

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER XIII

PROBATE AND ADMINISTRATION ORDINANCE

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Ordinances:
No. 9 of 2000

**An ordinance to declare the law relating to probate,
administration and intestate succession**

[1st August 2000]

Citation.

1. This ordinance may be cited as the Probate and Administration Ordinance.

Interpretation,
jurisdiction and
application.

2.—(1) In this ordinance—

“administration” means probate of the will of a deceased person and includes letters of administration of the estate of a deceased person, granted with or without a will annexed;

“Court” means the Supreme Court;

“estate” means the estate in the Islands of a deceased inhabitant or former inhabitant thereof;

“immovable property” shall include a chattel real;

“intestate” means without having made a will;

“Land and Estates Court” means the Land and Estates Court established by the Lands and Administration of Estates Ordinance No. 2 of 1967 repealed upon the commencement of this ordinance.

(2) Subject to this ordinance, the Supreme Court shall have exclusive jurisdiction in all matters of probate, administration and intestate succession in estates comprising movable or immovable property or both.

(3) This ordinance shall have no application to the estate of any person who died on a date prior to the commencement of this ordinance.

Court to determine
assets etc.

3. The Court shall determine the assets and liabilities of the deceased and shall ascertain the value of the movable property comprised therein as correctly as the circumstances allow.

Notice to executors.

4. The Court may of its own motion or on the application of any person claiming an interest under a will give notice to the executors (if any) named therein to prove the will or to renounce probate by application to the Court.

Inquiries.

5. The Court may refuse to issue probate or letters of administration until all inquiries which the Court sees fit to institute have been answered to its satisfaction.

Revocation or
alteration.

6. Revocation or alteration of a grant of probate or administration may be made for reasons to be recorded.

Original will.

7. Every original will which has been proved in the Court shall be kept and filed in the Court.

Testamentary papers
to be deposited in
Court.

8. Any person having the possession or control of any

paper or writing of a deceased person being or purporting to be testamentary shall forthwith deliver the original to the Court and deposit it there. Any person failing or neglecting to do so for fourteen days after having knowledge of the death of the deceased shall be liable to such penalty not exceeding two hundred dollars as the Court may think fit to impose.

9. The Court in granting letters of administration shall proceed as far as may be as in cases of probate.

Intestacy.

10. When administration is applied for by one or some only of the next-of-kin, there being other next-of-kin equally entitled thereto, the Court may require proof that notice of the application has been given to the other next-of-kin.

Several next-of-kin.

11. From the death of an intestate until administration be granted, his or her movable property shall be vested in the Court.

Property of intestate to be vested in Court until administration granted.

12. If within three years of the date of any estate having become vested in the Court as provided by section 11 of this ordinance, no claimant or other person has been found to be the next-of-kin to the deceased or to have established a right to the property, the proceeds of such estate shall become the property of the Crown.

Crown to take unclaimed estate.

13. The Registrar of the Court shall have power to administer estates and if so appointed by the Court shall act under the direction of the Court and shall be indemnified thereby.

Registrar of Court may administer estates.

14. Where it appears to the Court that the assets of a deceased person do not exceed movable property to the value of two hundred dollars or immovable property comprising one section of house land or both such movable and immovable property, the Court may without any probate or letters of administration or other formal proceedings, after paying the debts of the estate from the proceeds of such movable property (if any), transfer the nett assets of the estate to such person or persons as may be entitled and shall not be liable to any action or claim in respect of anything done under this ordinance.

Small estates.

15. The Court may of its own motion or on the application of any interested party or creditor issue a summons requiring the executors or administrators to show cause why an order for the administration of the property of the deceased should not be made.

Orders of performance of duties by executors or administrators.

16. The property of an intestate shall be divisible according to the First Schedule hereto.

Distribution of intestate estate.

Penalty.

17. Any person who refuses or neglects to obey an order of the Court pursuant to this ordinance shall be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding one hundred days or to both such fine and imprisonment.

Intermeddling.

18. Any person taking or dealing with the property of a deceased person before the Court has adjudicated thereon shall be liable to a fine not exceeding five hundred dollars recoverable by distress and the Court may in its discretion order such person to be prosecuted for theft.

Money owing to a deceased person by the Island Council.

19. Should the Island Council owe any money to a deceased person whether in the employ of the Council or not such money shall not be paid over until the estate has been adjudicated upon by the Court.

Procedure.

20. The Court shall exercise its jurisdiction in probate and administration under the provisions of this ordinance in accordance with procedure established by rules of Court to be made by the Chief Justice and until such rules have been made or so far as occasion may require the Court shall observe as nearly as local circumstances permit the practice and procedure observed by and before courts of justice in England in the exercise of the corresponding jurisdiction, powers and authority

Transitional provisions.

21. Transitional provisions consequent upon the repeal of the Lands and Administration of Estates Ordinance are set out in the Second Schedule.

FIRST SCHEDULE

DIVISION OF PROPERTY ON AN INTESTACY

Section 16

If the deceased die leaving The representatives of the deceased shall take in the following proportions

1. Widow only All to widow
2. Widow and child or children One third of movable property and the whole of any immovable property to widow, two thirds of movable property to children in equal shares. In the case of deceased children who have left issue such issue shall take equally amongst them their deceased parent's share.
3. Widow and parents All to widow
4. Widow, brothers and sisters All to widow
5. Widow, sibling(s) All to widow
6. Husband with children All to husband
7. Husband without children All to husband
8. Father, brother(s)/sister(s) All to father
9. Mother, brother(s)/sister(s) All to mother
10. Mother but no other kin All to mother
11. Child(ren) or grandchild(ren) Amongst children in equal shares, by deceased child(ren) the grandchildren by deceased children taking amongst them their deceased parent's share.
12. Brother(s)/sister(s)/nephew(s)/ niece(s) Amongst brothers or sisters in equal shares, the children of deceased brothers or sisters taking amongst them their deceased parent's share.
13. Brother(s)/sister(s)/ grandparent(s) All to brother(s)/sister(s).
14. Brother(s)/sister(s)/ uncle(s)/aunt(s) All to brother(s)/sister(s).
15. Grandparent(s) and no nearer relation All to grandparent(s).
16. Grandparent(s)/uncle(s)/ aunt(s) All to grandparent(s)
17. Great-grandparent(s) All to great-grandparent(s)

- 18. Great-grandparent(s),uncle(s)/ All equally
aunt(s)
- 19. Uncle(s)/aunt(s) All equally
- 20. Uncle(s)/aunt(s) and deceased All to uncle(s)/aunt(s)
uncle or aunt's child(ren)
- 21. Cousins All equally

SECOND SCHEDULE

TRANSITIONAL PROVISIONS

Section 21

1. The estate of any inhabitant or former inhabitant of the Islands who died prior to the date of the repeal of the Lands and Administration of Estates Ordinance which has not at the date of that repeal been fully administered and wound up shall continue to be administered and be wound up by the former Lands and Estates Court as though that ordinance had not been repealed.

2. Any difficulty or uncertainty in so continuing the administration of an estate may be referred by the President of the Court on application by any party; or on his or her own motion to the Supreme Court for determination and the opinion of the Supreme Court thereon shall be binding.