be, shall be excluded from any such share in the estate.

(4) If the advancement is less than such share, the child or the issue of the child, as the case may be, shall be entitled to receive in satisfaction of such share so much only of the estate as, when added to the advancement, is sufficient, as nearly as can be estimated, to make up the full amount of that share.

- (5) The onus of proving that a child has been made an advancement shall be upon the person so asserting, unless the advancement has been expressed in writing by the deceased.
- (6) For the purposes of this section, “advancement” means a gift intended to make permanent provision for a child, and includes
- (a) advancement by way of a portion or settlement, including any life or lesser interest and including property covenanted to be paid or settled;
 - (b) a marriage portion or an advancement or portion for the purpose of advancing a child in a profession, vocation, trade or business; and
 - (c) payments made for the education of the child to a higher standard than that provided by the deceased for any other of his children.
- (7) For the purposes of this section, the personal representatives may employ a duly qualified valuer.
- (8) Nothing in this section shall prevent a child retaining the advancement and abandoning his right to a share under the will or on intestacy.
- (9) This section applies to wills
- (a) made or confirmed; or
 - (b) probated,

after the 1st January, 1980.

[1979-41]

[1979-41]

Duty of personal representatives as to inventory

46. The personal representatives of a deceased person shall, when lawfully required to do so, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased, and the Court shall have power to require personal representatives to bring in inventories.

Administration on behalf of the Crown

47.(1) Where the administration of an estate is granted for the use and benefit of the Crown (whether to the Deputy Solicitor-General for the Attorney-General or any other person) any legal proceedings by or against the administrator for the recovery of the estate or any share thereof shall be of the same character and be instituted and carried on in the same manner, and be subject to the same rules of law and equity in all respects, as if the grant had been made to the administrator as a person beneficially entitled to a share of the estate.

(2) Proceedings on behalf of or against the Crown in respect of the estate of a deceased person or any share thereof or any claim therein shall not be instituted except subject to the same rules of law and equity in and subject to which proceedings for the like purposes may be instituted by or against a private individual.

PART VI**DISTRIBUTION ON INTESTACY****Rules for distribution on intestacy**

48.(1) Subject to the provisions of Part VII, all estate to which a deceased person was beneficially entitled for an estate or interest not ceasing on his death and as to which he dies intestate after 13th November, 1975, of this Act shall, after payment of all expenses, debts and liabilities and any legal right properly payable thereout, be distributed in accordance with this Part.

(2) For the purposes of this Part, the expression

“brother” or “sister” in relation to an intestate shall include any child of the father or mother of the intestate;

“father” includes an adoptive father.

[1979-41]

Shares of surviving spouse and of children and their issue

- 49.**(1) If an intestate dies leaving a spouse and no issue or next-of-kin, the spouse shall take the whole estate.
- (2) If an intestate dies leaving a spouse and no issue but next-of-kin, the spouse shall take two-thirds of the estate and the remainder shall be distributed in equal shares among the next-of-kin.
- (3) Subject to subsection (4), if an intestate dies leaving
- (a) a spouse and one child, the spouse shall take two-thirds of the estate and the remainder shall go to the child;
 - (b) a spouse and children, the spouse shall take one-third of the estate and the remainder shall be distributed among the children in equal shares.
- (4) If any child of the intestate has predeceased him leaving issue and such issue is alive at the date of the intestate's death, the spouse shall take the same share of the estate as if that child had been living at that date, and the issue of that child shall take, in the manner provided for in subsection (6), the share which that child would have taken if he had survived the intestate.
- (5) If an intestate dies leaving issue and no spouse, his estate shall be distributed among the issue in accordance with subsection (6).
- (6) If all the issue are in equal degree of relationship to the deceased person, the distribution shall be in equal shares among them; if they are not, it shall be *per stirpes*.

Shares of mother and father

- 50.** If an intestate dies leaving neither spouse nor issue, his estate shall be distributed between his mother and father in equal shares if both survive the intestate, but, if only one of them survives the intestate, the survivor shall take the whole estate.

Shares of brothers and sisters and their children

51.(1) If an intestate dies leaving neither spouse nor issue nor mother nor father, his estate shall be distributed between his brothers and sisters in equal shares, and, if any brother or sister does not survive the intestate, the surviving children of the deceased brother or sister shall, where any other brother or sister of the deceased person survives him, take in equal shares the share that his mother or father would have taken if she or he had survived the intestate.

(2) If an intestate dies leaving neither spouse nor issue nor mother nor father nor brother nor sister, his estate shall be distributed in equal shares among the children of his brothers and sisters.

Shares of next-of-kin

52.(1) If an intestate dies leaving neither spouse nor issue nor mother nor father nor brother nor sister nor children of any deceased brother or sister, his estate shall, subject to sections 53 and 54, be distributed in equal shares among his next-of-kin.

(2) Representation of next-of-kin shall not be admitted among collaterals except in the case of children of brothers and sisters of the intestate where any brother or sister of the intestate survives him.

Ascertainment of next-of-kin

53.(1) Subject to subsection (2), the person who, at the date of the death of the intestate, stands nearest in blood relationship to him shall be taken to be his next-of-kin.

(2) Degrees of blood relationship shall be ascertained by counting the number of steps between the intestate and the relative in question counting directly in the case of those related lineally and through the nearest common ancestor in the case of those who are issue of an ancestor of the intestate but are not themselves ancestors of the intestate; but where a direct lineal ancestor and any other relative are so ascertained to be within the same degree of blood relationship to the

intestate, the other relative shall be preferred to the exclusion of the direct lineal ancestor.

Half-blood

54. Without prejudice to sections 48 to 53, if the intestate dies leaving

(a) a spouse but no issue; or

[1979-41]

(b) neither spouse nor issue,

relatives of the half-blood shall be treated as, and shall succeed equally with, relatives of the whole blood in the same degree.

Crown's right to property as *bona vacantia*

55.(1) In default of any person taking the estate of an intestate, the residuary estate of the intestate shall vest in the Crown as *bona vacantia*.

(2) The Minister responsible for Legal Affairs may, if he thinks fit, waive, in whole or in part and in favour of such person and upon such terms (whether including or not including the payment of money) as he thinks proper, having regard to all the circumstances of the case, the right of the Crown under this section.

Partial intestacy

56. Where the will of a testator effectively disposes of part only of his property, the remainder shall be distributed as if he had died intestate and left no other property.

PART VII
PROVISION FOR DEPENDANTS

Meaning of dependant

57. For the purposes of this Part

“dependant” in relation to a person who dies intestate means

- (a) any woman (other than his spouse) living together with a man as his wife immediately preceding the date of his death and wholly or mainly maintained by him at that time;
- (b) any man (other than her spouse) living together with a woman as her husband immediately preceding the date of her death and wholly or mainly maintained by her at that time; or
- (c) a child who is presumed to be the child of the deceased person and his
 - (i) under the age of eighteen years; or
 - (ii) because of some mental or physical disability, incapable of maintaining himself or herself,

and was wholly or mainly maintained by, or was living with, the deceased person at the date of his death.

[1979-41]

Provision for dependants on intestacy

58.(1) Subject to this section where an intestate dies leaving a dependant, the Court may, on application made by or on behalf of that dependant on the ground that the law relating to intestacy does not make provision for the maintenance of such dependant, make an order providing for such maintenance to be made out of the intestate’s estate as it thinks fit, having regard to any benefits to which the person by or on whose behalf the application is made is entitled under any other enactment on the death of the intestate.

-
- (2) An application under subsection (1) shall be made within 12 months from the first taking out of the representation of the intestate's estate.
- (3) The Court may, in considering the application, where appropriate, direct enquiries to be made as to
- (a) whether the person by or on whose behalf the application is made was living with the intestate at the date of his or her death and the period during which that person was so living;
 - (b) the maintenance which the intestate provided, or could reasonably be expected to provide, for the person by or on whose behalf the application is made, and, where maintenance was provided, the period during which it was so provided;
 - (c) the income of the person by or on whose behalf the application is made;
 - (d) the mental state or physical condition of the dependant; or
 - (e) any other matter (including the conduct of the person by or on whose behalf the application is made, or of any other person) which in the circumstances of the case the Court considers relevant.
- (4) An order made under this section may provide for maintenance by way of periodical payments or of a lump sum payment.
- (5) Where the order provides for periodical payments, it shall provide for their termination not later than
- (a) in the case of a dependant mentioned in paragraph (a) of the definition of that expression
 - (i) the date on which she commences living together with another man as his wife, or
 - (ii) her earlier death;

- (b) in the case of a dependant mentioned in paragraph (b) of the definition of that expression
 - (i) the date on which he commences living together with another woman as her husband, or
 - (ii) his earlier death;
 - (c) in the case of a dependant mentioned in paragraph (c) of the definition of that expression.
 - (i) the date on which he or she attains the age of 18 years, or
 - (ii) the cesser of his or her disability, or, in any case, his or her earlier death.
- (6) Where an application is made under this section, the person making the application shall give notice thereof to
- (a) the personal representatives of the intestate; and
 - (b) all persons entitled on intestacy to a share of the intestate's estate,
- and such persons shall be entitled to appear and be heard at the hearing of the application.

PART VIII—A
WILLS GENERALLY

[1979-41]

Property which may be disposed of by will

59. A person may by his will, executed in accordance with this Act, dispose of all property which he is beneficially entitled to at the time of his death and which on his death devolves on his personal representatives

Capacity to make a will

60.(1) Subject to subsection (2), no will shall be valid unless it is made by a person who

- (a) has attained the age of eighteen years or is or has been married; and
- (b) is of sound mind.

(2) A person who is entitled to appoint a guardian of a minor may make the appointment by will notwithstanding that he is not a person to whom paragraph (a) of subsection (1) applies.

[1979-41]

Signing and witnessing will

61.(1) No will shall be valid unless—

- (a) it is in writing;
- (b) it is signed at the foot or end thereof by the testator, or by some person in his presence and by his direction;
- (c) the signature is made or acknowledged by the testator in the presence of each of two or more witnesses, present at the same time, and each witness shall attest by his signature the signature of the testator in the presence of the testator, but no form of attestation shall be necessary.

(2) For the purposes of subsection (1) (b), the signature of the testator or of the person signing for him shall be deemed to be valid, so far as the position of the signature is concerned, if the signature is so placed at or after, or following or under, or beside, or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect to the writing signed as his will.

(3) Without prejudice to the generality of subsection (1) (b), no will shall be affected by the circumstances—

- (a) that the signature does not follow or is not immediately after the foot or end of the will; or
- (b) that a blank space intervenes between the concluding word of the will and the signature; or
- (c) that 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, or under, or beside, the names or one of the names of the attesting witnesses; or
- (d) that the signature is on a side or page or other portion of the paper or papers containing the will on which no clause or paragraph or disposing part of the will is written above the signature; or
- (e) that there appears to be sufficient space to contain the signature on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written.

(4) Notwithstanding this section, no signature shall operate to give effect to any disposition or direction which is under or which follows it, nor shall it give effect to any disposition or direction inserted after the signature is affixed.

Appointments by will

62.(1) An appointment made by will, in exercise of any power, shall not be valid unless it is executed in accordance with this Act.

(2) Every will so executed shall, so far as concerns its execution and attestation, be a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

Holograph will

63. Section 61 shall not apply to any will which is written throughout in the proper handwriting of the testator.

Publication of will not necessary

64. Every will executed in accordance with this Act shall be valid without any other publication thereof.

Will not void on account of incompetency of witness

65. If any person who attests the execution of a will is, at the time of execution or at any time afterwards, incompetent to be admitted a witness to prove the execution, the will shall not on that account be invalid.

Gift to an attesting witness or spouse of witness to be void

66.(1) If a person attests the execution of a will, and any devise, bequest, estate, interest, gift or appointment, of or affecting any property (other than charges and directions for the payment of any debts) is given or made by will to that person or his spouse, that devise, bequest, estate, interest, gift or appointment shall, so far only as concerns the person attesting the execution of the will, or the spouse of that person, or any person claiming under that person or spouse, be utterly null and void.

(2) The person so attesting shall be admitted as a witness to prove the execution of the will, or to prove the validity or invalidity thereof, notwithstanding such devise, bequest, estate, interest, gift or appointment.

Creditor attesting will admissible as a witness

67. If by will any estate is charged with any debts, and a creditor, or the spouse of a creditor, whose debt is so charged, attests the execution of the will, the creditor, notwithstanding such charge, shall be admitted as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Executor admissible as a witness

68. A person shall not, only because he is an executor of a will, be incompetent to be admitted as a witness to prove the validity or invalidity thereof.

Revocation of will

69.(1) A will shall be revoked by the subsequent marriage of the testator except

(a) a will made in contemplation of that marriage and so expressed in the will; and

[1979-41]

(b) a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointment pass to the persons entitled to take beneficially under an intestacy in accordance with the rules* in force at the time the power was created.

**[The Rules relating to intestacy prior to the enactment of this Act were contained in section 19 of the Administration of Estates Act, 1891, formerly Chapter 242.]*

(2) Subject to subsection (1), no will, or any part thereof, shall be revoked except by another will or codicil duly executed or by some writing declaring an intention to revoke it and executed in the manner in which a will is required to be executed, or by the burning, tearing, or destruction of it by the testator, or by some person in his presence and by his direction, with the intention of revoking it.

Alterations of will after execution

70.(1) Subject to subsection (2), an obliteration, interlineation, or other alteration made in a will after execution shall not be valid or have any effect, unless such alteration is executed in the same manner as is required for the execution of the will.

(2) The will with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the signature of each witness is made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revoked will not revived otherwise than by re-execution or codicil

71. No will or any part thereof, which is in any manner revoked, shall be revived otherwise than by re-execution thereof or by a codicil duly executed and showing an intention to revive it, and when any will or codicil which is partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to that part which was revoked before the revocation of the whole thereof unless an intention to the contrary is shown.

Subsequent conveyance or other act not to prevent operation of will

72. Where, subsequent to the execution of a will, a conveyance or other act is made or done relating to any property comprised in the will, except an act by which the will is revoked, the conveyance or act shall not prevent the operation of the will with respect to any estate or interest in the property which the testator has power to dispose of by will at the time of his death.

Will to speak from death of testator

73. Every will shall, with reference to all property comprised in the will and every devise or bequest contained in it, be construed 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.

Extrinsic evidence as to will

74. Extrinsic evidence shall be admissible to show the intention of the testator and to assist in the construction of, or to explain any contradiction in, a will.

Residuary devise or bequest to include estate comprised in lapsed and void gifts

75. Subject to section 83, unless a contrary intention appears from the will, any estate comprised or intended to be comprised in any devise or bequest contained in the will which fails or is void because the devisee or legatee did not survive the testator, or because the devise or bequest is contrary to law or otherwise incapable of taking effect, shall be included in any residuary devise or bequest, as the case may be, contained in the will.

[1979-41]

General devise of land to include leasehold as well as freehold

76. A general devise of land shall be construed to include leasehold interests as well as freehold estates, unless a contrary intention appears from the will.

General gift of realty or personalty to include property over which the testator has general power of appointment

77. A general devise of land shall be construed to include any land over which the testator may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears from the will; and in like manner a general bequest of the personal estate of the testator shall be construed to include such estate over which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such powers, unless a contrary intention appears from the will.

Devise of real estate without words of limitation to pass the whole estate

78. Where the real estate is devised to any person (including a trustee or executor) without any words of limitation, the devise shall be construed to pass

the whole estate or interest which the testator had power to dispose of by will in the real estate, unless the contrary intention appears from the will.

Creation of estates tail

79.(1) An estate tail (whether general, in tail male, in tail female, or in tail special) in real estate may be created by will only by the use of the same words of limitation as those by which a similar estate tail may be created by deed.

(2) Words of limitation contained in a will in respect of real estate which have not the effect of creating an estate in fee simple or an estate tail shall have the same effect as similar words used in a deed in respect of personal property.

Meaning of “die without issue”

80. In a devise or bequest of real or personal estate, the words “die without issue” or “die without leaving issue”, or “have no issue” or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of issue, shall be construed to mean a want or failure of issue in his lifetime or at the time of his death, and not an indefinite failure of his issue, unless a contrary intention appears from the will.

Entitlement of trustee under an unlimited devise

81. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by the trustee, and the beneficial interest in such estate or in the surplus rents or profits thereof

- (a) is not given to any person for life; or
- (b) if given to any person for life, the purpose of the trust continues beyond the life of that person,

such devise shall be construed to vest in that trustee the fee simple or whole legal estate which the testator had power to dispose of by will, and not an estate determinable when the purposes of the trust are satisfied.

Devise of estate tail not to lapse where inheritable issue survives

82. Where a person to whom real estate is devised for an estate tail or an estate in quasi-entail dies in the lifetime of the testator leaving issue who could inherit under the entail, and any such issue is living at the time of the death of the testator, the devise shall not lapse, but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention appears from the will.

Gifts to children or other issue who leave issue living at testator's death

83. Where a person, being a child or other issue of the testator to whom any property is given (whether by a devise or bequest or by the exercise by will of a power of appointment, and whether as a gift to that person as an individual or as a member of a class) for any estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator leaving issue, and any such issue of that person is living at the time of the death of the testator, the gift shall not lapse, but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention appears from the will.

Interpretation of devise or bequest in case of doubt

84. If the purport of a devise or bequest is capable of more than one interpretation, then, in case of doubt, the interpretation according to which the devise or bequest will be operative shall be preferred.

Restriction on executory limitations

- 85.** Where a person is entitled under a will to
- (a) land for an estate in fee simple or for any lesser estate or interest not being an estate tail; or
 - (b) any interest in other property,

with an executory limitation over in default or failure of any of his issue, whether within a specified period of time or not, that executory limitation shall be or become void and incapable of taking effect if and as soon as there is living any issue of the class in default or failure of which the limitation over was to take effect.

PART VIII—B
SOLDIERS AND SAILORS WILLS

Soldiers wills

85A.(1) Notwithstanding that he is a minor, a soldier being in actual military service, or a mariner or seaman being at sea may dispose of his personal estate in accordance with this Act.

(2) Subsection (1) applies to a member of Her Majesty's naval or marine forces not only when he is at sea but also when he is so circumstanced that if he were a soldier he would be in actual military service within the meaning of that subsection.

[1979-41]

[1979-41]

Validity of testamentary dispositions of real property made by soldiers and sailors

85B. A testamentary disposition in respect of any real estate situate in Barbados made by a person to whom section 85A refers and who dies after 2nd July, 1944, shall be valid, notwithstanding,

- (a) that the person making the disposition was, at the time of the making, a minor; or
- (b) that the disposition has not been made in such manner or form as was at that date required by law,

in any case where the person making the disposition was of such age and the disposition had been a disposition of personal estate which if made by such person domiciled in Barbados, it would have been valid.

Power to appoint testamentary guardians

85C. Where a person dies after 2nd July, 1944 having made a will which is or which if it had been a disposition of property, would have been rendered valid by section 85A, any appointments contained in that will of any person as guardian of the testator's children shall be of full force and effect.

PART IX

CONFLICT OF LAWS RELATING TO TESTAMENTARY DISPOSITIONS

Testamentary disposition and validity as regards form

- 86.(1)** A testamentary disposition shall be valid as regards form if
- (a) its form complies with the internal law—
 - (i) of the place where the testator made it; or
 - (ii) of a nationality possessed by the testator either at the time when he made the disposition or at the time of his death; or
 - (iii) of a place in which the testator had his domicile either at the time when he made the disposition or at the time of his death; or
 - (iv) of the place in which the testator had his habitual residence either at the time when he made the disposition or at the time of his death; or
 - (v) so far as immovables are concerned, of the place where they are situated;
 - (b) irrespective of the place where it is made, or of the location of the assets or of the nationality, domicile or residence of the testator, it is made in

the form of an international will complying with the following provisions—

- (i) it is in writing;
- (ii) the testator has declared in the presence of two witnesses and of an authorised person that the document is his will and that he knows the contents thereof;
- (iii) the signature is made or acknowledged by the testator in the presence of each of two or more witnesses and of the authorised person present at the same time, and each witness and the authorised person shall attest by his signature the signature of the testator in the presence of the testator, but no form of attestation shall be necessary;
- (iv) it is signed at the foot or end thereof by the testator or by some person in his presence and by his direction;
- (v) in cases where the testator is unable to sign the will, he has indicated the reason therefor to the authorised person and the authorised person has made a note thereof on the will.

(2) Without prejudice to subsection (1), a testamentary disposition revoking an earlier testamentary disposition shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under that subsection, the testamentary disposition that has been revoked was valid.

(3) For the purposes of this Part, if a national law consists of a non-unified system, the law to be applied shall be determined by the rules in force in that system, and, failing any such rules, by the most real connection which the testator had with any one of the various laws within that system.

(4) The determination of whether or not the testator had his domicile in a particular place shall be governed by the law of that place.

(5) The invalidity of a testamentary disposition as an international will shall not affect its formal validity as a will of another kind.

(6) For the purposes of this Part—

“authorised person” means a person appointed by the Minister to act in connection with international wills;

“Convention” means the convention providing a uniform law on the form of an international will done at Washington on the 26th day of October, 1973;

“Convention country” means the territory of a contracting party to the Convention declared by a notice of the Minister to be a Convention country;

“internal law”, in relation to any territory or state means the law which would apply in a state where a question of the law in force in any other territory or state arose;

“international will” means a will made in accordance with the provisions of the Annex to the Convention, the text of which Annex is set out in the Second Schedule;

“testamentary disposition” means any will or other testamentary instrument.

Dispositions made on board vessels or aircraft

87. Without prejudice to section 86, a testamentary disposition made on board a vessel or aircraft shall also be valid as regards form if its form complies with the internal law of the place with which, having regard to its registration (if any) and any other relevant circumstances, the vessel or aircraft may be taken to have had the most real connection.

Exercise of power of appointment

88.(1) Without prejudice to section 86, a testamentary disposition shall also be valid as regards form so far as it exercises a power of appointment, if its form complies with the law governing the essential validity of the power.

(2) A testamentary disposition so far as it exercises a power of appointment shall not be treated as invalid as regards form only because its form is not in

accordance with any formal requirements contained in the instrument creating the power.

Joint dispositions

89. This Part (subsection (1) (*b*) of section 86 excepted) shall also apply to the form of testamentary dispositions made by two or more persons in one document.

Effect of restrictions on capacity

90.(1) For the purposes of this Part, any provision of law which limits the permitted form of testamentary dispositions by reference to age, nationality or other personal conditions of the testator shall be deemed to pertain to matters of form.

(2) In determining whether or not a testamentary disposition complies with a particular law, regard shall be had to the requirements of that law at the time of making the disposition, but this shall not prevent account being taken of an alteration of law affecting testamentary dispositions made at that time if the alteration enables the disposition to be treated as valid.

Effect of testamentary disposition

91. A testamentary disposition which under this part is valid as regards form shall have the same effect as if it were a will executed in compliance with Part VIII.

PART X

TESTATOR'S SPOUSE'S LEGAL RIGHT AND PROVISION FOR
CHILDREN

[1979-41]

Application of Part X

92.(1) Where, after the commencement of this Act, a person dies domiciled in Barbados wholly or partly testate leaving a spouse or children, or both spouse and children, this Part shall have effect.

(2) For the purposes of this Part, references to the estate of the testator are references to all the property to which he was beneficially entitled for an estate or interest not ceasing on his death and remaining after payment of all expenses, debts and liabilities properly payable thereout.

Right of surviving spouse

93.(1) If a testator dies leaving a spouse and a child who is a minor, or a child who is, because of some mental or physical disability, incapable of maintaining himself, the spouse shall have a right to one-quarter of the estate.

(2) If a testator dies leaving a spouse and no such child as is mentioned in subsection (1), the spouse shall have a right to one-half of the estate.

Priority of legal right

94. The spouse's legal right under section 93 shall have priority over devices, bequests and shares on intestacy.

[1979-41]

Renunciation of legal right

95. The spouse's legal right may be renounced in an antenuptial contract made in writing between the parties to an intended marriage or may be renounced in writing by the spouse after marriage and during the lifetime of the testator.

[1979-41]

Effect of devise or bequest to spouse

96.(1) Where property is devised or bequeathed in a will to a spouse and the devise or bequest is expressed in the will to be in addition to the share as a spouse's legal right, the testator shall be deemed to have made by the will a gift to the spouse consisting of

- (a) a sum equal to the value of the share as a spouse's legal right; and
[1979-41]
- (b) the property so devised or bequeathed.

(2) In any other case, a devise or bequest in a will to a spouse shall be deemed to have been intended by the testator to be in satisfaction of the share as a spouse's legal right.

[1979-41]

[1979-41]

Election between legal rights under a will and on partial intestacy

97.(1) Where under the will of a deceased person who dies wholly testate, there is a devise or bequest to a spouse, the spouse shall elect within 6 months of the probate of the will to take either that devise or bequest or the share to which he is entitled as a legal right.

(2) In default of an election under subsection (1), the spouse shall be entitled under the will and shall not be entitled to take any share as a legal right.

- (3) Where a person dies partly testate and partly intestate, a spouse may elect to take either
- (a) his share as a legal right; or
 - (b) his share under the intestacy, together with any devise or bequest to him under the will of the deceased.
- (4) In default of an election under subsection (3), the spouse shall be entitled to take his share under the intestacy, together with any devise or bequest to him under the will, and shall not be entitled to take any share as a legal right.
- (5) A spouse in electing to take his share as a legal right, may further elect to take any devise or bequest to him less in value than the share in partial satisfaction thereof.
- (6) The personal representatives shall notify the spouse in writing of the right of election conferred by this section; but the right shall not be exercisable after the expiration of 6 months from the receipt by the spouse of such notification or from the first taking out of representation of the deceased's estate, whichever is the later.
- (7) Where the surviving spouse is a person of unsound mind, the right of election conferred by this section may, if there is a committee of the spouse's estate, be exercised on behalf of the spouse by the committee by leave of the Court, or, if there is no committee, be exercised by the Court.
- (8) For the purposes of this section, but only in its application to a case to which subsection (1) applies, "devise or bequest" means a gift deemed under that subsection to be made by the will of the testator.

Provision in satisfaction of legal right

98.(1) Where a testator during his lifetime has made permanent provision for his spouse, whether under contract or otherwise, all property which is the subject of such provision (other than periodical payments made for the spouse's maintenance during his lifetime) shall be taken as being given in or towards satisfaction of the share as a legal right of the surviving spouse.

-
- (2) The value of the property shall be reckoned as at the date of the making of the provision.
- (3) If the value of the property is equal to or greater than the share of the spouse as a legal right, the spouse shall not be entitled to take any share as a legal right.
- (4) If the value of the property is less than the share of the spouse as a legal right, the spouse shall be entitled to receive in satisfaction of such share so much only of the estate as, when added to the value of the property, is sufficient, as nearly as can be estimated, to make up the full amount of that share.
- (5) This section shall apply to a provision made before 13th November, 1975.

Estate Duty

99. Property representing the share of a person as a legal right and property which is the subject of an order under section 100 shall bear their due proportion of the estate duty payable on the estate of the deceased.

[The Estate Duty Act has been repealed by Act 1981-41.]

Provision for children

100.(1) Where, after 13th November, 1975 a testator dies leaving a child who is a minor or a child who is, because of some mental or physical disability, incapable of maintaining himself or herself, then, if the Court, on application by or on behalf of such child of the testator, is of the opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by will or otherwise, the Court may order that such provision shall be made out of the estate as it thinks fit.

(2) The provision for maintenance to be made by order shall, subject to subsection (3), be by way of periodical payments, and the order shall provide for their termination not later than

(a) in the case of a child who is a minor, his or her attaining the age of 18 years;

(b) in the case of a child under disability, the cesser of his or her disability, or, in any case, his or her earlier death.

(3) The Court may make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

(4) An order under this section shall not affect the legal right of a surviving spouse, or, if the surviving spouse is the mother or father of the child, any devise or bequest to the spouse or any share to which the spouse is entitled on intestacy.

(5) An order under this section shall not be made except on an application made within 12 months from the first taking out of representation of the deceased's estate.

(6) The definition "father" contained in section 48 (2) shall have effect for the purposes of this section.

[1979-41]

Proceedings to be in chambers

101. All proceedings in relation to this Part shall be heard before a Judge in chambers.

PART XI

EXCLUSION FROM SUCCESSION AND DISINHERITANCE

Exclusion of spouse from succession

102.(1) A spouse against whom the deceased obtained a judicial separation, a spouse who failed to comply with a decree of restitution of conjugal rights obtained by the deceased, and a spouse guilty of desertion which has continued up to the death for 3 years or more, shall be precluded from taking any share in the estate of the deceased as a legal right or in intestacy.

(2) A spouse who was guilty of conduct which justified the deceased in separating and living apart from him shall be deemed to be guilty of desertion within the meaning of subsection (1).

(3) A person who has been found guilty of an offence against the deceased or against the spouse or any child of the deceased (including a person to whom the deceased was *in loco parentis* at the time of the offence), punishable by imprisonment for a maximum period of at least 2 years or by a more severe penalty, shall be precluded from taking any share in the estate as a legal right or from making an application under section 100.

(4) Where a husband and wife have ceased to cohabit with each other and have been living apart continuously for a period of 5 years or more immediately preceding the date of death of either of them, the survivor shall be precluded from taking any share in the estate of the deceased as a legal right or on intestacy.

[1979-41]

(5) Any share which a person is precluded from taking under this section shall be distributed as if that person had died before the deceased.

Disposition for the purpose of disinheriting spouse and children

103.(1) This section applies to a disposition of property (other than a testamentary disposition or a disposition to a purchaser) under which the

beneficial ownership of the property vests in possession in the donee within three years before the death of the person who made it, or on his death, or later.

(2) If the Court is satisfied that a disposition to which this section applies was made for the purpose of defeating or substantially diminishing the share of the disponent's spouse, whether as a legal right or on intestacy, or the intestate share of any of his children, or of leaving any of his children insufficiently provided for, then, whether the disponent died testate or intestate, the Court may order that the disposition shall, in whole or in part, be deemed, for the purposes of Parts VI and X, to be a devise or bequest made by him by will and to form part of his estate, and to have no other effect.

(3) To the extent to which the Court so orders, the disposition shall be deemed never to have had effect as such, and the donee of the property, or any person representing or deriving title under him, shall be a debtor of the estate for such an amount as the Judge may direct.

(4) The Court may make such further order in relation to the matter as may appear to the Court to be just and equitable having regard to the provisions of this Act and to all the circumstances.

(5) Subject to subsections (6) and (7), an order may be made under this section

(a) in the interests of the spouse, on the application of the spouse or the personal representatives of the deceased made within one year from the first taking out of representation;

(b) in the interests of a child on an application under section 100.

(6) In the case of a disposition made in favour of the spouse of the disponent, an order shall not be made under this section on an application by or on behalf of a child of the disponent who is also a child of the spouse.

- (7) An order shall not be made under this section affecting a disposition made in favour of any child of the disponer if
- (a) the spouse of the disponer was dead when the disposition was made; or
 - (b) the spouse was alive when the disposition was made but was a person who, if the disponer had then died, would have been precluded under section 102 from taking a share in his estate;
 - (c) the spouse was alive when the disposition was made and consented in writing to it.
- (8) If the donee disposes of the property to a purchaser, this section shall cease to apply to the property and shall apply instead to the consideration given by the purchaser.
- (9) Accrual by survivorship on the death of a joint tenant of property shall, for the purposes of this section, be deemed to be a vesting of the beneficial ownership of the entire property in the survivor.
- (10) For the purposes of this section “disposition” includes a *donatio mortis causa*.

Proceedings to be in chambers

104. All proceedings in relation to this Part shall be heard before a Judge in chambers.

PART XII

MISCELLANEOUS

Presumption of simultaneous death in cases of uncertainty

105. Where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or

others, then, for the purposes of the distribution of the estate of any of them, they shall be deemed to have died simultaneously.

Savings

- 106.**(1) Subject to this section and to section 99, nothing in this Act shall—
- (a) affect any duty payable in respect of real estate or impose on real estate any other duty than is payable in respect thereof immediately before the commencement of this Act; or
 - (b) affect any remedy for the recovery of any estate or succession duty.
- (2) Succession duty shall be payable having regard to the rules of distribution of property contained in this Act.
- (3) Except to the extent to which any provision of this Act expressly provides to the contrary, the provisions of this Act shall not apply to the estate of any person dying before the commencement of this Act.
- (4) This Act shall not apply to the will of a testator who dies before the commencement of this Act, but shall apply to the will of every testator who dies after such commencement, whether the will was executed before or after that time.
- (5) Except to the extent to which any provision of this Act expressly provides to the contrary, the law relating to succession to the property of deceased persons and to the devolution, administration, testamentary disposition and to distribution on intestacy of such property, in force immediately before the commencement of this Act shall continue to have effect in relation to the estate of a person, or to the will of a testator, who has died before such commencement.

FIRST SCHEDULE

(s. 29)

RULES AS TO APPLICATION OF ASSETS

PART I

RULES AS TO APPLICATION OF DEBTS WHERE THE ESTATE IS
INSOLVENT

1. The funeral, testamentary and administration expenses have priority.
2. Subject to paragraph 1, section 118 of the *Bankruptcy Act*, Cap. 303 applies to the administration in bankruptcy of an estate of a deceased person dying insolvent.
3. In the application of the rules of bankruptcy, the date of death shall be substituted for the date of adjudication in bankruptcy.

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 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 under paragraph 1.
3. Property of the deceased specifically appropriated or devised or bequeathed (either by specific or general description) for the payment of debts.

4. Property of the deceased charged with or devised or bequeathed (either by 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.
8. The following provisions shall also apply—
 - (a) the order of application may be varied by the will of the deceased;
 - (b) this Part of this Schedule does not affect the liability of land to answer the estate and succession duty imposed thereon in exoneration of other assets.

SECOND SCHEDULE*(s. 86 (6))**ANNEX TO THE CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN
INTERNATIONAL WILL***ARTICLE 1**

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.
2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

ARTICLE 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

ARTICLE 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

ARTICLE 4

1. The testator shall declare in the presence of two witnesses and of a person authorised to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorised person, of the contents of the will.

ARTICLE 5

1. In the presence of the witnesses and of the authorised person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorised person who shall make note of this on the will. Moreover, the testator may be authorised by the law under which the authorised person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorised person shall there and then attest the will by signing in the presence of the testator.

ARTICLE 6

1. The signature shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorised person. In addition, each sheet shall be numbered.

ARTICLE 7

1. The date of the will shall be the date of its signature by the authorised person.
2. This date shall be noted at the end of the will by the authorised person.

ARTICLE 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorised person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

ARTICLE 9

The authorised person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

ARTICLE 10

The certificate drawn up by the authorised person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of 26th October, 1973)

1. I,.....(name, address and capacity), a person authorised to act in connection with international wills
2. Certify that on.....(date) at.....(place)

3. (testator).....(name, address, date and place of birth)
in my presence and that of the witnesses
4. (a).....(name, address, date and place of birth)
- (b)(name, address, date and place of birth)
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that—
6. (a)in my presence and in that of the witnesses
- (1) the testator has signed the will or has acknowledged his signature previously affixed.
- (2) following a declaration of the testator stating that he was unable to sign his will for the following reason.....
.....
—I have mentioned this declaration on the will
—the signature has been affixed by.....
*
- *[To be completed if appropriate.]*
- (name, address)
- [To be completed if appropriate.]*
7. (b)the witnesses and I have signed the will;
8. (c)each page of the will has been signed by.....and numbered;
[To be completed if appropriate.]

- 9. (d)I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
- 10. (e)the witnesses met the conditions requisite to act as such according to the law under which I am acting;
- 11. (f)the testator has requested me to include the following statement concerning the safekeeping of his will:
.....
.....

[To be completed if appropriate.]

- 12. PLACE
- 13. DATE
- 14. SIGNATURE and, if necessary, SEAL

ARTICLE 11

The authorised person shall keep a copy of the certificate and deliver another to the testator.

ARTICLE 12

In the absence of evidence to the contrary, the certificate of the authorised person shall be conclusive of the formal validity of the instrument as a will under this law.

ARTICLE 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this law.

ARTICLE 14

The international will shall be subject to the ordinary rules of revocation of wills.

ARTICLE 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.