

*INHERITANCE (PROVISION FOR FAMILY-AND
DEPENDANTS)*

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**THE INHERITANCE (PROVISION FOR FAMILY
AND DEPENDANTS) ACT**

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THE INHERITANCE (PROVISION FOR FAMILY
AND DEPENDANTS) ACT

Act
14 of 1993.

[20th May, 1993.]

PART 1. *Preliminary*

1. This Act may be cited as the Inheritance (Provision for Family and Dependants) Act. Short title.

2. In this Act—

Interpreta-
tion.

“beneficiary” in relation to the estate of a deceased person means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate or would be so interested if an order had not been made under this Act;

“child” means a child under the age of eighteen years and includes—

(a) a child adopted in pursuance of an adoption order made under the Children (Adoption of) Act or a child adopted in pursuance of any law in a country other than Jamaica where that law is recognized by the law of Jamaica as conferring upon the child in question, in relation to the child’s custody, maintenance and education, the status of a child of the adopter or adopters;

(b) a child *en ventre sa mere* at the death of the deceased;

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- (c) a child of the deceased's husband or wife, as the case may be, who had been accepted as one of the family by the deceased,

so, however, that a child of or over the age of eighteen years may be regarded as a child for the purposes of this definition—

- (i) if such child is under the age of twenty-three years and pursuing academic studies or receiving trade or professional instructions; or
- (ii) if there are special circumstances (including physical and mental disability) which justify the disregard of the age limit;

“court” means the court for the time being having jurisdiction over the probate of the will or the administration of the estate or both, of the deceased person;

“former wife” or “former husband”, as the case may be, means a person whose marriage with the deceased was during the deceased's lifetime dissolved or annulled by a decree of divorce or of nullity of marriage and who has not remarried;

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

- (a) property which the deceased had power to dispose of by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any transfer or other tax payable out of his estate on his death; and for the purposes of this paragraph a person who is

not of full age and capacity shall be treated as having power to dispose of by will property of which he would have had power to dispose by will if he had been of full age and capacity;

- (b) other property including any sum of money which is treated for the purposes of this Act as part of the net estate of the deceased;
- (c) other property including any sum of money which is, by reason of a disposition made by the deceased, ordered under section 13 to be provided for the purpose of the making of financial provision under this Act;

“parent” includes a person who was in *loco parentis* to the deceased immediately before his death;

“property” means all property (whether movable or immovable)—

- (a) in Jamaica or elsewhere, where the deceased was domiciled in Jamaica; or
- (b) in Jamaica, where the deceased was not domiciled in Jamaica;

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

“wife” or “husband”, as the case may be, includes a person who in good faith entered into a void marriage with the deceased, unless either—

- (a) that marriage was annulled during the lifetime of the deceased; or
- (b) that person has during the lifetime of the deceased entered into a later marriage.

Application
of Act.

3. This Act shall only apply to cases where a deceased person dies after the 20th May, 1993.

PART II. *Application for financial provision*

Application
for financial
provision
from de-
ceased's
estate.

4.—(1) An application for an order under section 6 may be made by any of the persons referred to in subsection (2) on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the maintenance of the applicant.

(2) The persons to whom subsection (1) applies are—

- (a) the wife or husband of the deceased;
- (b) a child;
- (c) a parent of the deceased who was being maintained wholly or partly or was legally entitled to be maintained wholly or partly by the deceased immediately before his death;
- (d) a former wife or former husband of the deceased, who was being maintained wholly or partly or who was entitled under an existing order of a court of competent jurisdiction or under an agreement between the parties to be maintained wholly or partly by the deceased immediately before his death;
- (e) a person who—
 - (i) where the deceased was a single man, was a single woman who was living with the deceased as his wife for a period of not less than five years immediately preceding the date of the deceased's death; or

- (ii) where the deceased was a single woman, was a single man who was living with the deceased as her husband for a period not less than five years immediately preceding the date of the deceased's death.

(3) An administrator of the estate of the deceased may apply on behalf of any person who is not of full age or mental capacity in any case where such person might apply, or may apply to the court for advice or directions as to whether he ought so to apply; and in the latter case, the court may treat the application as an application on behalf of the person for the purpose of avoiding the effect of limitation.

5. An application for an order under section 6 shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out.

Time limit
for applica-
tions.

PART III. Orders

6.—(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such, at the time of the hearing of the application, as to make reasonable financial provision for the maintenance of the applicant, make any one or more of the following orders—

Powers of
court to
make orders.

- (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

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- (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;
- (c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;
- (d) an order for the setting up of a trust fund out of the net estate for the benefit of two or more applicants;
- (e) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;
- (f) an order for the acquisition, out of property comprised in that estate, of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit.

(2) An order made for the payment of periodical sums pursuant to subsection (1) (a) may provide for—

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

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

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

(4) An order under subsection (1) (b) may provide for the payment of the sum specified therein by instalments of such amount as may be specified in the order.

(5) An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another.

(6) The court may attach to any order under this section such conditions as it thinks fit.

(7) Where an application for an order under this section has been made by or on behalf of any person, it may be treated by the court as an application by or on behalf of all persons who are entitled to apply under section 4.

7.—(1) Where an application is made for an order under section 6, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the maintenance of the applicant and, if the court con-

Matters to which court is to have regard in exercising powers under section 6.

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siders that such reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters—

- (a) the size and nature of the net estate of the deceased;
- (b) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any other applicant for an order under section 6 has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 6 or towards any beneficiary of the estate of the deceased;
- (e) any physical or mental disability of any applicant for an order under section 6 or any beneficiary of the estate of the deceased;
- (f) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (g) the deceased's reasons, so far as they are ascertainable, for making provision or for not making provision or for not making adequate provision, as the case may be, for any person by his will;
- (h) the conduct of the applicant towards the deceased;
- (i) the relationship of the applicant to the deceased and the nature of any provision for the applicant which was made by the deceased during his lifetime;
- (j) any other matter which, in the circumstances of the case, the court may consider relevant.

(2) Without prejudice to the generality of paragraph (j) of subsection (1), where an application for an order under section 6 is made by or on behalf of a child of the deceased, the court shall, in addition to the matters specified in paragraphs (a) to (i) of that subsection, have regard to the manner in which the child was, or is expected to be, educated or trained and where the application is on behalf of a child as referred to in paragraph (c) of the definition of "child" contained in section 2, the court shall also have regard—

- (a) to the extent (if any) to which the deceased had, on or after acceptance of the child as one of the family, assumed responsibility for the child's maintenance; and
- (b) to the liability of any person other than the deceased to maintain the child.

8.—(1) Where on an application for an order under section 6 it appears to the court—

Interim
orders.

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

the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals as the court thinks reasonable; and the court may order that, subject to the provisions of this Act, such payments are to be made until such date as the court may specify, not being later than the

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date on which the court either makes an order under the said section 6 or decides not to exercise its powers under that section.

(2) Subsections (2), (3), (4), (5), (6) and (7) of section 6 shall apply in relation to an order under this section as they apply in relation to an order under that section.

(3) In determining what order, if any, should be made under this section the court shall, so far as the urgency of the case admits, have regard to the same matters as those to which the court is required to have regard under section 7.

(4) An order made under section 6 may provide that any sum paid to the applicant by virtue of this section shall be treated, to such an extent and in such manner as may be provided by that order, as having been paid on account of any payment provided for by that order.

Incidence of
payments
ordered.

9.—(1) The incidence of the payment or payments ordered under this Act shall, unless the court otherwise determines, fall rateably upon the whole estate of the deceased, or, in cases where the authority of the court does not extend or cannot directly or indirectly be made to extend to the whole estate, then to so much thereof as is subject to the authority of the court.

(2) The court shall have power to exclude any part of the deceased's estate from the incidence of any such order, after hearing such of the parties who may be affected by the exclusion as it thinks necessary, and may for that purpose direct any administrator to represent or appoint any person to represent, any such party.

Variation
of orders
for
periodical
payments.

10.—(1) Subject to the provisions of this Act, where the court has made an order under section 6 (1) (a) (in this section referred to as "the original order") for the making of

periodical payments to any person (in this section referred to as "the original recipient") the court, on an application under this section, shall have power by order to vary or discharge the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) An application under this section may be made by any of the following persons—

- (a) any person who by virtue of section 4 has applied, or would but for section 5 be entitled to apply, for an order under section 6;
- (b) the personal representatives of the deceased;
- (c) the trustees of any relevant property;
- (d) any beneficiary of the estate of the deceased.

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

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

(5) An order made under this section may only affect—

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

and any such property as is mentioned in paragraph (a) or (b) is in subsection (2) (c) referred to as relevant property.

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

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

(8) The power to vary an order made under subsection (3) includes a power to provide for the making of periodical payments after the expiration of the period specified in that subsection or the occurrence of the event so specified.

11. Where an order is made under this Act for the payment of a lump sum, the court shall have power, on an application made by the person to whom the lump sum is payable, by the personal representatives of the deceased or by the trustees of the property out of which the lump sum is payable, to vary that order by varying the number of instalments payable, the amount of any instalment and the date on which any instalment becomes payable.

Variation
of orders
for pay-
ment of
lump sums.

12. An order under this Act for the making of periodical payments to a former wife or former husband of the deceased shall terminate on the remarriage of such former wife or husband.

Termination
of orders on
remarriage
of former
wife or
husband.

**PART IV. *Powers of court in relation to transaction
intended to defeat application for
financial provision***

13.—(1) Where an application is made by any person for an order under section 6, the court may, subject to sections 15 and 16, and on application by that person, if the court is satisfied—

Disposi-
tions in-
tended to
defeat
applica-
tion for
financial
provisions.

- (a) that less than one year before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Act, made a disposition; and
- (b) that the disposition was not made for valuable consideration to a person (in this section referred to as the donee) who at the time of the disposition

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did not act in relation to it in good faith and had notice of the deceased's intention of defeating a claim for financial provision under this Act,

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

(2) Where an order is made under subsection (1) as respects any disposition made by the deceased, the amount of any sum of money or the value of any property ordered to be provided under that subsection shall not exceed the amount of the payment made by the deceased or the value at the date of the death of the deceased of the property disposed of by him to or for the benefit of the person to whom the payment or the disposition was made after deducting therefrom any tax borne by that person in respect of that payment or the transfer of that property.

(3) In determining whether and in what manner to exercise its powers under this section, the court shall have regard to the circumstances in which any disposition was made and any valuable consideration which was given therefor, the relationship to the deceased, if any, of the person to or for the benefit of whom the disposition was made, the conduct and financial resources of that person and all the other circumstances of the case.

(4) In this section "disposition" does not include—

- (a) any provision in a will or any *donatio mortis causa*;
or
- (b) any appointment of property made, otherwise than by will, in the exercise of a special power of appointment,

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

(5) The provisions of this section shall not apply to any disposition made before the 20th May, 1993.

14.—(1) Where an application is made to a court for an order under section 6 the applicant may, in the proceedings on that application, apply to the court for an order under this section.

Contracts
to leave
property by
will.

(2) Where on application under subsection (1) the court is satisfied—

- (a) that the deceased made a contract by which he agreed to leave by his will a sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate;
- (b) that the deceased made that contract with the intention of defeating an application for financial provision under this Act;
- (c) that when the contract was made full valuable consideration for that contract was not given or promised by the person with whom or for the benefit of whom the contract was made (in this section referred to as “the donee”) or by any other person; and
- (d) that the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Act,

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then, subject to the provisions of this section and of sections 13 and 16, the court may make any one or more of the following orders, that is to say—

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

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

(4) In determining whether and in what manner to exercise its power under this section, the court shall have regard to the circumstances in which the contract was made, the relationship, if any, of the donee to the deceased, the

conduct and financial resources of the donee and all the other circumstances of the case.

(5) Where an order has been made under subsection (2) in relation to any contract, the rights of any person to enforce that contract or to recover damages or to obtain other relief for the breach thereof shall be subject to any adjustment made by the court under section 13 of this Act and shall survive to such extent only as is consistent with giving effect to the terms of that order.

(6) The provisions of this section shall not apply to a contract made before the 20th May, 1993.

15.—(1) Where the exercise of any of the powers conferred upon the court by section 13 is conditional on the court being satisfied that a disposition was made by a deceased person with the intention of defeating an application for financial provision under this Act, that condition shall be fulfilled if the court is of the opinion that, on a balance of probabilities, the intention of the deceased (though not necessarily his sole intention) in making the disposition was to prevent an order for financial provision being made under this Act or to reduce the amount of the provision which might otherwise be granted by an order thereunder.

Provisions
supple-
mentary to
section 13.

(2) Where the court makes an order under section 13 it may give such consequential directions as it thinks fit (including directions requiring the making of any payment or the transfer of any property) for giving effect to the order or for securing a fair adjustment of the rights of the persons affected thereby.

(3) Any power conferred on the court by section 13 to order a person to whom or for the benefit of whom a

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disposition was made by the deceased to provide any sum of money or other property shall be exercisable in like manner in relation to the personal representatives of that person, so, however, that the court shall not have power under section 13 to make an order in respect of any property forming part of the estate of that person which has been distributed by the personal representative; and the personal representative shall not be liable for having distributed any such property before he has notice of the making of an application under section 13 on the ground that he ought to have taken into account the possibility that such an application would be made.

Provisions
as to
trustees
in relation
to section
13.

16.—(1) Where an application is made for an order under section 13 in respect of a disposition made by the deceased to any person as a trustee, the powers of the court under that section to order that trustee to provide a sum of money or other property shall be limited—

- (a) in the case of an order to provide a sum of money, to the aggregate of so much of that money as is at the date of the order in the hands of the trustee and the value at that date of any property which represents that money or is derived therefrom and is at that date in the hands of the trustee;
- (b) in the case of an order to provide other property, to the value at the date of the order of so much of that property as is at that date in the hands of the trustee.

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

(3) Where any such application is made in respect of a disposition made to any person as a trustee, any reference in section 13 to the donee or the person to whom or for the benefit of whom the disposition is made shall be construed as including a reference to the trustee or trustees for the time being of the trust in question and any reference in subsection (1) or (2) to a trustee shall be construed accordingly.

PART V. Miscellaneous and Supplementary Provisions

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

Provisions
as to
personal
representatives.

- (a) that the court might permit the making of an application for an order under section 6 after the end of that period; or
- (b) that, where an order has been made under section 6, the court might exercise in relation thereto the powers conferred on it by section 10 or 13,

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

(2) Where a deceased person entered into a contract by which he agreed to leave by his will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if the personal representative of the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision

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under this Act, he may notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under section 6, until the determination of the proceedings on that application.

Determina-
tion of
date on
which
representa-
tion was
first taken
out.

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

Effective
date of
will or
law
relating to
intestacy.

19. Where an order is made under section 6, that order shall in relation to any distribution of property pursuant to a will or the law relating to intestacy, or both, have effect, subject to the provisions of the order, as from the date of the deceased's death.

Registra-
tion of
orders.

20. A copy of every order under this Act shall be registered and filed by the Clerk or the Registrar of the court, as the case may be, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.