

## CHAPTER 2

### **Administration of Estates Act**

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### CHAPTER 2

#### ADMINISTRATION OF ESTATES

A Law relating to the Administration of the Estate of Deceased Persons

31 December, 1991

#### Part I - Devolution of Property

Devolution of property on personal representative

1. (1) all property to which a deceased person was entitled for an interest not ceasing on his death shall, on his death and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representatives of the deceased.
2. (2) An interest in land shall not be administered unless the administrator shows to the satisfaction of the court that other assets of the estate are insufficient to pay the intestate's debts and expenses of his funeral and of taking out administration.
3. (3) The personal representatives for the time being of a deceased person are deemed in law to be his heirs and assigns within the meaning of all trusts and powers.
4. The personal representatives shall be the representatives of the deceased with regard to any property to which he was entitled for an interest not ceasing on his death.

Application of part 11 to certain cases

2. (1) A testator shall be deemed to have been entitled at his death to any interest in property passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.
3. (2) The interest of a deceased person under a joint tenancy where another survives the deceased is an interest ceasing on his death.
4. (3) On the death of the incumbent of a corporation sole his interest in the corporation's property shall be deemed to be an interest ceasing on his death and shall devolve on his successor.

#### ART 11 - Executors and Administrators

Cesser of right of executor to prove.

3. Where a person appointed executor by a will-
  - a. survives the testator but dies without having taken out probate of the will; or
  - b. Is cited to take out probate of the will and does not appear to the citation; or
  - c. Renounces probate of the will, his right in respect of the executorships 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

4. (1) Where an executor who has renounced probate has withdrawal been permitted, whether before or after the commencement of this Law to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the provisions, acts and dealings of and notices to any other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.
5. (2) This section applies whether the testator died before or after the commencement of this Law.

Executor of sole or last surviving executor represents original testator

5. (1) an executor of a sole or lasting surviving executor of a testator is the executor of that testator.
6. (2) This provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.
7. (3) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.
- 8.
9. (4) The chain of such representation is broken by-
  - a. An intestacy;
  - b. The failure of a testator to appoint an executor; or
  - c. The failure to obtain probate of a will; but is not broken by a temporary grant of administration if probate is subsequently granted.
10. (5) Every person in the chain of representation to a testator-
  - a. Has the same rights in respect of the estate that testator as the original executor would have had if living; and
  - b. Is to the extent to which the estate of that testator has come to his hands, answer able as if he were an original executor.

Right of proving executors to exercise powers.

6. (1) Where probate is granted to one 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 law conferred on the personal representative may be exercised by the proving executor or executors for the time being 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 Law.  
Vesting of estate of intestate between death and grant of administration in Chief Judge

7. (1) where a person dies intestate and administration is granted under this Law in respect of his estate, that estate shall be deemed to have been vested, from the date of his death until administration is granted, in the Chief Judge of the State.

(2) The Chief Judge may, if satisfied, that the undue delay in applying for a grant of administration is occasioned by the inability on the part of the beneficiaries to pay the requisite duties, fees and taxes charged on the estate, make an order for the disbursement of funds out of the estate so vested in him by virtue of sub-section (1) of this section for the purpose of making such payments.

Executor not to act while administration is in force

8. Where administration has been granted in respect of any estate of a deceased person, no person shall have power to 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 recalled or revoked.

Continuance of legal proceedings after revocation of temporary administration.

9. If, while any legal proceedings is pending in any court by or against an administrator to whom a temporary administration has been granted, until that administration is revoked, that 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, and subject to such conditions and variations, if any, as that court may direct.

Rights and liabilities of administrator.

10. Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations 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.

Duty of personal representatives.

II. The personal representatives of a deceased person shall personal be under a duty to-

- a. Collect and in the estate of the deceased and administer it in accordance with the law;
- b. When required to do so by the court, exhibit on oath in court a full inventory of the estate and when so required render an account of the administration of the estate to the court;
- c. When required to do so by the court, deliver up the grant of probate or administration to that court.

Right of action by or against personal representative.

12. (1) Subject to the provisions of this section, on the death of any person after the commencement of this Law, all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of his estate.

2. Sub-section (1) of this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claim for damages on the ground of adultery.

3. Where a cause of action survives as referred to in sub-section (1) of this section for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person-
  - a. Shall not include any exemplary damages;
  - b. In the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
  - c. Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain in his estate consequent of his death, except that a sum in respect of funeral expenses may be included.

(4) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either- (a) Proceedings against him in respect of that cause of action were pending at the date of his death; or (b) The cause of action arose not earlier than three years before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation. (5) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Law, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered. (6) The rights conferred by this Law for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of the deceased persons by any law relating to Fatal Accidents or the Warsaw Convention for the Unification of Rules Relating to International Carriage by Air; and so much of this Law as relates to causes of action against estates of deceased persons shall apply in relation to causes of action under the said enactments or convention as it applies in relation to other causes of action not expressly excepted from the operation of sub-section (1) of this section.

(7) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt proveable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

Protection of persons acting on probate or administration

13. (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 them; 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 in good faith.

Liability of persons fraudulently obtaining or retaining estate of deceased.

14. If any person, in defrauding of creditors or without full valuable consideration, obtains, receives or holds any estate or part thereof 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 to him which might properly be made by a personal representative.

Liability of estate of personal representative.

15. Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the 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.

### PART III - Grants of Probate and Administration

16. Application for grants.

An application for the grant or revocation of probate or administration may be made at the probate registry of the court.

17. Caveat.

A caveat against a grant of probate or administration may be entered in the probate registry of the court.

18. Summons of executor to prove or renounce

The court shall have power to summon any person named as executor in a will to prove or renounce probate of the will and to do such other thing concerning the will as were customary before the commencement of this Law.

19. Provision as to number of personal representatives.

(1) Probate or administration shall not be granted to more than four persons in respect of the same property, and administration shall, if there is a minor, a person of unsound mind or if a life interest arises under the will or intestacy, be granted either to a trust corporation, with or without an individual, or to not less than two individuals.

(2) The court in granting administration may act on such prima facie evidence furnished by the applicant or any other person, as to whether or not there is a minor, a person of unsound mind or life interest, as may be prescribed by probate rules or orders.

(3) if there is only one personal representative (not being a trust corporation) then, during the majority or mental incapacity of beneficiary or the subsistence of a life interest and until the estate is fully administered, the court may, grant administration on the application of any person interested or of the guardian, committee or receiver of any such person, against one or more personal representative in addition to the original personal representative in accordance with probate rules and orders.

(4) This section shall apply to grants made after the date of the commencement of this Law whether the testator or intestate died before or after that date.

Power to grant representation to trust corporation.

20. (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) Probate or administration shall not be granted to an agent or nominee on behalf of a trust corporation.

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

(4) where, at the commencement of this Law, any interest in any estate is vested in an agent on behalf of a trust corporation acting as the personal representative of a deceased person, the said interest shall, by virtue of this Law, vest in the and the agent shall be kept indemnified by the corporation in respect of the said interest.

(5) Sub-section (4) shall not apply to committee registered or inscribed in the name of an agent or to land or a charge-registered under the Land Instruments Registration Law, in the name of an agent but any such securities, land or charge, shall be transferred by the agent to the corporation or as the corporation may direct.

(6) This section shall have effect whether the testator or the intestate died before or after the commencement of this Law, and no such vesting or transfer referred to in sub sections (4) and (5) of this section shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Discretion of court as to persons to whom administration is to be granted

21. (1) In granting administration, the court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof, and, in particular, administration with the will concerned may be granted to a legatee, and any such administration may be limited in any way the court thinks fit.

(2) Notwithstanding sub-section (1) of this section-

(a) where the deceased died wholly intestate as to his estate, administration shall be granted to one or more persons interested in the residuary estate of the deceased, if they make an application for the purpose; and

(b) if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of may in its discretion, notwithstanding anything in this Law, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the court thinks fit.

(3) This section shall apply only in the case of persons dying after the date of the commencement of this Law, and the court in granting administration in the case of persons dying at any time before that date shall act in accordance with

the principles and rules in accordance with which it would have acted if this Law had not been passed.

Administration pendent lite

22. (1) Where any legal proceedings testing the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general

administrator, other than the rights of distributing the residue of the estate and every such administrator shall be subject to the immediate control of the court and not under its direction.

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

Grant of special administration where personal representative is abroad.

23. (1) if at or after the expiration of twelve months from death of a person, any personal representative of the deceased to whom a grant has been made is residing out Nigeria, the court may, on the application of any creditor or person interested in the estate of the deceased, grant to him in the prescribed form special administration of the estate of the deceased

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

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

Administration during minority of executor

24. (1) where an infant 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 infant attains the age of eighteen years, and on his attaining that age, and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints an infant to be an executor the appointment shall not operate to transfer any interest in the property of the deceased to the infant, or to constitute him a personal representative for any purpose unless and until probate is granted to him under this section.

Administration with will annexed

25. (1) Administration with the will annexed shall be granted by the court where no executor has been appointed under a will or where the appointment of a sole executor fails for one of the following reasons-

(a) Where the executor has died without proving the will;

(b) Where the executor has renounced probate;

(c) Where the executor has failed to appear to a citation to accept or refuse probate;

(d) Where the executor is not sui juris or is under a disability.

(2) Notwithstanding the provisions of sub-section (1) of this section, the court may grant administration with the will annexed in special circumstances under the power contained in section 21 of this Law.

Administration bonds.

26. (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 probate registrar by the name of his office, and, subject to the provisions of this section, if the probate registrar so requires, with one or more sureties, conditions for duly collecting, getting in, and administering the estate of the deceased.
- (2) The probate registrar for the time being 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 maybe directed by probate rules and orders.
- (4) Where it appears to the satisfaction of the court or a judge that the condition of an administration bond has been broken, the court or judge may, on an application in that behalf, order that the bond shall be assigned to such person as may be specified in the order, and the person to whom the bond is ordered to be assigned shall be entitled (by virtue of the order) to sue thereon in his own name as if it had been originally given to him instead of to the probate registrar, and to recover thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the condition thereof.
- (5) Without prejudice to any proceedings instituted before the commencement of this Law, any administration bond given under any enactment in force before the commencement of the Law or which is to be enforceable as if it had been given under any such enactment, may be enforced or assigned as if it had been given to the probate registrar under this section.
- (6) Probate rules and orders may be made for providing that sureties to administration bonds shall not be required when the grant is made to a trust corporation or to two or more individuals, or in any other proper case.
- (7) This section shall not apply where administration is granted to the Administrator-General.

Transfer by executor or administrator to administrator general.

27. (1) Any executor or administrator other than the Administrator-General may, with the previous consent of the Administrator General by instrument in writing under his hand, published in the Official Gazette of the State, transfer the assets of the estate vested in him by virtue of a grant or probate or letters of administration to the Administrator General by that name.
- (2) As from the date of such transfer, the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts or omissions done, or committed before the date of such transfer.

Places for deposit of original wills and other documents.

28. All original wills or other documents which are under the control of the court shall be deposited and preserved in such place as the Chief Judge may direct and any wills or other documents so deposited shall, subject to the control of the court and the provisions of probate rules and orders be open to inspection.
29. Subject to section 31, an official copy of the whole or any part of a will or an official certificate of any grant of administration may, on payment of the fee prescribed by probate rules and orders, be obtained from the probate registry.

Depositories of wills of living persons

30. There shall, under the control and direction of the court, be provided safe and convenient depositories for the custody of the wills of living persons, and any person may deposit his will

therein on payment of such fees, and subject to such regulations as may from time to time be prescribed by the Chief Judge.

#### Mode of availability of document

31. Whenever under sections 29 and 30 of this Part of this Law any person is required to

(a) Make available any document for inspection; or

(b) make available a copy of an official document on the payment of a prescribed fee, that person shall ensure that the document is open for inspection or an official copy made available only to persons who have an interest in the estate of the deceased person either as beneficiaries, dependants, Issues, relatives or creditors of the deceased.

#### PAR T IV - Administration of Assets Estate and

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

(2) Sub-section (1) of this section takes effect with out prejudice to the rights of encumbrances.

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

33. (1) On the death of a person intestate as to any prop- statutory erty, his estate shall be

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money such part thereof as may not consist of money, with power to postpone the sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest is not sold until it falls into possession, unless the personal representatives see special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal effects are not sold except for special reason.

(2) Out of the net money to arise from the sale and conversion of such estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Law and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.

(3) During the minority or mental incapacity of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust

money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

(4) The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration

purposes referred to in sub-section (2), is in this section referred to as 'the residuary estate of the intestate'.

(5) The income (including net rents and profits of the estate after payment of rates, taxes, rents, costs of insurance, repairs and other outgoing property attributable to income) of so much of the estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes referred to in sub-section (2) of this section may however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainder man.

(6) Nothing in this section shall affect the rights of any creditor of the deceased or the rights of the State in respect of death duties.

(7) Where the deceased leaves a will, this section shall have effect subject to the provisions contained in the will.

#### Administration of assets first schedule

34. (1) where the estate of a deceased person is insolvent, it shall be administered in accordance with the rules set out in Part 1 of the First Schedule to this Law.

(2) Where the estate of a deceased person is solvent his estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part 11 of the First Schedule to this Law.

#### Retainer preference and payment of debts by personal representative

35. (1) the right of retainer of a personal representative and his right to prefer creditors are hereby abolished.

(2) Notwithstanding the provisions of sub-section (1) of this section a personal representative-

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

(b) to whom letters of administration had been granted solely by reason of his being a creditor and who, in good faith and at such a time pays the debt of another person who is a creditor of the estate, shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

#### Charges on property of deceased to be paid primarily out of property charged.

36. (1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is

charged with the payment of money, whether by way of mortgage, charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, 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) A contrary or other intention shall not be deemed to be signified unless the intention is signified by words expressly or by necessary implication referring to all or some part of the charge.

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

Effect of assent or deposition of transfer by personal representative.

37. (1) A personal representative may assent to the vesting in any person who (whether by disposition under a will, devolution, appropriation or otherwise) may be entitled thereto either beneficially or as a trustee or personal representative, of any estate or interest in land to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statutory covenants implied by a person being expressed to convey as personal representative may be implied in an assent in like manner as a conveyance by deed.

(4) An assent to the vesting of a legal estate shall be in writing, assigned by the personal representative and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

(5) Any person in whose favour an assent or transfer of a legal estate is made by a personal representative may require that notice of the assent or transfer be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased and that the probate or letters of administration produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(6) A statement in writing by a personal representative that he has not given or made an assent or transfer in respect of a legal estate, shall, in favour of a purchaser but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or transfer has not been given or made in respect of the legal estate to which the

statement relates, unless notice of a previous assent or transfer affecting that estate has been placed on or annexed to the probate or administration.

(7) A transfer by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as referred to in sub-section (6) and unless notice of a previous assent or transfer affecting that estate has been placed on or annexed to the probate or administration) operate to transfer and create the legal estate expressed to be transferred in like manner as if no previous assent and transfer had been made by the personal representative.

(8) A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

(9) An assent or transfer by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or transfer affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or transfer is given or made is the person entitled to have the legal estate transferred to him, and upon the proper trust, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or transferred or any charge thereon.

(10) A transfer of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have had notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

(11) An assent or transfer given or made by a personal representative shall not. Except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or transfer relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or transfer.

(12) A personal representative may. As a condition of giving an assent or making a transfer, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the duties, debt or liability; and an assent may be given subject to any legal estate or charge by way of legal mortgage.

(13) This section shall not operate to impose any stamp duty in respect of an assent, and in this section 'purchaser' means a purchaser for money or money's worth.

(14) This section applies to assents and transfer made after the commencement of this Law whether the testator or intestate died before or after its commencement.

Validity of transfer not affected by revocation of representation.

38. (1) all transfers of any interest in property made to a purchaser wither before or after the commencement of this Law by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this law, or probate or administration.

( 2 ) This section takes effect without prejudice to any order of the court made before the commencement of this Law, and applies whether the testator or intestate died before or after its commencement.

Right to follow property and powers of Court in relation

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

(2) Notwithstanding any such assent or transfer the court may on the application of any creditor or other person interested-

(a) order a sale, surcharge, mortgage, charge, loans, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

(b) Declare that the person, not being a purchaser in whom the property is vested is a trustee for these purposes;

© Give direction respecting the preparation and execution of any transfer or other instrument or as to any other matter required for giving effect to the order;

(d) Make any vesting order, or appoint a person to transfer in accordance with the provisions of any enactment relating to trust.

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

#### Power of management

40. (1) In dealing with the estate of the deceased his personal representatives shall, for purpose of administration, or during a minority or mental incapacity of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have-

(a) the power and discretion, including power to raise money by mortgage or charge (whether or not by deposit of documents), with respect to personal estate vested in him, and such power of raising money by mortgage may in the case of land be exercised by way of mortgage;

(b) all the powers, discretions and duties conferred or imposed by Law on trustees holding land upon an effectual trust for sale (including power to over reach equitable interests and power as if they affected the proceeds of sale); and

© all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the deceased, and may be carried into effect, or be varied or rescinded by him, and in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or transfer to be made.

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

#### Power of personal representative as to appropriate.

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

(2) An appropriation shall not be made under this section so as to affect prejudicially any specific disposition by will.

(3) An appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents-

(a) When made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;

(b) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative) or the person who for the time being is entitled to the income.

(4) If the person whose consent is so required as aforesaid is an infant or a lunatic the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, or committee, or if, in the case of an infant there is no such parent or guardian, by the court on the application of his next friend-

(a) No consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;

(b) if no committee of a lunatic has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic;

© if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof,

no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.

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

(6) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified estate valuer where such employment may be necessary; and may make any transfer (including any assent) which may be requisite for giving effect to the appropriation.

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

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

(9) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated 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 legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(10) If after any property has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was transferred 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 consents, if any, had been given.

(11) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity, and "purchaser" means a purchaser for money or money's worth.

(12) This section applies whether the deceased died intestate or not and whether before or after the commencement of this Law, and extends to property over which a testator exercises a general power

of appointment, and authorises the setting a part of a fund to answer an annuity by means of the income of that fund or otherwise.

#### Power to appoint trustees of infant's property

42. (1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Law (in this sub-section called "the deceased") to a disposition under a will, or legacy, or to the residue of the estate of the deceased, or any share therein, and the disposition, legacy, residue or share is not under the will, if any, of the deceased, disposed of or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees for sale of such disposition or trustee or trustees of such legacy, residue or share for the infant and may execute or do any assurance or thing requisite for vesting such disposition, legacy, residue or share in the trustee or trustees so appointed.

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

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

#### Obligations of personal representative as to giving possession of land and powers of court.

43. (1) A personal representative, before giving an assent or making a transfer in favour of any person who appears to be entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to transfer the land as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

(2) any person who as against the personal representative claims possession of any land, or the appointment of a receiver thereof, or a transfer thereof, or an account to the vesting thereof, or to be registered as proprietor thereof under any law in force in the State relating to registration of titles to land may apply to the court for directions with reference thereto, and the court may make such vesting or other order as may be deemed proper, and the provisions of any trust legislation relating to vesting orders and to the appointment of a person to transfer, shall apply.

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

#### Power to postpone distribution

44. Subject to the foregoing provisions of this Law a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death.

#### PART V - Distribution of Residuary Estate

45. With regard to the estate of every person dying after the commencement of this Law, there shall be abolished-

(a) All existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise, whether operating by the general law or otherwise; and

(b) Tenancy by the curtesy and every other interest of a husband in land as to which his wife dies intestate, whether arising under the general law or otherwise; and

© Dower and every other interest of a wife in land as to which her husband dies intestate, whether arising under the general law or otherwise; and

(d) escheat to the State or want of heirs.

Succession to estate on intestacy. Second schedule.

46. (1) the residuary estate of an intestate shall be distributed in the manner or be held on the trusts set out in the Second Schedule

(2) A husband and wife shall for all purpose of distribution or division under (he provisions of the Second Schedule be treated as two persons.

(3) Where the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain which of them survived the other this section and the schedule thereto shall have effect as respects the intestate as if the husband or wife had not survived the intestate.

(4) The interest on the residuary estate payable to a surviving spouse under this section and the schedule thereto shall be primarily payable out of income.

Statutory trust in favour of issues and other classes of relatives of intestate

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

(a) in trust, in equal shares if more than one for all or any of the children or child of the intestate, living at the death of the intestate, and for all or any of the issue living at the death of the intestate, of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate and so that no issue shall take whose parent is at the death of the intestate and so capable of taking;

(b) the interest of a person entitled to the residuary estate or a share thereof under this sub-section shall vest in him absolutely on his attaining the age of eighteen years or marrying under that age, and shall be contingent if he is below that age and unmarried;

© all persons having an interest, whether absolute or contingent in the residuary estate under paragraph (a) of this sub-section shall, until that estate is distributed; be entitled to the income accruing there from in proportion to their respective rights;

(d) when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest;

€ where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or

settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;

(f) the personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal effect in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.

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

(a) the residuary estate of the intestate and the income thereof and all accumulation, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting it, shall go, devolve and be held under the provisions of this part of this Law as if the intestate had died without leaving issue living at the death of the intestate;

(b) References in this Part of this Law to the intestate "leaving no issue" shall be construed as "leaving no issue" who attains an absolutely vested interest;

© references in this Part of this Law to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue" who attains an absolutely vested interest".

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

(4) References in paragraphs 1, 2, 3 and 4 of the Second Schedule to the intestate leaving. Or not leaving, a member of the class consisting of brothers or sisters of the whole blood of the intestate and issue shall be construed as references to the intestate leaving, or not leaving, a member of the class who attains an absolutely vested interest.

(5) It is hereby declared that, where the trusts in favour of any class or relatives of the intestate, other than issue of the intestate, fail by reason of no member of that class attaining an absolutely vested interest, the residuary estate of the intestate and the income thereof and all accumulations, if any of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall by virtue of sub-sections (2) and (3) of this section go, devolve and be held under the provisions of this Part of this Law, as if the intestate had died without leaving any member of that class living at the death of the intestate.

Right of surviving spouse in matrimonial home.

48. (1) In any case where it is shown that the residuary estate of the intestate comprises an interest in a dwelling-house in which the surviving spouse was resident at the time of the intestate's death and that the eviction of that spouse would entail or has entailed serious hardship, the court may, on the application made to it within twelve months of the taking out of representation order that the surviving spouse be allowed to remain in residence in the dwelling-house; subject to any limitation which the court may impose, having regard to the rights of all the parties.

(2) Sub-section (1) of this section shall not apply to-

(a) A tenancy which at the date of the death of the intestate was tenancy which would determine within the period of one year from that date; or

(b) A tenancy which the landlord by notice given after that date could determine within the remainder of that period.

(3) Any order made under this section shall be revoked-

(a) On the remarriage or death of the surviving spouse, whichever occurs first; or

(b) on the application of any beneficiary of the intestate where it is shown that the financial position of the surviving spouse is such that no hardship would be suffered by the said spouse if the order is revoked.

(4) Upon the revocation of any order made in pursuance of sub-section (3) of this section the interest, if any, in the dwelling-house shall be distributed as part of the residuary estate of the intestate in accordance with the provisions of section 46 of this Law.

(5) In this section "dwelling-house" shall include any building or part thereof which is occupied as a dwelling, and any yard, garden or sub-house occupied therewith.

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

(2) The said capital value shall be calculated in accordance with set rules by a duly qualified actuary selected by and agreed upon by the personal representative and the surviving spouse.

(3) An election under this section shall only be exercisable if at the time of the election the whole of the said part of the residuary estate consists of property in possession, but, for the purpose of this section, a life interest in property partly in possession and partly not in possession may be treated as consisting of two separate life interests in those respective parts of the property.

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

(5) If the surviving spouse satisfies the court that the limitation to the said period of twelve months will operate unfairly-

(a) In consequence of the representation first taken out being probate of a will subsequently revoked on the ground that the will was invalid;

(b) In consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out; or

© In consequence of some other circumstances affecting the administration or distribution of the estate; the court may extend the said period.

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

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

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

(9) In considering for the purposes of the foregoing provisions of this section the question when representation was first taken out, a grant limited to a trust property shall be left out of account and a grant limited to an interest in land or other property shall be left out of

account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Power of personal representatives in respect of interest of surviving spouse.

50. The personal representative may raise-

(a) the net sum of money equivalent to the value of one-quarter, one-third or two-thirds of the residuary estate, as the case may be, or any part thereof and the interest thereon payable to the surviving spouse of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal effects) so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by an appropriation, under the statutory power available in that behalf; and

(b) in like manner the capital sum, if any required for the purchase or redemption of the life interest of the surviving spouse of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate; and in either case the amount, if any, properly required for the payment of the costs of the transaction.

Application to cases of partial intestacy

51. where any person dies leaving a will which fails to effectively dispose of part of his property, this Part of this Law shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will which remain operative and effective and subject to the following modifications-

(a) where the deceased leaves a surviving spouse who acquired any beneficial interest under the will of the deceased (other than personal effect specifically bequeathed) the reference in this Part of this Law to the net sum of money equivalent to one-quarter, one-third or two-thirds of the residuary estate payable to a surviving spouse and to interest on that sum, shall be taken as reference to the said sum diminished by the value at the date of death of the said beneficial interest, and to interest on that sum as so diminished and, accordingly, where the said value exceeds the said sum, this Part of this Law shall have effect as if reference to the said sum and interest thereon were entitled;

(b) the requirements of section 47 of this Law as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons;

© The personal representative shall, subject to his rights and powers for the purpose of administration, be a trustee for the persons entitled under this Part of this Law in respect of the part of the estate not

expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficiary.

(2) references in the provisions of sub-section (1) of this section to beneficial interests acquired under a will shall be construed as including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not of a special power of appointment.

(3) For the purpose of paragraph (a) of sub-section (1) of this section the personal representative shall employ a duly qualified valuer in any case where such employment may be necessary.

(4) The references in sub-section (3) of section 49 of this Law to property are references to property comprised in the residuary estate and accordingly where a will of the deceased creates a life interest in property in possession, and the remaining interest in that property forms part of the residuary estate, the said references are references to that remaining interest (which until the life interest determines, is property not in possession).

Construction of document.

52. (1) References to any Statutes of Distribution in an instrument inter vivos made or in a will coming into operation after the commencement of this Law, shall be construed as references to this Part of this Law, and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part of this Law.

(2) Trusts declared in an instrument inter vivos made, or in a will coming into operation, before the commencement of this Law by references to the Statutes of Distribution, shall, unless the contrary thereby appears, be construed as referring to the enactment relating to the distribution of effects of intestates which were in force immediately before the commencement of this Law.

Insurance and superannuation benefits.

53. (1) Where the intestate during his lifetime takes out life insurance policy or contributes to any social security scheme or superannuation fund or provident fund, the right in the benefit of such insurance policy or social security scheme or superannuation or provident fund shall devolve on the personal representatives as part of the estate of the intestate.

(2) The provision of this section shall not apply to-

(a) Trust policies; or

(b) Policies taken out for the purpose of securing loans.

(3) Where the estate of the intestate is not sufficient to provide adequate financial provision for the child or children of the intestate such child or children, as the case may be, may apply to the court for an Order directing the personal representatives to make such payments out of the benefit accruing from such insurance policy or social security scheme or superannuation or provident fund as may be reasonably necessary for the maintenance of such child or children.

(4) An application under the provisions of this section shall be made within six months of the taking out of the letters of administration.

(5) In any case where-

(a) an application is not made within the time limit prescribed under sub-section (4) of this section; or

(b) an order is not granted by the court, the personal representatives shall transfer the right in the benefit of such insurance policy or social security scheme or superannuation or provident fund to the person to whom or for whose benefit any nomination was made in the scheme.

#### PART VI - Supplemental Provisions

Saving as to power court

54. Nothing in this Law shall derogate from the powers of the Court which exist independently of this Law.

Application to state

55. The provisions of this law shall bind the state as respects the estates of persons dying after the commencement of this Law.

Power to make rules.

56. (1) Rules of Court made for giving effect to the provision of this Law.

(2) Rules of court made under the High Court Law, with respect to the grant of probate or administration or the administration of estates, shall, in so far as they are not inconsistent with this Law, have effect as if made under this section and may be amended or revoked accordingly.

Application

57. (1) This Law shall not apply-

(a) To deaths occurring before the commencement unless otherwise provided; or

(b) To the estates of deceased persons, the administration of which is governed by Islamic Law.

(2) The provisions of this Law relating to the administration of the estate of a person who died intestate or the undisposed part of the estate of a testator shall apply only to persons who contract a valid monogamous marriage and are survived by a spouse or issue of that marriage.

(3) Any property the succession of which cannot according to customary law be affected by testamentary disposition shall descend in accordance with such customary law, anything herein to the contrary notwithstanding.

Interpretation.

58. (1) in this Law unless the context otherwise requires- interpret:

"Administration" means with reference to the estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise; "Administrator" means a person to whom administration is granted;

"Charge by way of legal mortgage" has same meaning as in the "Law of Property "Court" means the High Court;

"Income" includes rents and profits;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his estate; "Legal estates" means the estates, charges and interests in or over land (subsisting or created at law) which are by statute authorised to subsist or to be created at

law; and "equitable interest" means all other interests and charges in or over land or in the proceeds of sale thereof;

"lunatic" includes a lunatic whether so found or not;

"monogamous marriage" has the meaning assigned to it under the Interpretation Law;

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"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 effects" means carriage, horses, stable furniture, and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plates, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of house-hold or personal use or ornament, musical and scientific instruments and apparatus, wines, liquor and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money;

"Personal representative" means the executor, original or by representation or administrator for the time being of a deceased person;

"Possession" includes the receipt of rents and profits or the right to receive the same if any;

"prescribed" means prescribed by rules of court or by probate rules made pursuant to this Law;

"Probate" means the probate of a will;

"Probate rules" means rules and orders made by the Governor for regulating the procedure and practice of the High Court in regard to non contentious or common form probate business;

"property" includes a thing in action and any interest in land; purchaser" means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration also an intending purchaser and "valuable consideration" include marriage, but does not include a nominal consideration in money;

presentation" means the probate of a will and administration, and the expression "taking out representation" refers to the obtaining of the probate of a will or of the grant of administration;

"rent" includes an annual or periodical payment in money or money's worth, issuing out of or charged upon land but does not include mortgage interest;

"rules of court" includes, in relation to non-contentious or common form probate business, probate

"securities" include stocks, funds, or shares;

"Statutory trust" means a trust created by operation of law under this Law;

"transfer" includes a mortgage, charge by way of legal mortgage, lease, assignments, assent, vesting, declaration, disclaimer, release and every other assurance or property or of an interest therein by any

instrument, except a will, and "convey" has a corresponding meaning; and; "disposition" includes a disposition under a will and an appointment of property contained in a will, and "dispose of has a corresponding meaning;

"trust corporation" means the public trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under any Public Trust legislation to act as custodian trustee;

"trust for sale" in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power or discretion to postpone the sale;

"power to postpone a sale" means power to postpone in the exercise of a discretion; "will" includes codicil.

(2) Reference to a child or issue living at the death of any person shall include a child whose paternity has been acknowledged in accordance with any customary law applicable in Nigeria, a child adopted whether before or after the commencement of this Law in pursuance of an adoption Order made under any statute in force in Nigeria or in any other country, a child en ventre sa mere at the death, and a child legitimated by Law.

(3) Reference to the estate of a deceased person includes property over which the deceased exercises a general power of appointment by his will.

Short title

59. This law may be cited as the administration of estates law.

Section 34

## FIRST SCHEDULE

### PART I - RULES AS TO PAYMENT OF DEBTS WHERE ESTATE IS INSOLVENT

1. The funeral, testamentary, and administration expenses shall have priority.

2. (1) Subject as mentioned in rule 1 there shall be paid priority to all other debts-

(a) all local rates due from the deceased at the date of his death and having due and payable within twelve months next before that date, and all taxes, including income tax assessed on the deceased up to the 31 st day of December next before the date of his death and not exceeding in the whole one year's assessment;

(b) all wages or salary of any clerk or servant in respect of services rendered to the deceased during four months before the date of his death, not exceeding one thousand, two hundred naira;

© all wages of any labourer or workman not exceeding six hundred naira, whether payable for

time or piece work, in respect of services rendered to the deceased during two months before the date of his death;

(d) all amounts due in respect of compensation under the Workman's Compensation Act, the liability whereof accrued before the date of the death of the deceased.

(2) The debts mentioned in paragraph (a) to (d) of sub-rule (1) of rule 2 shall rank equally between themselves and shall be paid in full unless the property of the deceased is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the purposes of rule 1, the debts mentioned in paragraph (a) to (d) of sub-rule (1) of rule 2 shall be discharged forthwith the property of the deceased is sufficient to meet them

(4) Subject to the foregoing rules all other debts of the deceased shall be paid pari passu.

#### PART 11 - ORDER OF APPLICATION OF ASSETS WHERE ESTATE IS SOLVENT

1. Property of the deceased undisputed of by will, subject to the retention there out of a fund sufficient to meet any pecuniary legacies.
2. Property of the deceased not specifically disposed of by will 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 for as aforesaid.
3. Property of the deceased specifically appropriated or disposed of by will (either by a specific or general description) for the payment of debts.
4. Property of the deceased charged with, or disposed of by will (either by a specific or general description) subject to a charge for the payment of debts.
5. The fund, if any retained to meet pecuniary legacies.
6. Property specifically disposed of by will, rateably according to value.
7. Property appointed by will under a general power, rateably according to value.
8. The foregoing order of application may be varied by the will of the deceased.

#### SECOND SCHEDULE

Section 47.

#### DISTRIBUTION OF RESIDUARY ESTATE

1. If the intestate leaves a spouse but-
  - (a) No issue; and
  - (b) No parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood.

The residuary estate shall be held in trust for the surviving spouse absolutely

2. If the intestate leaves a spouse and-
    - (a) Issue; but
    - (b) No parent, or brother or sister of the whole blood or issue of a brother or sister of the whole blood
- the surviving spouse shall take the personal effects absolutely and, in addition, the residuary estate of the intestate (other than the personal effects) shall stand charged with the payment of a net sum of

money equivalent to one-third of the residuary estate, free of death duties and costs, to the surviving spouse with interest thereon from the date of the death at the rate of five percent per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, remainder of the residuary estate (other than the personal effects) shall be held as to the other two-thirds, on the statutory trusts for the issue of the intestate.

3. If the intestate leaves a spouse and-

(a) Issue; and

(b) Parents (whether or not he leaves brother or sister of the whole blood or issue of such brother or sister of the whole blood).

the surviving spouse shall take the personal effects absolutely and, in addition, the residuary estate of the intestate (other than personal effects) shall stand charged with the payment of a net sum of money equivalent to the value of one-quarter of the residuary estate free of costs and death duties to the surviving spouse with interest thereon from the date of the death at the rate of five percent per annum until paid or appropriated and subject to providing for the sum and the interest thereon, the remainder of the residuary estate shall be held

(i) as to one-quarter upon trust for parents of the intestate during their individual lives, and there after held on statutory trusts for the issue of the intestate;

(ii) as to the remaining three-quarters on statutory trust for the issue of the intestate.

4. If the intestate leaves a spouse and-

(a) Parents and one or more of the following, that is to say, a brother or sister of the whole blood; but

(b ) No issue.

The surviving spouse shall take the personal effects absolutely and, in addition, the residuary estate of the intestate (other than the personal effects) shall stand charged with. The payment of a net sum of money equivalent to the value of two-thirds of the residuary estate free of costs, to the surviving spouse with interest thereon from the date of the death at the rate of five percent per annum until paid or appropriated, and subject to providing for that sum and the interest thereon, the remainder of the residuary estate (other than the personal effects) shall be held-

(i) where the intestate leaves one parent or both parents whether or not he leaves brothers or sisters of the intestate or their issue) also in trust for the parent absolutely or, as the case may be, for the two parents in equal shares absolutely.

(ii) where the intestate leaves no parent, on statutory trusts for the brothers and sisters of the whole blood of the intestate.

5. If the intestate leaves issue but no surviving spouse the residuary estate of the intestate shall be held-

(a) as to one-third to the parents of the intestate for life and subject to such life interest, on statutory trusts for the issue of the intestate; and

(b) as to the remaining two-thirds on statutory trusts for the issue of the intestate.

6. In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall be distributed in accordance with the customary law that would apply to the deceased person's estate as if this Law had not been passed.

#### SUBSIDIARY LEGISLATION

No Subsidiary Legislation