



**BERMUDA  
1974 : 4**

**ADMINISTRATION OF ESTATES ACT 1974**

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[11 March 1974]

*[preamble and words of enactment omitted]*

**Interpretation**

- 1 (1) In this Act, unless the context otherwise requires—
- "administration" means letters of administration of the property of a deceased person, whether with or without the will annexed and whether granted for general, special or limited purposes;
- "administrator" means a person to whom administration is granted;
- "Court" means the Supreme Court and in Part II includes a judge whether sitting in Court or in Chambers or where expressly provided by the Act or the rules, the Registrar;
- "estate" means real and personal estate;
- "estate representative" means the executor, original or by representation, or administrator for the time being of a deceased person;
- "grant" means a grant of probate or of administration and includes a resealed grant of probate or administration;

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"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

"non-contentious or common form probate business" means the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court in contentious cases where the contest has been terminated, and all business of a noncontentious nature in matters of testacy or intestacy not being proceedings in any action, and also the business of lodging caveats against the grant of probate or administration;

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

"personal chattels" mean vehicles and accessories, marine craft and accessories, horses, stable furniture and effects, garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, furnishings, jewellery, objets d'art, bric-a-brac, photographic equipment, radios, record players, tape-recorders, television sets, musical and scientific instruments and apparatus, wines, liquors and consumable stores, and all other articles of household or personal use or ornament, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money nor bullion whether gold or silver;

"prescribed" means prescribed by rules;

"probate" means the probate of a will;

"property" includes a thing in action and any interest in real or personal property;

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

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

"residuary estate of the intestate" means every beneficial interest of the intestate in property which (otherwise than by virtue of a special power of appointment) he could, if of full age and

capacity, have disposed of by his will, less all such funeral, testamentary and administration expenses (and, in the case of a partial intestacy, pecuniary legacies), debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Act;

"rules" means rules made in accordance with the provisions of this Act, and "rules of Court" include, in relation to non-contentious or common form probate business, probate rules;

"testamentary cause or matter" includes all causes or matters relating to the grant or revocation of probate or administration;

"trust corporation" means —

- (a) a corporation either appointed by the Court in any particular case to be a trustee or holding an unlimited trust licence issued under the Trusts (Regulation of Trusts Business) Act 2001;
- (b) the person for the time being holding office as public trustee in his capacity as corporation sole under the Public Trustee Act 1906 of the Parliament of the United Kingdom;

"will" includes any testamentary instrument of which probate may be granted.

(2) References to the estate of a deceased person include property over which the deceased exercises a general power of appointment by his will.

*[Section 1 amended by 1991:40 effective 16 September 1991; "trust corporation" para (a) substituted by 2001:22 Sch 2 para 2 effective 25 January 2002]*

PART II  
GRANTS OF PROBATE AND ADMINISTRATION

**Jurisdiction**

2 (1) Without prejudice to any provision of law, and subject to subsection (2), an affidavit made in support of an application to the Court for a grant in which the deponent states that the deceased person at the time of his death was ordinarily resident in Bermuda or that some property of the deceased person was then in Bermuda shall be conclusive for the purpose of establishing that the Court has jurisdiction.

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(2) Where the application is pending and it is shown to the Court that the deceased person was not ordinarily resident or did not have property in Bermuda, the Court may stay the proceedings and make such order as to the costs of the proceedings as it thinks fit.

### **Time lapse before grant**

3 Unless the Court otherwise orders,

- (a) no grant of probate or of administration with the will annexed shall be made until at least seven days after the death of the deceased person; and
- (b) no other grant of administration shall be made until at least fourteen days after the death of the deceased person.

### **Application for grant or revocation of grant**

4 An application for the grant or revocation of probate or administration shall be made through the Registrar in the prescribed form.

### **Issue of grants**

5 (1) Grants may be made in common form by the Registrar in the name of the Court and under the seal of the Court.

(2) No grant shall be made by the Registrar in any case in which there is contention until the contention is disposed of, or it appears to the Registrar that a grant ought not to be made without the direction of the Court.

(3) Where it appears doubtful to the Registrar whether an application for a grant should or should not be granted, or where any question arises in relation to a grant, or an application for a grant, the Registrar shall refer the matter to the Court, and the Court may direct the Registrar to proceed with the matter in accordance with such instructions as the Court may think necessary, or may forbid any further proceedings by the Registrar in relation to the matter, leaving the party applying for the grant to apply to the Court.

### **Caveat against issue of grant**

6 A caveat against a grant of probate or administration may be entered in the Registry.

### **Power to grant representation of real and personal estate separately or together**

7 Probate or administration in respect of the real estate of a deceased person, or any part thereof, may be granted either separately or together with probate or administration of his personal estate, and may also be granted in respect of real estate only where there is no personal

estate, or in respect of a trust estate only, and a grant of administration to real estate may be limited in any way the Court thinks proper:

Provided that where the estate of the deceased is known to be insolvent, the grant of representation to the estate shall not be severed except as regards a trust estate.

**Register of grants**

8 (1) The Registrar shall continue to maintain in the Registry a register of all grants made in the Registry.

(2) The register maintained under this section may be inspected by any person on payment of such fee as may be required by law, without reference to the number of estates in respect of which the search is made.

**Summons to executor to prove or renounce**

9 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 things concerning the will as were customary before 1 September 1974.

**Revocation of grant**

10 (1) Where it appears to the Court that —

(a) revocation of the grant is appropriate for the due and proper administration of the estate and the protection of the interests of the parties beneficially entitled thereto; or

(b) a grant either ought not to have been granted or contains an error;

the Court may call in the grant and may revoke it.

(2) A grant may be revoked under subsection (1) without being called in if it cannot be called in.

**Provisions as to the number of estate representatives**

11 (1) A grant shall not be made to more than four persons in respect of the same property and administration shall, if an infant is interested in the estate, be granted either to a trust corporation, with or without an individual, or to not less than two individuals:

Provided that the Court in granting administration may —

(a) act on such prima facie evidence, furnished by the applicant or any other person, as to whether or not there

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is a minority or life interest, as may be prescribed by the rules;

(b) if it sees fit, grant administration to an individual.

(2) If there is only one estate representative (not being a trust corporation) then, during the minority of a beneficiary or the subsistence of a life interest and until the estate is fully administered, the Registrar may, on the application of any person interested or of the guardian or receiver of any such person, appoint one or more estate representatives in addition to the original estate representative in accordance with the rules.

(3) This section shall apply to grants made on or after 1 September 1974, whether the testator or intestate died before, on or after that date.

### **Trust corporations**

12 (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) A grant shall not be made to a nominee on behalf of a trust corporation.

(3) Any person authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, and do any other act or thing which the Registrar or the Court may require with a view to the making of a grant to the corporation, and the acts of a person so authorised shall be binding on the corporation.

(4) Where, on 31 August 1974, any interest in any estate is vested in a nominee on behalf of a trust corporation acting as the estate representative of a deceased person, such interest shall, by virtue of this Act, vest in the corporation, and the nominee shall be kept indemnified by the corporation in respect of such interest.

(5) Subsection (4) shall not apply to securities registered or inscribed in the name of a nominee but any such securities shall be transferred by the nominee to the corporation or as the corporation may direct.



(6) This section shall have effect whether the testator or the intestate died before, on or after 1 September 1974, and no such vesting or transfer 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**

13 (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 annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit:

Provided that —

- (a) where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons interested in the residuary estate of the intestate if they make an application for the purpose; and
- (b) every applicant for a grant of administration shall give notice in accordance with the rules, of intention to apply for administration.

(2) This section shall apply only in the case of persons dying on or after 1 September 1974, 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 Act had not been passed.

**Administration pendente lite**

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

**Administration during minority of executor**

15 (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

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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 an estate representative for any purpose unless and until probate is granted to him under this section.

*[Section 15 subsection (1) amended by 2001 20 s 7(1) & Sch 2 effective 1 November 2001]*

### **Administration with will annexed**

16 Administration with the will annexed shall continue to be granted in every case where such a grant was customary before 1 September 1974, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

### **Power to require administrators to produce sureties**

17 (1) As a condition of granting administration to any person the Court may, subject to the following provisions of this section and subject to and in accordance with the rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the Court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such:

Provided that no guarantee shall be required as a condition of granting administration to a person who has an immediate beneficial interest in the estate of the deceased or to a barrister and attorney unless the Court considers that there are special circumstances making it desirable to require a guarantee.

(2) A guarantee given in pursuance of any requirement under this section shall enure for the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.

(3) No action shall be brought on any such guarantee without the leave of the Court.

(4) This section does not apply where administration is granted to a trust corporation, a consular officer under the Consular Conventions Act 1957 [*title 6 item 2*], a nominee of the Government, or in such other cases as may be prescribed by the rules.

**Resealing of foreign grants**

18 (1) In this section "foreign grant" means any grant of probate or administration or other document purporting to be of the same nature granted by a court in —

- (a) the United Kingdom or any British possession, colony or dependency; or
- (b) a member nation of the Commonwealth; or
- (c) the District of Columbia or any state of the United States of America.

(2) A foreign grant may be resealed at the direction of the Court and under the seal of the Court upon application made in accordance with the rules and thereupon the foreign grant —

- (a) is of the same force and effect in Bermuda as if it were made by the Court;
- (b) is, as regards property in Bermuda, subject to any order of the Court to which any grant of the Court is subject; and
- (c) is, as regards property in Bermuda, subject to appeal in the same manner as any other grant of the Court.

(3) For the purposes of this section and the rules, a duplicate or exemplification of a foreign grant sealed with the seal of the court by which it was granted or a copy of a foreign grant certified as correct by or under the authority of the court by which it was granted is as effective as the original.

(4) The Court may, in relation to the resealing of a foreign grant, exercise the power conferred by section 17 to require administrators to produce sureties and the Court in making such a requirement shall have regard to the property of the deceased in Bermuda.

**Grant in special case**

19 Where it appears to the Court by reason of special circumstances that —

- (a) it is necessary that the property of a deceased person be forthwith administered; or
- (b) that some person other than the executor or a person to whom administration would be granted under section 13 be appointed to administer the property of a deceased person,

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the Court may upon application and upon such notice, if any, as it may direct make a grant of administration to such person as it thinks fit and may impose such limitations and restrictions in the grant as it sees fit.

### **Applications in small estates**

20 (1) Where a grant of probate or administration is sought and the whole property of the deceased is of an aggregate value not exceeding \$20,000 so far as can be ascertained after reasonable inquiry, the Registrar or a clerk in the Registry authorised by him may —

- (a) prepare the application and any other papers necessary to lead to the grant; and
- (b) give on behalf of the applicant any notice required to be given by this or any other Act in connection with the application;

and the fee payable by the applicant under the rules made under this Act shall not exceed \$25.

(2) An administrator to whom a grant is made under this section shall not be required to produce sureties.

### **Certificate in lieu of grant**

21 (1) Where it appears to the Court that the estate of the deceased consists only of personal property of an aggregate value not exceeding \$20,000 so far as can be ascertained after reasonable inquiry, the Court may, without a grant, direct the Registrar to issue to the applicant a certificate under this section on payment of a fee of \$5.

(2) The certificate shall be in the form prescribed by the rules and shall —

- (a) authorise the person to whom it is issued to make a demand of payment or possession and to receive and give a valid receipt for the money or other personal property so received as effectively as if he had been issued a grant; and
- (b) order the person to whom it is issued to dispose of the estate by paying the reasonable funeral expenses and the debts of the deceased and by distributing the remainder, if any, of the estate —
  - (i) in the case of property of which the deceased died testate, to the beneficiaries entitled thereto, or if none can conveniently be found, to the Accountant-General to be paid into the Consolidated Fund; and

- (ii) in the case of property of which the deceased died intestate, to the persons entitled thereto.

(3) Where a balance is paid over to the Accountant-General under subsection (2)(b)(i) and any claim thereto is subsequently proved to the satisfaction of the Court, the Accountant-General, upon order of the Court, shall pay the claim out of the Consolidated Fund.

(4) The provisions of this Act or the rules made under this Act with respect to the grant of probate or administration do not apply in cases coming within this section.

**Varying aggregate value in sections 20(1) and 21(1)**

21A The Premier may by order which is subject to the affirmative resolution procedure vary the sums in respect of the aggregate value specified in sections 20(1) and 21(1).

PART III

DEVOLUTION OF REAL ESTATE UPON ESTATE REPRESENTATIVES

**Assimilation of real estate and personal estate**

22 (1) The estate representatives shall be the representatives of a deceased person in regard to his real estate to which he was entitled to an interest not ceasing on his death as well as in regard to his personal estate; and real estate to which a deceased person was entitled for an estate or interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition, devolve upon and become vested in his estate representatives from time to time as if it were personal estate vesting in them.

(2) The estate representatives for the time being of a deceased person shall be deemed in law his heirs and assigns within the meaning of all trusts and powers.

(3) The estate or interest of a deceased person in an estate in tail shall be deemed to be an estate or interest ceasing on his death.

(4) The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death.

(5) On the death of a corporation sole his estate or interest in the real and personal estate of the corporation shall be deemed to be an interest ceasing on his death and shall devolve to his successor.

(6) Without prejudice to the rights and powers of an estate representative, the appointment of an estate representative in regard to

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real estate shall not, save as hereinafter provided, affect any rule as to marshalling or as to administration of assets.

(7) Subject to the provisions of this Act, all statutory provisions and rules of law relating to —

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

shall, so far as the same are applicable, extend and apply to real estate as if it were personal estate vesting in them or him.

(8) All jurisdiction of any court with respect to the appointment of administrators or otherwise with respect to the grant of probate or letters of administration as respects personal estate shall extend over, and be exercisable in relation to, real estate as if it were personal estate.

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

### **Trust for beneficiaries**

23 Subject to this Act, the estate representatives of a deceased person shall hold the real estate which devolves upon and becomes vested in them under section 22(1) as trustees for the persons beneficially entitled thereto in accordance with the will of the deceased person or the law relating to intestacy, or the combination of his will and that law, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

### **Conveyance of real estate by estate representatives**

24 Where as respects real estate there are two or more estate representatives, a conveyance of real estate devolving under this Act shall not be made without the concurrence therein of all such representatives or an order of the Court, but 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, any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the Court, and shall be as effectual as if all the persons named as executors had concurred therein.

PART IV  
EXECUTORS AND ADMINISTRATORS

**Cesser of right of executor to prove**

- 25 (1) 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) files in the Registry his renunciation of probate of the will,

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

(2) Where a person appointed executor and trustee by a will files in the Registry his renunciation of probate of the will his rights in respect of the executorship and trusteeship shall wholly cease, and the representation to the testator and the administration of his real and personal estate and the execution of the trusts of his will shall devolve and be committed and executed in like manner as if that person had not been appointed executor and trustee.

**Withdrawal of renunciation**

26 (1) Where an executor who has renounced probate has been permitted, whether before, on or after 1 September 1974, 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 previous acts and dealings of and notices to any other estate representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

(2) This section applies whether the testator died before, on or after 1 September 1974.

**Executor of executor represents original testator**

27 (1) An executor of a sole or last surviving executor of a testator is the executor of that testator:

Provided that 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

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who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

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

(3) The chain of such representation is broken by —

- (a) an intestacy; or
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator —

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

### **Right of proving executors to exercise powers**

28 (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the estate 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, on or after 1 September 1974.

### **Vesting of estate of intestate between death and grant of administration**

29 (1) Where a person dies without having appointed an executor or having appointed an executor whose rights in respect of the executorship have wholly ceased, his real and personal estate, until administration is granted in respect thereof, shall vest in the Registrar.

### **Executor not to act while administration is in force**

30 Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to 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**

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

**Rights and liabilities of administrator**

32 Every person to whom administration of the real and personal 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 estate representatives**

33 The estate representative of a deceased person shall be under a duty —

- (a) to collect and get in the real and personal estate of the deceased and administer it according to law;
- (b) when required to do so by the Court, to exhibit on oath in the Court a full inventory of the estate, and, when so required, to render an account of the administration of the estate to the Court;
- (c) when required to do so by the Court, to deliver up the grant to the Court.

**Protection of persons acting on probate or administration**

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

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

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### **Liability of person fraudulently obtaining or retaining estate of deceased**

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

- (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 an estate representative.

### **Liability of estate of estate representative**

36 Where a person as estate representative of a deceased person (including an executor in his own wrong) wastes or converts his own use any part of the real or personal estate of the deceased, and dies, his estate 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.

### **Administration of estate falling to the Government**

37 (1) Where the administration of the real and personal estate of any deceased person is granted to a nominee of the Government (whether the Attorney-General or a person nominated by the Attorney-General), any legal proceedings by or against the Attorney-General or that nominee for the recovery of the real or personal estate, or any part or 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, (including, except as otherwise provided by this Act, the rules of limitation under the statutes of limitation or otherwise), in all respects as if the administration had been granted to the Attorney-General or such nominee as one of the persons interested in the estate of the deceased.

(2) Proceedings on the part of the Government shall not be filed or instituted in respect of the real or personal estate of any deceased person or any part or share thereof, or any claim thereon, except subject to the same rules of law and equity and subject to which a proceeding for the like purposes might be instituted by or against a subject.

(3) The Attorney-General or such nominee shall not be required, when applying for or obtaining administration of the estate of a deceased person for the use or benefit of the Government, to deliver, nor shall the Court be entitled to receive in connection with any such

application or grant of administration, any affidavit, statutory declaration, account, certificate or other statement verified on oath, but the Attorney-General or such nominee shall deliver, and the Court shall accept in lieu thereof, an account or particulars of the estate of the deceased signed by or on behalf of the Attorney-General or such nominee.

PART V  
ADMINISTRATION OF ASSETS

**Real and personal estate of deceased are assets for payment of debts**

38 (1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power disposes by his will, are assets for payment of his debts (including stamp duties), 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.

This subsection takes effect without prejudice to the rights of incumbrancers.

(2) If any person to whom any such beneficial interest devolves, or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he 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.

**Power of estate representative to sell**

39 (1) The estate representative may, without the consent of any person, sell the assets referred to in section 38 for the purpose not only of paying debts, but also (whether there are or are not debts) of distributing the estate among the persons beneficially entitled thereto, and before selling for the purposes of distribution the estate representative shall, so far as practicable, give effect to the wishes of the persons of full age for the time being beneficially 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, but a purchaser shall not be concerned to see that this section has been complied with.

(2) Unless required for purposes of administration owing to want of other assets, personal chattels as to which a person dies intestate shall not be sold except for special reason.

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(3) Nothing in this section shall affect the operation of section 8 of the Succession Act 1974 [*title 26 item 1*] (which enables the surviving husband or wife of a person dying intestate on or after 1 September 1974 to acquire the matrimonial home).

### **Protection of bona fide purchasers**

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

(2) A purchaser of any property, being the whole or part of the estate of a deceased person which has been transferred by the estate representatives to the person beneficially entitled thereto, shall be entitled to hold that property freed and discharged from the claims of the creditors of the deceased person except claims of which the purchaser had actual or constructive notice at the time of his purchase.

### **Abolition of rule *Allhusen v. Whittell***

41 (1) Unless the will contains an express direction to the contrary—

- (a) the estate representative in paying the debts, funeral and testamentary expenses, legacies, or other similar disbursements, shall not apply or be deemed to have applied any income of the estate in or towards the payment of any part of the capital of any such disbursements or of any part of the interest (if any) due or accruing due thereon at the date of death of such person;
- (b) until the payment of the debts, funeral and testamentary expenses, legacies, or other similar disbursements mentioned in paragraph (a), the income from the property required for the payment thereof, with the exception of any part of such income applied in the payment of any interest accruing due thereon after the date of death of the deceased, shall be treated and applied as income of the residuary estate, provided that, in any case where the assets of the estate are not sufficient to pay the aforesaid disbursements in full, the income shall be applied in making up such deficiency.

**Retainer, preference and the payment of debts by estate representatives**

42 (1) The right of retainer of an estate representative and his right to prefer creditors are hereby abolished.

(2) Nevertheless an estate representative —

(a) other than one mentioned in paragraph (b), who, in good faith and at a time when he has no reason to believe that the deceased's estate is insolvent, pays the debts 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.

(3) This section shall not apply in relation to the estates of persons dying before 1 September 1974.

**Administration of assets**

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

(2) Where the estate of a deceased person is solvent his real and personal estate shall, subject to the rules 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, liabilities and pecuniary legacies payable thereout in the order mentioned in Part II of the First Schedule.

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

44 (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge;

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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 or other 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 personal estate, or his residuary real and personal estate, or his residuary real estate; 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 some part of the charge.

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

### **Validity of conveyance not affected by revocation of grant**

45 (1) All conveyances of any interest in real or personal estate made to a purchaser before, on or after 1 September 1974 by a person to whom a grant has been issued are valid, notwithstanding any subsequent revocation or variation, before, on or after 1 September 1974, of the grant.

(2) This section takes effect without prejudice to any order of the Court made before 1 September 1974, and applies whether the testator or intestate died before, on or after such date.

### **Right to follow property and powers of the Court in relation thereto**

46 (1) A conveyance by an estate representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the conveyance, 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 conveyance the Court may, on the application of any creditor or other person interested—

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

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

- (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;
- (d) make any vesting order, or appoint a person to convey in accordance with the Trustee Act 1975 [*title 26 item 51*].

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before, on or after 1 September 1974.

**Additional powers of estate representative**

47 (1) In dealing with the real and personal estate of a deceased person an estate representative shall, for the purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have in addition to any other powers conferred on him by this Act, the powers conferred by the Second Schedule.

(2) This section shall not prejudice or affect any powers conferred by will on an estate representative, and the powers conferred by this section on the estate representative 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.

(3) Nothing in this section shall affect the right of any person to require a conveyance to be made.

(4) This section applies whether the testator or intestate died before, on or after 1 September 1974.

**Powers of estate representative as to appropriation**

48 (1) The estate representative may appropriate any part of the real or personal estate, including things in action, of the deceased person 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 person, or of any other interest or share in his property, whether settled or not, as to the estate representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased person:

Provided that—

- (i) an appropriation shall not be made under this section so to affect prejudicially any specified devise or bequest;
- (ii) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased person for the investment of money subject to

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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 estate representative), or the person who may for the time being be entitled to the income:

If the person whose consent is so required as aforesaid is an infant or is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1968 [*title 11 item 36*], of managing and administering his property and affairs, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian or receiver, or if, in the case of an infant, there is no such parent or guardian, by the Court on the application of his next friend;

- (iii) 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;
- (iv) if no receiver is acting for a person suffering from mental disorder, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased person for the investment of money subject to the trust, no consent shall be required on behalf of the said person;
- (v) if, independently of the estate 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.

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

(3) For the purposes of such appropriation, the estate representative may ascertain and fix the value of the respective parts of



the real and personal estate and the liabilities of the deceased person as he may think fit, and may for that purpose employ an independent valuer; and may make any conveyance which may be requisite for giving effect to the appropriation.

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

(5) The estate 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.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased person, and takes effect with any extended powers conferred by the will (if any) of the deceased person, 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 powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation has been made.

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

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

(9) This section applies whether the deceased person died intestate or not, and whether before, on or after 1 September 1974, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

**Power to appoint trustees of infants property**

49 (1) Where —

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- (a) an infant is absolutely or contingently entitled under the will or on the intestacy of a person dying before, on or after 1 September 1974 (in this subsection called "the deceased person"), to a devise or legacy, or to the residue of the estate of the deceased person, or any share therein; and
- (b) such devise, legacy, residue or share is not under the will, if any, of the deceased person, devised or bequeathed to trustees for the infant,

the estate representative of the deceased person may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the estate representatives or one or more of the estate representatives) to be the trustee or trustees of such devise, legacy, residue or share for the infant, and may execute and do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

On such appointment the estate representative, as such, shall be discharged from all further liability in respect of such devise, legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any manner authorised by Part VA of the Trustee Act 1975 [*title 26 item 51*].

(2) Where an estate representative has before 1 September 1974 retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such date, 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.

*[Section 49(1) amended by 1999:19 €]fective 10 July 1999]*

### **Discretionary power of estate representative as to giving possession of land and powers of the Court**

50 (1) An estate representative, before making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the estate representative to take or resume possession nor his power to convey 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 land.

(2) Any person who as against the estate representative claims possession of real estate, or the appointment of a receiver thereof, or a

conveyance thereof, 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 the Trustee Act 1975 [*title 26 item 51*], relating to vesting orders and to the appointment of a person to convey, shall apply.

(3) This section applies whether the testator or intestate died before, on or after 1 September 1974.

**Power to postpone distribution**

51 Subject to the foregoing provisions of this Act, an estate representative is not bound to distribute the estate of the deceased before the expiration of one year from the death or six months from the date on which representation in regard to the estate of the deceased is first taken out, whichever is later.

PART VI  
MISCELLANEOUS

52 [*repealed by 1975:2*]

**Protection of estate representative by means of advertisements**

53 (1) Before making any conveyance to or distribution among the persons entitled to the estate of the deceased, the estate representative may give notice by advertisement published three times at intervals of not less than one week in a newspaper for the time being approved as the Gazette, requiring all persons having claims against the estate of the deceased to send particulars thereof to the estate representative within the time, not being less than one month from publication of the last of the notices, fixed in the notice.

(2) At the expiration of the time fixed by the notice the estate representative may convey or distribute the real and personal estate of the deceased, or any part thereof, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the estate representative then has notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the estate representative has not had notice at the time of conveyance or distribution.

(3) Nothing in this section prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person other than a purchaser, who may have received it.

(4) Every creditor or other person filing a claim against the estate of a deceased person shall, if required to do so by the estate

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representative, verify his claim by affidavit showing full particulars of his claim.

(5) This section applies notwithstanding anything to the contrary in the will.

### **Places for deposit of wills**

54 All original wills and other documents which are under the control of the Court shall be deposited and preserved in such places as the Chief Justice may direct, and any wills and other documents so deposited shall, subject to the control of the Court and the rules, and subject to the payment of the fees required by law, be open to inspection.

### **Official copies of wills**

55 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 required by law, be obtained from the Registrar.

### **Application of Act**

56 Save as otherwise expressly provided, this Act does not apply in any case where the death occurred before 1 September 1974.

### **Rules**

57 (1) The Chief Justice may make rules in relation to any matter or thing required or permitted to be prescribed by rules under this Act and generally for the better administration and carrying out of this Act:

(2) The affirmative resolution procedure shall apply to rules made for the purpose of entitling a corporation to act as a trust corporation.

(3) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section, other than those to which subsection (2) applies.

58 [*repealed by 1975:2*]

### **Repeals**

59 [*omitted*]

### **Amendment of the Trustee Act 1936**

60 [*repealed by 1975:2*]

### **Non-application of certain English statutes enacted before July 11, 1612**

61 (1) The provisions of this Act shall prevail over the provisions of any enactment of the Parliament of England passed before July 11,

1612, which apply to Bermuda and are inconsistent with the provisions of this Act.

(2) This section shall not apply in relation to the estates of persons dying before 1 September 1974.

**Commencement**

62 [omitted]

*[This Act was brought into operation on 1 September 1974]*

**FIRST SCHEDULE**

(Section 43)

PART I

RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS  
INSOLVENT

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

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

PART II

ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS  
SOLVENT

1 Property of the deceased person undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.

2 Property of the deceased person specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

3 Property of the deceased person charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

4 Property of the deceased person not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

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- 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.

### **SECOND SCHEDULE**

(Section 47)

#### ADDITIONAL POWERS OF ESTATE REPRESENTATIVE

1-8 [*Repealed by 1975:2*]

9 Power to make leases.

An estate representative of a deceased person may make such leases of land forming part of the estate of such person as may be reasonably necessary for the due administration of the estate.

10 Power to carry out repairs.

The estate representative of a deceased person may, pending sale or distribution of any land forming part of the estate of such person, carry out such repairs to buildings or structures on the land as may be necessary to prevent deterioration.

11 Remuneration of trust corporation.

The estate representative may agree reasonable terms of remuneration for any trust corporation appointed by him to act as trustee of any property and may authorise the trust corporation to recover such remuneration out of that property, without being personally responsible for any loss occasioned by any act or thing so done by him in good faith.

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**THIRD SCHEDULE**

[omitted]

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[Amended by

1975 2	1999 19
1977 35	2001 20
1988 3	2001 22]
1991 40	