

CHAPTER 5

ADMINISTRATION OF ESTATE LAW

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CHAPTER 5

ADMINISTRATION OF ESTATE LAW

A Law to make provisions for the administration of the estates of deceased persons.

{27th August 1991}

PART 1 — PRELIMINARY

- 1. This LAW may be cited as the Administration of Estate Law.

Short
title

PART III—ADMINISTRATION-GENERAL

- 2. This Part applies to the administration of estate of a deceased person by the Administrator-General.

Application

3 In this Part-

“Administrator-General” means Administrator-General of the State and includes an Assistant Administrator-General:

"agent" means an agent of the Administrator-General;

"assets" means all property of a deceased person—

(a) Chargeable with and applicable to the payment of his debts and legacies; or

(b) available for distribution among his heirs and next of kin:

"auditor" means the State Auditor-General acting pursuant to the Audit Law; and

'audited" has a corresponding meaning:

“court” means High Court:

“customary court" and "customary law" have the respective meanings assigned to them by the Customary Courts Law;

“estate” Includes—

(a) all interests in land and chattels real: and

(b) all goods, Chattel, moneys, choses in action and other property of whatever kind:

"Federal Administrator-General” means the Federal authorities empowered to apply for grants of representation in respect to the estates, in Nigeria, of deceased persons;

“letters of administration” means letters of administration whether—

(a) general; or

(b) with copy of will annexed, or

(c) limited in time, Or otherwise;

"Commissioner" means Commissioner for the time being charged with responsibility for the administration of justice.

"Ministry of Finance" means the Corporation constituted by the Ministry of Finance (Incorporation) Law,

“next of kin" includes—

(a) a widow or widower of a deceased person; or

(b) other person who, by law, would be entitled to letters of administration in preference to a creditor or legatee of the deceased; “overseas officer" means a person in the public service of the State not, being a citizen of Nigeria,

“prescribed” means prescribed by rules made under section 60;

“property” includes goods, choses in action land and—

(a) all kinds of property, whether real or personal; and

(b) all kinds of estate and interest, present or future, vested or contingent,

“State” means Enugu State of Nigeria.

State Administrator-General means the State authority empowered by the legislature of a State, (other than Enugu State of Nigeria) to apply for grant of representation in respect of the estate of deceased persons;

“taxing officer” means Chief Registrar of the court,

unrepresented estate means—

(a) the estate of a person who dies intestate and where next of kin (or where the next of kin is a minor, his guardian)—

(i) is unknown, or

(ii) is absent from Nigeria without having an attorney in Nigeria, or

(iii) it in Nigeria and known, for a period of one month after the death of the testator, refused or neglected in apply to the court for tellers of administration

(b) the estate of a person who dies having made a will where, owing to any cause, it is necessary to appoint an administrator cum testamento annexo or de bonis non of the estate and the person entitled to the tellers of administration—

(i) is unknown, or

(ii) If in Nigeria and known, refuses, or neglects, for one month after the death of the testator to apply to the court fertile letters of administration, or

(iii) is absent from Nigeria without having an attorney in Nigeria;

(c) an estate of which the executor or administrators are absent from Nigeria without having an attorney in Nigeria, or

(d) an estate where the deceased has named the Administrator General as the sole executor of his will:

But an estate in respect of which a grant of representation has, under section 2 of the Consular Conventions Act, been made to a consular officer, is not deemed to be an unrepresented estate;

“year” means a period commencing on the first day of January and ending

on the following thirty-first day of December.

Administrator - General

4. (1) There shall be appointed to the public service—

(a) a suitable person as Administrator-General; and

Appointment

(b) as many Assistant Administrators-General as may be required.

(2) The Administrator-General may hold that office together with another office in the public service,

(3) The Administrator-General-

(a) is a corporation sole by the name of the Administrator General of Enugu State of Nigeria.

(b) has perpetual succession and an official seal; and

(c) may be sued in the corporate name.

(4) Until an official seal is provided, a stamp bearing the name of the corporation may be used as the official seal.

(5) An instrument sealed by the corporation is not, by reason only of the use of the seal, rendered liable to a higher stamp duty than if the corporation were an individual.

(6) The Administrator-General may appear in court—

(a) in person; or

(b) by counsel; or

(c) by a person duly authorized in that behalf by the Administrator-General, in a proceeding to which he is a party.

5. (1) Neither the Administrator-General nor his agent is liable for an act done by himself

(a) bona fide and

(b) in the supposed and intended execution of his duties

unless it is shown that the act was done not only illegally but willfully or with gross negligence

(2) In addition, where the estate of a deceased person is being administered by the Administrator-General or his agent

Neither person is liable in respect of assets

(a) in the possession of the deceased person at the time of his death; and

Liability
of the
Administrator-
General

(b) dealt with by the Administrator or his agent, unless either person has knowledge by actual notice or otherwise before the assets are dealt with, that they were not in fact, the property of the deceased person.

(3) Nothing in this section is deemed to restrict the operation of section 16.

6. (1) Except as provided by subsection (2) there shall be charged on the Consolidated Revenue Fund the sum required to discharge all liabilities the Administrator-General, if he were a private administrator, would be personally liable to discharge.

(2) Where the liability is one which neither the Administrator-General nor his agent—

(a) has, in any way, contributed to: or

(b) could, by the exercise of reasonable diligence, have averted; then neither the Administrator-General nor that fund shall be subject to a liability

(3) Where death is proved, to the satisfaction of the Administrator General. by —

(a) a certified copy of a register of deaths; or

(b) a certificate of a local government in an area where there is no compulsory registry of deaths; or

(c) a certificate of a Permanent Secretary of a Ministry or Head of Department, where the deceased was a public officer employed in the Ministry or department as the case may be,

neither the Administrator-General, personally, nor the Government is liable for a loss incurred through a fraudulent or innocent misrepresentation concerning the death in question.

7. Where, during the administration of an estate by the Administrator-General there is sold by the Administrator-General, or an agent on his behalf, goods or chattels belonging to a third party, the amount realized by that sale shall be paid to the owner upon proof by him of that ownership unless the amount has already been—

(a) applied in payment of the debts of the deceased; or

(b) distributed in the ordinary course of administration, whilst the Administrator-General or his agent was in ignorance, or without actual notice, of the claim of that person to the goods or chattels sold.

8. (1) The Administrator-General shall not be required—

- (a) to enter into an administration bond, or to give other security to the Court, on the grant of letters of administration to him by that name; or
- (b) to verify, otherwise than by his signature, a petition presented by him under this Law.

No security of oath required from Administrator-General.

(2) Subject to subsection (3), where the facts stated in that petition are not within the Administrators-General's own personal knowledge, the petition may be subscribed and verified by a person competent to make the verification.

(3) For purposes of this section, the facts stated in the reports of administrative officers to the Administrator-General are deemed to be within the personal knowledge of the Administrator-General.

Appointment of Administrator-General as executor.

9. The Administrator-General may be appointed the sole executor of a will.

10. A grant to the Administrator-General of probate or letters of administration—

How grant to be made to Administrator-General

- (a) shall be to him by that name: and
- (b) is deemed to include his successor in office: and
- (c) shall authorize the Administrator-General to act as executor or administrator, as the case may be, of the estate to which the probate or letters relate.

11 (1) A grant of probate or letters of administration by the court to the Administrator-General—

Effect of grants to Administrator-General and grants and resealing of grants to other Administrator-General

(a) is conclusive, as to the representative title against—

- (i) all debtors of the deceased: and
- (ii) all persons holding the assets, and

(b) affords full indemnity to all persons delivering up the assets to the Administrator-General or his agent duly appointed in accordance with this Law.

(2) A grant of probate or letters of administration by the Court to the federal Administrator-General or to a State Administrator-General or by another High Court resealed by the court—

(a) is conclusive, as to the representative title of the Administrator-General to whom the grant has been made, against—

- (i) all debtors of the deceased, and

- (ii) all persons holding assets within the State, and
- (b) affords full indemnity to—
 - (i) all debtors of the deceased, and
 - (ii) all persons holding assets within the State.

12. (1) Subject to this section, the entry of the Administrator-General by that name in the books of a company does not constitute notice of a trust.

Entry of
Administrator-
General's name in
books of company.

(2) A company may not object to entering in its register the name of the Administrator-General by reason only that the Administrator General is a corporation

(3) In dealing with assets, the fact that the person dealt with is the Administrator-General does not, of itself, constitute notice of a trust.

(4) The Administrator-General is not personally liable for a claim as a contributory

13.(1) Subject to this section, the Administrator-General may, where he becomes aware of an estate, or assets of an estate, within the State which he considers unrepresented, present to the court a petition, in the form set out in the Schedule—

Administrator-
General to petition
court schedule.

(a) stating the particulars of the estate or assets; and

(b) praying for the grant of probate or of letters of administration, as the case may be, of the estate.

(2) that form shall be completed in accordance with the direction contained in it.

(3) On being satisfied that the estate is unrepresented, the court shall make an order accordingly and, thereupon, the Administrator-General shall forthwith—

(a) cause an inventory to be made of the estate or assets, as the case may be
and

(b) file it in the court.

(4) The Administrator-General shall not petition the court in respect of an estate for the administration of which other special provision is made by—

(a) Act of the Parliament of the United Kingdom basing effect to Enugu State
of Nigeria or

(b) a written law,

14. The Administrator-General-

- (a) immediately on becoming aware of an estate mentioned in section 13; and
 - (b) before obtaining a grant of probate or of letters of administration of the estate;
- may, if he thinks fit to do so, enter upon the estate for the purpose of sealing up or making such other dispositions for the security of the estate as he may consider necessary.

Administrators
- General to
petition court
Schedule

15. Nothing in this Law precludes the Administrator-General from applying to the court for a grant of probate or of letters of administration within a period of one month from the death of the deceased.

Application for
grant within one
month of death
of deceased

deceased who—

- (a) has not been personally served with a citation; or
- (b) has not had actual notice of it in time to appear pursuant to it, establishes, to the satisfaction of the court, a claim to probate of a will or to letters of administration in preference to the Administrator-General, then—
 - (I) the letters of administration granted, in accordance with this Law, to the Administrator-General may be revoked, and
 - (ii) probate or letters of administration may be granted to that executor or next-of- kin, as the case may be.
- (2) Letters of administration granted to the Administrator-General shall not be revoked for that cause, upon the application of the next of kin of the deceased, unless—
 - (a) the application is made within six months of the grant to the Administrator-General; and
 - (b) the court is satisfied that there has been no unreasonable delay in—
 - (i) making the application, or
 - (ii) transmitting the authority under which the application is made.

21. (1) Where letters of administration granted, in accordance with this Law to the Administrator-General are revoked the court may order to be paid to, or retained by the Administrator- General, out of the estate-

Cost of
administration
on revocation
of grant.

- (a) the costs of obtaining those letters of administration; and
- (b) the whole or part of the fees which would otherwise have been payable under this Law, and
- (c) the costs of the Administrator-General, in proceedings taken to obtain that revocation.

(2) Nothing in this section affects paragraph (c) of subsection (2) of section 16.

22. (1) Subject to subsection (2), where letters of administration granted to the Administrator-General in accordance with this Law are revoked, they are, so far as concerns—

Effect revocation
on previous acts
of Administrator
-General

- (i) the Administrator-General; and
- (ii) all persons acting under his authority in pursuance of them; deemed to have been valid, except as to an act done by the Administrator-General, or that other person, after notice of a will or of another fact which would render those letters void.

(2) No notice of a will or of another fact which would render those letters void shall affect the persons mentioned in paragraph (a) or (b) of subsection (1) unless—

- (a) within the period of one month from the time of giving the notice, proceedings are commenced to prove the will or to cause the letters to be revoked: and
- (b) those proceedings are prosecuted without unreasonable delay.

23. Where, upon the grant of probate of a will or of letters of administration with copy of the will annexed, there are revoked letters of administration granted to the Administrator-General in accordance this Law, then—

Payment made
by Administrator-
General prior to
revocation of
grants

- (a) All payments made; or
- (b) all acts done by, or under the authority of, the Administrator
General:

in pursuance of those letters of administration, prior to revocation, which would have been valid under letters of administration lawfully granted to him with a copy of that will annexed, are deemed valid notwithstanding the revocation.

24. When any person shall die intestate after the commencement of this law leaving any real property of whatsoever nature of which the intestate might have disposed by will, such real property shall for the purposes of administration be deemed to be part of the personal estate of the said intestate and shall be administered accordingly.

In case of industry
real estate to be
administered as
personal estate

Provided always that —

- (a) the real property the succession to which cannot by customary law be affected by testamentary disposition shall descend in accordance with the provisions of such customary law anything herein contained to the contrary

notwithstanding:

(b) the real estate shall not be administered unless the administrator shows to the satisfaction of the court that the personal estate is insufficient to pay the intestate's debts and the expenses of his funeral, and of taking out administration

In granting administration court to have regard to heir-at-law.

25. When a person dies intestate possessed of real estate the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in real estate, and his heir-at-law if not one of the next of kin shall be equally entitled to the grant with the next of kin.

Notice to creditors and beneficiaries from of claims.

26. (1) The Administrator-General shall cause to be published in—

(a) the State Gazette: and

(b) such other manner as he considers expedient;

notices calling upon the creditors of the person whose estates he administers, and other persons beneficially entitled to the estates, to come in and prove their claims before him within such period as he may specify.

(2) Subject to section 37, he shall, after the expiration of that period, pay—

(a) the debts proved; and

(b) where, all those debts cannot be paid, a dividend on them,

(3) Where, after making that payment, he collects further assets, he shall if some of the debts proved remain unpaid, pay—

(a) those debts; and

(b) debts subsequently proved before him; or a dividend on them;

but on those debts subsequently proved shall first be paid a dividend, in proportion to their amount, equal to the dividend paid to creditors having previously proved their debts.

(4) The Administrator-General may require that a claim filed by a creditor or claimant shall express—

(a) the name and place of abode of the Creditor or claimant

(b) the origin of the debt or claim;

(c) the degree or class of the debt; and

(d) the particulars and exact amount of the debt, verified by affidavit.

(5) There shall be annexed to a claim the documents purporting to be evidence of it.

(6) The Administrator-General may also require a claimant to make an affidavit in the prescribed form giving, according to the best of his knowledge and ability, particulars concerning the persons beneficially entitled to the estate.

(7) A notice published in the State Gazette in accordance with subsection (I) is deemed to be a notice to person responsible for the payment of wages or salary to the deceased

27. Where the Administrator-General—

(a) is administering an estate; and

(b) receives assets situated at the time of death of the deceased, outside the State.

then those assets shall be treated in the same manner as assets within the State at the time of death.

Disposal of assets
received from outside
the state.

28. (I) Where the Administrator-General has given the notice required by section 26 he may, at the expiration of the period specified by him for the proof of claims, distribute the assets, or part of them in discharge of lawful claims of which he has notice.

Barring of
claims

(2) He is not liable, for the assets so distributed, to a person of whose claim he had no notice all the time of the distribution

(3) Notice of a claim, rejected or disallowed in part, by the Administrator General, does not affect him unless—

(a) proceeding to enforce the claim are commenced within two months of notice of the rejection or disallowance being given; and

(b) proceedings are prosecuted without unreasonable delay

(4) Nothing in this section prejudices the right of a creditor or other claimant to follow the assets, or part of them, to the hands of the persons respectively receiving them.

(5) In computing any period of limitation for a suit appeal or application under a law in force, the period—

(a) between the date of the submission to the Administrator General of the claim of a creditor, and

(b) final decision of the Administrator-General on the claim, shall be excluded.

29. (I) Where a suit is instituted by a creditor against the Administrator General, the creditor shall pay the costs of the suit unless he proves that—

- (a) not less than one month immediately preceding the institution of the suit he had applied in writing to the Administrator-General stating—
 - (i) the amount, and
 - (ii) other particulars of his claim, and
 - (b) had given such evidence in support of the claim as, in the circumstances of the case, the Administrator-General was reasonably entitled to require.
- (2) Where that suit is decreed to favour of the creditor, he may, nevertheless, unless he is a secured creditor, only receive payment out of the assets of the deceased equally and rateably with the other creditors.

30. In the case of a solvent estate the Administrator-General may deliver to the next of kin of the deceased watches, jewellery, or other property of the deceased which, in the opinion of the Administrator General, ought not to be sold.

31. The Administrator-General may, in addition to, and not in derogation of, any other lawful powers of expenditure exercisable by him, incur expenditure—
- a) on acts necessary for the proper care and management of property belonging to an estate in his charge; and
 - (b) with the sanction of the court, on such improvements as may be reasonable and proper to the case of the property.

32. (1) On the application of—

- (a) the Administrator-General; or
- (b) a person interested in the assets of an estate or in their due administration, the court may give to the Administrator-General directions as to assets in his charge or with regard to their administration.

(2) Where a portion of the estate of a deceased person devolves according to customary law, the Administrator-General may apply to a customary court administering that customary law for information as to how that portion shall be distributed.

(3) That portion distributed in accordance with that information is, so far as concerns any liability of the Administrator-General or the Government, deemed to be well administered.

33. (1) Subject to subsection (2), the Administrator-General shall—

- a) make a complete inventory of an estate which he administers.
- (b) keep account of all payments, receipts and dealings with that estate; and
- (c) retain all—
 - (i) letters received and copies of all letters written by him; and
 - (ii) deeds, writings, and papers, of or relating to that estate.

(2) the Administrator-General may, in his discretion, destroy private papers, bills, receipts, memoranda, and other similar documents of no value—

- (a) received with the estate; and
- (b) not claimed by the beneficiaries, next of kin or other persons entitled to the estate.

Right of
interested
person to inspect

34. A creditor or beneficiary of an estate in the charge of the Administrator-General may, on payment of the prescribed fee and subject to such conditions and restrictions as may be prescribed—

- (a) inspect, at all reasonable times, the accounts relating to the estate and the reports and certificates of the auditor; and
- (b) take, on payment of the prescribed fee, copies, and extracts from them

Payment of
money into
prescribed
banks and
investment of
surplus funds

35. (1) The Administrator-General shall keep, with a prescribed bank, an Administrator-General's account.

(2) He shall pay into that account all moneys received by him in respect of proceedings under this Law

(3) Where the cash balance standing to the credit of that account is in excess of the amount in his opinion required for the time being to answer demands in respect of the estates being administered by him, he may—

- (a) deposit the cash balance, or a part of it, with the Accountant-General or in the Post Office Savings Bank; or
- (b) invest the whole, or a part, of it in funds or securities in which trustees are, by law, authorized to invest trust funds.

(4) Where money so deposited or invested is, in the opinion of the Administrator-General, required to answer demands in respect of an estate administered by him, he shall, thereupon -

- (a) withdraw the money deposited; or realize the investment, as the case may be; and
- (b) place the amount received to the credit of the cash balance of the Administrator-General's account.

Filing of
final
accounts

36. (1) On the completion of the administration of an estate, the Administrator-General shall file in the court—

- (a) his accounts and vouchers relating to them; together with
- (b) an affidavit in verification,

(2) After the Administrator-General has given fourteen clear days notice, in the prescribed manner, to all persons which are interested and resident in Nigeria, setting forth the day and the hour to be appointed by the taxing officer for the passing of those accounts—

- (a) they may be examined and taxed by the taxing officer in the presence of persons who may attend upon such notice; and
- (b) objection may be taken to the account, or to an item in or part of it.

(3) The court may bring under review the taxation in the same manner, as near as may be, as in the case of a proceeding in the court

(4) A certificate under the hand of the taxing officer, or Judge of the court, to the effect that the accounts have been examined and found correct is a valid and effectual discharge, in favour of the Administrator-General as against all persons.

Power to
interim
accounts.

37, On giving the notice mentioned in section 34, the Administrator-General may have interim accounts passed prior to the completion of the administration.

When
Administrator-General
to file
interim
accounts.

38. Where the administration of an estate by the Administrator-General is not completed within eighteen months after the grant of letters of administration, he shall, unless otherwise ordered by the court, file in court an interim statement of accounts which may be examined in accordance with the rules of the court.

Power to
transfer
share of
minor to
relative.

39. Where a person entitled to a share under the will or in the distribution of the estate of a deceased person whose estate is being administered by the Administrator-General is a minor, the court may, upon the application of the Administrator-General appoint the father or mother of that minor or some other suitable person to receive the share of the minor on his behalf and, upon the appointment being made, the Administrator-General may pay the share of the minor to that person on behalf of the minor, and the receipt of that person is a full and complete discharge to the Administrator-General so far as regards that share

Distribution of Residue

40. (1) As soon as practicable after—

- (a) the time limited for the submission of claims in the last of notices published in pursuance of section 26; or
- (b) the settlement of a disputed claim.

Distribution of
proceeds of
estate

The Administrator-General shall dispose of the property of the estate in the manner provided by subsection (2).

(2) He shall—

- (a) reimburse himself of all costs and charges he may reasonably have incurred in collecting the estate.
- (b) Pay, to the credit of the Consolidated Revenue fund, such percentage as may be prescribed of the gross amount of money arising from the realization of the estate;
- (c) pay the creditors of the estate in the order and manner prescribed; and
- (d) pay any balance remaining after those payments—
 - (i) to the person legally entitled to it, it known, or
 - (ii) if unknown, to the Accountant-General of the State in trust for the persons entitled to it in accordance with section 43.

Disposal of real
property

41. (1) Where, after winding up an estate, real property remains undisposed of, the Administrator-General shall, forthwith and before closing the accounts of the estate, apply to the court for an order as to the disposal of that property

(2) The court may, in respect of it—

- (a) order its sale; or
- (b) appoint a receiver; or

(c) make such other order as the court considers just

42, (1) Subject to this section, where a person, not domiciled in Nigeria but having his domicile within a territory of the Commonwealth, dies leaving assets in the State, the Administrator-General, after having—

To whom payable
assets of persons
not domiciled in
Nigeria.

(a) given the notice required by section 26 for creditors and others to come in and prove their claims: and

(b) discharged, at the expiration of the period specified, such lawful claims of which he may have notice, may instead of distributing any surplus or residue of the assets of the deceased to persons residing out of Nigeria and being entitled to those assets, transfer, with the consent of the executor or administrator if any, as the case may be, in the country of the domicile of the deceased, the surplus or residue to that executor or administrator for distribution to those persons.

(2) Where—

(a) the person entitled to receive the residue of an estate is living in a territory within the Commonwealth; and

(b) the Government of that territory is willing to pay the residue to that person

the Administrator-General may, notwithstanding subsection (1), transfer the residue, through the Account-General of the State to the Government of the territory in which that person is living.

(4) A written acknowledgment of the Accountant-General that he has received that amount for that purpose, is a full discharge to the Administrator-General in respect of the transfer

(5) The fees payable to a consular officer: or a Government of a territory, mentioned in this section, may be prescribed.

43, (1) Where--

(a) the Administrator-General has, by paying all debts, fees expenses and liabilities incidental to the collection, management and administration, completed administration of the estate of a person dying intestate and without known heirs or next-of-kin; and

(b) after the passing of the accounts of that estate by the taxing officer or a Judge.

a sum of money remains in the State Treasury, to the credit of that estate, he shall forthwith, publish in the State Gazette a notice (i) announcing the completion of the administration of the estate and the passing of its accounts and the amount of the residue, and

(ii) calling upon all persons claiming, on legal, equitable or moral grounds, to the interested in the estate to present their petitions to the court.

(2) Unless the court fixes under subsection (4), a lesser period within which the petition may be presented, the petition may be presented within a period of two years from the date of that notice and no claim shall be entertained after the expiration of—

(a) that period; or

(b) a lesser period of time so fixed by the court.

(3) The hearing of the petition shall not take place until—

(a) the expiration of either period, or

(b) the petitioner has given two month's notice in the *State Gazette*—

(i) of the presentation, or intended presentation of the petition, and

(ii) as to whether the petition has been presented;

and that notice shall not be given until after the day appointed by the court

(4) Where the court is satisfied upon application, either by the Administrator-General or by a person who has presented a petition as provided for by subsection (1), that—

(a) it is unlikely that further petitions will be presented; or

(b) a lesser period of time will be sufficient for the presentation of those petitions,

then the court may order that, for the period of two years mentioned in subsection (2), there shall be substituted such lesser period, being not less than six months, as the court may consider sufficient

(5) Notice of an order made by the court under this subsection shall be published in the State Gazette

(6) The petition shall state—

- (a) the place of residence of the claimant; and
- (b) the grounds upon which, and the description of the estate in respect of which, the claim is made.

(7) A copy of the petition shall be served on the Administrator-General

(8) A person claiming to be interested in the estate may appear—

- (a) personally; or
- (b) by a legal practitioner;

and the respective claims of different petitioners may be heard and dealt with at the hearing.

(9) the equitable or moral grounds referred to in this section and section 47 include those arising from the illegitimacy of—

- (a) the deceased person whose estate has been administered by the Administrator-General; or
- (b) his children or grandchildren;

44. (1) Where a petitioner verifies his claim by evidence to the satisfaction of the court, the court shall make such order in the premises, including an award of costs, as it thinks fit.

(2) The order may contain a direction to the Accountant-General of State to pay from the sum standing to the credit of the estate in the State Treasury

- (a) the sum awarded to a claimant or petitioner by the order; or
- (b) a debt appearing to the court to be outstanding and due from the estate

45. (1) Where two or more persons lay claim into that estate or residue -

- (a) the Administrator-General may pay it into court and notify the claimants of that payment, and
- (b) the court may, with the consent of the parties—

(i) dispose of their claims by determining them in a summary manner, and
(ii) make such order in the matter with regard to the costs and other matters as the circumstances may require.

(2) Where the parties do not consent they shall proceed to obtain a decision of their claims

Rival claims to
residue'

according to the ordinary course of law.

46. (1) Subject to subsection (2), all sums paid

(a) by the Administrator-General to the Accountant-General of the State in accordance with subparagraph (ii) of paragraph (d) of subsection (2) of section 40: or

(b) into court in accordance with paragraph (a) of subsection (1) of section 45, and which remain for a period of five years or upwards without an application for payment of them being made or granted by the court, shall be transferred, in the prescribed manner to the account and credit of the Ministry of finance of the State.

(2) Subsection (1) does not authorize the transfer of those sums where a suit or other proceeding is pending in respect of them in a court

(3) where, before the end of the period of five years-

(a) the Attorney-General of the State or

(b) an officer authorized by the Government, proves to the satisfaction of the court that the sum so paid by the Administrator-General to the Accountant-General are *bona vacantia*. then those sums shall become the absolute property of the Ministry of Finance, subject to the power of disposal conferred on that corporation, by section 47

47, The Ministry of Finance may dispose of, or distribute, either the whole, or a part of sums transferred, under section 46, to that Ministry, to or among—

(a) any kindred of the deceased; or

(b) such other persons and such shares or manners as it thinks fit, regard being had to equitable or moral claims.

Ministry of
finance
power of
disposal

48. In respect of the duties of the Administrator-General, there shall be charged such fees as may be prescribed which shall be retained and paid in like manner as an addition to the expenses mentioned in section 49.

Fees

49. (1) Subject to subsection (2), expenses which might be retained or paid out of an estate in the charge of the Administrator-General, if he were a private administrator of that estate, shall be so retained and paid.

Expenses

Assets
unclaimed
for five years.

(2) Fees of court payable under a written law or rule of court shall not be charged, paid or collected in respect of estates administered, under section 57, by the Administrator-General—

(3) Fees, charges and reimbursements to be retained or paid by the Administrator-General

(a) shall have priority over all debts of the deceased; and

(b) may be deducted from moneys received by the Administrator-General in the course of the administration.

Right of
Administrator-
General to cost

50.(1) Where—

(a) the Administrator-General is a party to proceedings: and

(b) the court orders their costs to be paid otherwise than out of the estate of a deceased person being administered by the Administrator-General.

the Administrator-General may charge ordinary costs whether or not he has appeared in person.

(2) Those costs shall be credited to the Consolidated Revenue Fund.

Estates of Deceased Overseas Officers

Administration
by
Administrator
General

51. (I) The Permanent Secretary, or head of non-ministerial department, as the case may be, shall forthwith inform either—

{a) the Administrator-General or

(b) his *ex officio* agent of the death of an overseas officer of his Ministry or Department, as the case may be.

(2) Where an overseas officer dies -

(a) (i) either intestate; or

(ii) leaving a will but without having appointed an executor within the State who is able and willing to take probate; and

(b) without leaving a widow or next of kin within the State who is able and willing to take probate or letters of administration, as the case may be.

then his personal estate shall be administered by the Administrator-General.

(3) Where that overseas officer dies leaving property in the State then the Local Government Secretary of the Local Government Area in which the property is left shall be *ex officio* the agent of the Administrator-General in the administration of the estate of that deceased

52. (1) The administration of the estate by the Administrator - General shall be limited to-

Limitation of
Administration

- (a) the collection and realization of the assets of the deceased within the State;
- (b) the payment of his funeral and testamentary expenses and debts within the State; and
- (c) the payment of the balance into the State Treasury to the credit of the legal personal representative of the deceased.

(2) The agent shall, as soon as possible, give notice to the Administrator-General of

- (a) the death of the deceased, and
- (b) the fact that he is provisionally administering the estate

(3) The duties of the agent shall be limited to—

- (a) the collection and realization of the assets of the deceased within the jurisdiction of the agent;
- (b) the payment of funeral and testamentary expenses and debts within the State;
- (c) the payment of the balance into the State Treasury to the Credit of the estate of the deceased; and
- (c) rendering of his accounts verified by affidavit to the Administrator-General

(4) The Administrator-General, or the agent—

- (a) shall take such steps as may be possible to advise creditors of the estate being administered to come in and prove their claims, and

- (b) may, if he thinks fit, require that a claim be supported by an affidavit of—
 - (i) the person making it, or
 - (ii) a person cognizant of the facts relating to it.

53. The Administrator-General, or an agent, may request a responsible Government official—

- (a) to take possession of and realize assets; or
- (b) to pay debts,

situated or being or owing in a place other than that in which the Administrator-General or agent is residing or usually stationed.

Collection
of assets

54. Where the estate is solvent, a watch, jewellery letters or other property of the deceased which, in the opinion of the Administrator-General, ought not to be sold, shall be securely packed and forwarded to—

- (a) the Crown Agents; or
- (b) other authority appointed by the Administrator-General to be his agent, for delivery to the legal personal representative of the deceased.

55. (1) On the completion of the administration of the estate, the Administrator-General shall file in the court.

- (a) his accounts and those of any agent, and
- (b) the vouchers relating to those accounts, together with
- (c) an affidavit, or affidavits, as the case may be, in verification.

(2) On passing those accounts, the court shall order the net balance due to the estate to be lodged with the Accountant-General of the State with a view to it being paid to the Crown Agents for and on behalf of the legal personal representative of the deceased.

(3) On receipt of the order of the court, the Administrator-General shall send to the Governor a copy of -

- (a) the order.
- (b) the accounts as finally passed by the court;
- (c) the vouchers relating to these accounts; and
- (d) the affidavit or affidavits in verification;

Certain articles
to be sent to
Crown Agents.

Rendering of
accounts and
order of court.

together with a request that the Crown Agents may be instructed accordingly.

(4) Where subsequent to that filing of accounts and vouchers, there is brought to the knowledge of due court the possibility of their being assets of, or of claims against, the estate which were —

(a) unknown to the Administrator-General; or

(b) not included in the accounts at the time of that filing, the court, on being satisfied by affidavit or otherwise of the existence of those assets, or the validity of those claims, may—

(i) order that the accounts be amended: in circumstances may require: and till pass the amended accounts accordingly

56 (I) Notwithstanding section 48. it is lawful for the court—

(a) on application being made to it for the purpose; or

(b) of its own motion.

Change of
administration
may be
ordered by
the court.

to order that the Administrator-General shall cease to administer an estate.

(2) The court may—

(a) make that order on such terms as it thinks fit. and

(b) by the same, or another order name some other person to act as administrator.

Administration of Small Estates

57 (I) Subject to subsection (2) and notwithstanding anything contained in this law or any other written law, where a person died intestate leaving property or assets within the State, the gross value of which does not exceed six hundred naira, the Administrator-General may -

(a) by notice in the State *Gazette* (which notice may be combined with a notice to creditors and others) advertise his intention to administer the estate under this section; and

(b) at the expiration of the time limited by that notice, apply to the court for leave to administer the estate.

(2) Where the gross value of that estate does not exceed three hundred naira, the Administrator-General may dispense with a notice in the State *Gazette*.

(3) Where there has been—

Administration
where assets
do not exceed
N600

- (a) previous appointment of an administrator under a written law referred to in subsection (I) with reference to small estates; or
- (b) previous grant of probate of the will of the deceased or of letters of administration of his estate.

the Administrator-General shall not, under this section, undertake the administration of an estate unless and until the appointment or grant, as the case may be, has been revoked.

(4) It is not obligatory on the Administrator-General to file in court his accounts or vouchers in respect of an estate administered under this section unless he—

- (a) is required, in accordance with subsection (6), to do so by a beneficiary or creditor of the administration; and
- (b) receives payment of such sum as the Administrator-General may reasonably require to cover the costs of preparing, filing and passing the accounts.

(5) The Administrator-General shall give notice, to the prescribed manner, to all persons interested that he has completed the administration of the estate.

(6) Within one month of that notice being given, a beneficiary or creditor shall call on the Administrator-General to file an account under subsection (4),

(7) The Administrator-General—

(a) has full power to settle finally, and without appeal, all disputes and questions arising in the course of an administration by him under this section, including claims by creditors, but may, if he thinks fit, allow an appeal to the Court; or

(b) may himself, apply to the court for directions.

(8) In settling those disputes or questions, the Administrator-General may—

- (a) if he thinks it expedient in the interest of justice; or
- (b) with a view to saving expense,

act on information appearing to him to be credible, although it is not legal evidence

Remission of fees in estates not exceeding N600.

58. Notwithstanding anything contained in this Law or in any other written law, where an estate is administered by the Administrator General under section 57, he may—

- (a) remit all fees and costs usually payable upon an administration by him; and
- (b) replace them with a fee calculated in accordance with rules in that behalf made by the Executive Council under section 60.

Effect of order

59. An order made under this Law by the court has the same effect as a decree.

Power to make rules.

60. (1) The Executive Council may make rules to implement the objects of this Law,
(2) Without prejudice to the generality of the foregoing power those rules may, for example—

- (a) provide for the accounts to be kept by the Administrator- General
 - (b) provide for the notices to be given by the Administrator- General and the method of service;
 - (c) prescribe forms, scales of fees and matters in this Law directed to be prescribed;
 - (d) in respect of agents —
 - (i) define their powers and liabilities,
 - (ii) appoint such persons as may be thought advisable to be ex officio agents.
 - (iii) fix the amount of security to be given by them.
 - (iv) fix the amount of remuneration to be allowed to them, whether by way of fees or salary, and
 - (v) generally, regulate their duties.

61. (1) The Administrator-General may appoint such person or persons, as he thinks fit, to act as his agent or agents—

- (a) for the preservation of the assets under section 16; or
- (b) in the collection, getting in or managing of the assets; or

Administrator-General's power to appoint agents

(c) in the payment of the liabilities and the distribution of the assets, of the deceased persons whose estates are in the course of administration by him.

(2) Those agents shall, in all respects, act in those matters under the direction of the Administrator-General, who is not answerable for an act or omission of an agent which is—

(a) not in conformity with that direction; or

(b) has not happened by the Administrator-General's own fault or neglect,

(3) An agent shall find security, to the satisfaction of the Administrator-General, for the performance of his duty

(4) Agents, other than agents appointed in accordance with section 48. may be remunerated either by—

(a) salary; or

(b) such fees as the Administrator-General may, with the approval of the Governor, decide.

62. The Administrator-General—

(a) may administer oaths, take solemn affirmations and declarations;

Power to administer oaths

(b) where, for purposes of this Law, he desires to satisfy himself regarding a question of fact, may examine on oath a person willing to be so examined by him regarding that question.

63. A person who, in a matter affecting the administration of an estate, makes on oath a statement—

(a) which is false; and

(b) which he either knows or believes to be false, or does not believe to be true, is deemed to have knowingly given false testimony in judicial proceeding.

64. Where—

(a) a deceased person has assets in the State; and

(b) the Secretary for the Local Government Area in which the assets are situated considers it advisable for the protection of the estate.

Local Government Secretary's power in relation to assets.

False evidence

he may take possession of them and, in that case, shall forthwith report his action to the Administrator-General who shall give such directions and take such proceedings in the matter as he thinks fit.

65. Where a person employed in the service of a government department, ora local government, dies leaving a sum of money not exceeding three hundred naira due to him as wages, salary, gratuity or other-wise and—

Where wages or salary not exceeding N300 may be paid to relatives of deceased.

- (a) probate of his will, or letters of administration, is or are not produced to the officer responsible for the payment of that sum; or
- (b) notice in writing of the existence of a will and intention to prove it, or notice of intention to take out letters of administration, is not given to that officer, within the period of two months from the death of that person so employed, or
- (c) that notice is given but—
 - (i) the will is not proved or letters of administration are not taken out, and
 - (ii) the probate or letters of administration, as the case may be, are not produced to that officer within the period of four months from the death of that person so employed, then that officer may, after that period of two or four months, as the case may be, pay at his discretion, the sum so due to the widow and relatives of the deceased person, or one or more of them, and shall notify the Administrator-General accordingly.

66. (1) s early as possible in each year, the Administrator-General shall furnish the Commissioner with two certified copies of the audited accounts of moneys received, paid and expended in each case of the estate administered, and being administered by him, during the previous year,

Annual report of Administrator-General

(2) The Commissioner shall lay, on the table of the State House of Assembly, a certified copy of those audited accounts.

67.(1) Subject to this section, where the administration of an estate has been commenced under another written law, that administration shall, notwithstanding this Law, be carried out in accordance with that other written law.

Savings.

(2) Where a person dies intestate without known heirs or next of kin and notwithstanding that the administration of the estate has been commenced under another written law, this Law applies

to the distribution of the residuary estate.

(3) In so far as this Law relates to the administration by the Administrator-General of the estate of a deceased person it does not apply in the case of an estate which —

(a) at the commencement of this Law, the Federal Administrator General has begun to administer:

(c) he is willing to continue to administer; or

(c) it is agreed between the Administrator-General and the Federal Administrator-General that the estate can more conveniently be administered by the Federal Administrator-General.

(4) Nothing in this Law affects the estate of a seaman to whom the Merchant Shipping Act, 1844, applies.

PART 111-ADMINISTRATION BY PERSONAL REPRESENTATIVES

68 (1) In this Part—

Interpretation

"administration" means, in relation to the real and personal estate of a deceased person, letters of administration, whether general or limited or with the will annexed or otherwise;

"administrator" means a person to whom letters of administration are granted;

"child" includes child legitimated under the Legitimacy Law, or adopted under the Adoption Law of the State;

"Conveyance" includes mortgage, charge by way of legal mortgage, lease, assent vesting declaration, vesting instrument, disclaimer, release, and other assurance of property or of an interest therein by an instrument (not being a will) and "convey" has a corresponding meaning,

"court" means court of competent jurisdiction;

"death duty" means estate duty or other duty leviable on death; "disposition" includes a conveyance, and also a devise, bequest, and an appointment of property contained in a will, and "dispose of" has a corresponding meaning,

"equitable interests" means all interests and charges (other than legal interest and charges) in or over land or in the proceeds of sale thereof;

"estate" means property to which a person is entitled at the time of his death, but does not include interest in property which ceases at death;

"income" includes rents and profits;

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

“legal estate” means estate, charges and interest in or over land (subsisting or created at law) which are by statute authorized to subsist or to be created at law;

“lunatic” includes lunatic whether so found or not;

“net estate” means the property of which a testator 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 and estate duty payable out of his estate on his death;

“pecuniary legacy” includes annuity, general legacy, demonstrative legacy, so far as it is not discharged out of the designated property, and other general directions by a testator for the payment of money, including all death duties, duties free from which a devise, bequest, or payment is or payment is made to take effect;

“Personal chattels” means carriages, houses, stable furniture and accessories (not used for business purposes), garden effects, domestic animals, plates, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical or scientific instruments and apparatus, wines, liquors and consumable stores, and does not include chattels used at the death of the intestate for business purposes nor money or securities for money.

“personal representative” means the executor, original or by representation, or by representation, or administrator, of a deceased person;

“possession” includes the receipt of rents and profits or the right to receive them;

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

“probate” means probate of a will;

“probate rule” probate rule for regulating the procedure and practice in regard to non-contentious or common form probate business;

“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 also an intending purchaser;

"real estate" save as provided in sections 51 to 59 of this Law means real estate, including chattels real, which by virtue of sections 69 to 71 of this part of this Law devolves on the personal representative of a deceased person;

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

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

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

"securities" includes stock, funds or shares;

"trust corporation" means a public trustee or a corporation either appointed by the court in a particular case to be a trustee or entitled by rules made under the Trust and Equity Law to act as custodian trustee; "trust for sale" in relation to lands means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of a person, and with or without a power at discretion to postpone the sale, and "power to postpone a sale" means power to postpone in the exercise of a discretion;

"valuable consideration" includes a marriage, but does not include a nominal consideration in money;

"will" includes a codicil.

(2) References to a child or issue living at the death of a person include references to a child or issue en ventre us mere at the death

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

Application 69. Save as otherwise expressly provided, this Part of this Law does not apply in any case where the death occurred before the commencement of this Law.

Jurisdiction 70. (1) The High Court shall have and exercise jurisdiction in accordance with this Law for the

grant of probate or administration of any estate whether the estate would Otherwise be subject to the general law or to customary law

(2) A Magistrates Court shall have and exercise jurisdiction under this Law for the grant of administration in respect of any estate which is subject to customary law regarding distribution of estates:

Provided that such jurisdiction shall be within the limits prescribed by the Magistrate's Courts Law

71. (1) Where a person dies intestate with regard to his estate or part of it, the provisions of this section shall apply to determine what law shall govern succession thereto

(2) Where the property concerned is land or interest in land and is situated outside this State, the law applicable shall be the law of the place where the land is situated;

Provided that where, under the law of the place where the property is situated, succession to such property is to be in accordance with the law of this State, then that law shall apply which would have applied if the property were situated in this State.

(3) Where the property concerned is land or interest in land and is situated within this State, and also where the property, wherever situated, is other than land or interest in land, then—

- (a) if the deceased in his lifetime Was subject to customary law and married in accordance with customary law only, the law applicable shall be the customary law applying to the deceased;
- (b) if the deceased in his lifetime was subject to customary Law and died without marrying, the law applicable shall be the customary law applying to the deceased;
- (c) if the deceased married only in accordance with law which makes polygamy unlawful, then notwithstanding that he was in his lifetime subject to customary law, the law applicable shall be this Law;
- (d) if the deceased in his lifetime was not subject to customary law, the law applicable shall be this Law;
- (e) in all other cases, the law applicable shall be either this Law or the

customary law applying to the deceased, whichever will confer the greatest economic advantage on the greatest number of the children and other dependants of the deceased, and in deciding which law to apply, the court of law or other tribunal before which such issue is raised shall have regard to all the circumstances of the case, including the deceased person's place of origin, his level of education and sophistication, his style of life, his position in life, his marital status (including the nature of marriage he contracted, if any) and his general attitude towards the customs and traditions of his place of origin.

(4) For purposes of this section—

- (a) every citizen of Nigeria shall be presumed to be subject to customary law unless the contrary is proved;
- (b) a purported marriage in accordance with any law shall be deemed to be a marriage in accordance with that law;
- (c) “customary law” shall include Islamic law of all sects and schools.

(5) Nothing in this section shall be construed to affect any disposition of property made by will.

72.(I) For purposes of sections 69, 70 and 71 “real estate” includes—

- (a) leases and other chattels real, and in possession, remainder or reversion, and an interest in or over land to which a deceased person was entitled at the time of his death; and
 - (b) real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, or money secured or charged on land
- (2) A testator shall be deemed to have been entitled at his death to an interest in real estate passing under a gift contained in his will which operates as an appointment under a general power to appoint by will.
- (3) Where property is held under a joint tenancy and one of the tenants dies, such property shall be held on trust for Sale by the surviving tenant and the estate of the deceased tenant.
- (4) On the death of the incumbent of a corporation sole, his interest in the

corporation's real and personal estates shall be deemed to be an interest ceasing on his death and shall devolve on his successor.

Devolution of real estate on personal representative

73. (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased to be held on trust for persons entitled thereto either on intestacy or by will, subject to the payment therefrom in appropriate cases of the deceased person's just debts, funeral and testamentary expenses.

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

(3) The personal representatives shall be the representatives of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.

74. Subject to the provisions of this Law, all enactments and rules of law, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration, or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate, in force before the commencement of this Law and all powers duties, rights, equities obligations, and liabilities of a personal representative in force at the commencement of this Law with respect to chattels real, shall apply and attach to the personal representatives, and shall have effect with respect to real estate vested in him, and in particular all such powers of disposition and dealing as were before the commencement of this Law exercisable as respects chattels real by the survivor or survivors of two or more personal representatives, as well as by a single personal representative or by all the personal representatives together, shall be exercisable the personal representatives or representative of the deceased with respect to his real estate.

Application to real estate of Law affecting chattels real.

Multiples Personal representatives

75. Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Law shall not, save as otherwise

provided as respects trust estates, 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.

76. Without prejudice to the rights and powers of personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided, affect—

- (a) any rule as to marshaling or as to administration of assets;
- (b) the beneficial interest in real estate under any testamentary disposition;
- (c) any mode of any dealing with beneficial interest in real estate, or the proceeds of sale thereof;
- (d) the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the personal representative.

Limitation of powers of personal representatives

77. 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 does not appear to the citation; or
- (c) renounces probate of the will;

his rights in respect of the executorship shall absolutely 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.

78. (I) Where an executor who has renounced probate has been permitted, whether before or after the commencement of this Law, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of, and notices to, any

Cesser of right of executor to prove

Withdrawal of renunciation

other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

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

79. (I) An executor of a sole or last surviving executor of a testator is the executor of that testator;

Provided that this provision does not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, shall cease to apply on such probate being granted.

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

(3) The chain of 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, and 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 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.

80. (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons named as executors had concurred therein

Right of proving executors to exercise powers.

Executor of executor represent original testator.

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

81. Where a person died intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the court who shall have and exercise such powers in relation to the estate as may be required for the realization, preservation or prevention of waste, of the estate.

Vesting of estate of intestate between death and grant administration

82. Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked

Executor not to act while administration in force.

83. If, while any legal proceeding is pending in a court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, that court may order that the proceeding be continued by or against the new personal 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 that court directs.

Continuance of legal proceeding after revocation of temporary administration

84. A 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.

Rights and liabilities of administrator

85. The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the court, a true and perfect inventory and account of the real and personal estate of the deceased, and the court shall have power to require a personal representative to bring in inventories:

Duty of personal representative as to inventory.

Provided that nothing in this section shall affect the operation of section 50.

86. (I) Subject to the provisions of this section, all cause of action subsisting against or vested in a person shall, on his death after the commencement of this Law, survive against, or for the benefit as the case may be, of his estate.

(2) Subsection (1) does not apply to causes of action for—

- (a) defamation, or
- (b) seduction: or
- (c) inducing one spouse to leave; or
- (d) claims for damages on the ground of adultery

(3) Where a cause of action survives under this section for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of the promise to marry;
- (c) shall, where the death of that person has been caused by the act or omission which gives rise to the cause of action, be calculated without reference to any loss or gain to his estate consequent on his death except that a sum in respect of funeral expenses may be included.

(4) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section had survived against the estate of a deceased person unless either—

- (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) the cause of action arose not earlier than one year before his death and proceedings are taken in respect thereof not later than one year after his personal representative took out representation.

(5) Where damage has been suffered by reason of an act or omission in respect of which a cause of action would have subsisted against a person if that person had died before or at the same time as the damage was suffered, there shall be deemed, for the purpose of this Law; to have been subsisting against him before his death such cause

of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(6) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to, and not in derogation of, any rights conferred on the dependents of deceased persons by any written law applicable in the State, and so much of this Law as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action not expressly excepted from the operation of subsection (1)

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

(8) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have, done if he were living.

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

- (a) within six months after the termination of the lease or tenancy; or
- (b) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

(10) The statutory enactments relating to distress for rent apply to a distress made pursuant to subsection (9).

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

(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before its revocation are a

valid discharge to the person making them; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payment or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

88. If any person with intent to defraud creditors or without valuable

consideration—

- (a) obtains, receives, or holds any real or personal estate of a deceased person, or
- (b) effects the release of any debt or liability due to the estate of the deceased;

he shall be charged as an 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—

- (i) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death, and
- (ii) any payment made by him which might properly be made by a personal representative.

89. Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Grant of Probate and Administration

90. An application for the grant or revocation of probate or administration may be made in the probate registry of the

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

Liability of person fraudulently obtaining or retaining estate of

Caveats.

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

Liability of estate of defaulting personal representative.

Application for grant

92. Probate or administration in respect of the whole or part of the real estate of a deceased person may be granted either—

- (a) separately; or
- (b) together with probate or administration of his personal estate; or
- (c) in respect of real estate only where there is no personal estate; or
- (d) in respect of a trust only,

and a grant of administration to real estate may be limited in any way the court thinks proper and where the estate of the deceased is known to be insolvent, the grant of representation to the estate shall not be served except as regards a trust estate.

93. Subject to section 73, the court may summon a person named as executor in a will to prove or renounce probate of the will and do such other things concerning the will as the court may deem fit in the interest of the estate and of the beneficiaries thereof.

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

(2) In granting administration, the court may act on such prima facie evidence, furnished by the applicant or any person, as to whether or not there is a minority or life interest, as may be prescribed by probate rules and orders.

Summons of executor to prove or renounce.

(3) If there is only one personal representative (not being a trust corporation) then—

Number of Personal representatives

- (a) during the minority of a beneficiary; or during the subsistence of a life interest; and
- (b) until the estate is fully administered;

the court may, on the application of a person interested, or of the guardian, committee or receiver, of such person, appoint one or more personal representatives in addition to the original personal representative in accordance with probate rules, and orders of court if any.

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

Power to grant representation to a trust corporation.

95. (I) 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 whether solely or jointly with another person as the case may require, and

(b) grant administration to a trust corporation, either solely or jointly with another person, and the corporation may act accordingly as executor or administrator, as the case may be.

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

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

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

(5) Subsection (4) shall not apply to securities registered or inscribed in the name of a syndicate or to land or a charge registered under the lands Instruments (Preparation and Registration) Law in the name of a syndicate but such security, land or charge shall be transferred by the syndicate to the corporation or as the corporation may direct

(6) This section shall have effect whether the testator or the intestate died before or after the commencement of this Law and no vesting or transfer made hereunder shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture

96. (1) In granting administration the court shall have regard to the rights of all persons interested in the estate of the deceased person or in the proceeds of the sale of the estate; and, in particular, administration with the will annexed may be granted to a devisee or legatee and the 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 any one or more persons interested
in the application for the purpose; and

Direction of
court as to
persons to
whom grant
may be made.

- (b) if, by reason of the insolvency of the estate of the deceased or of any special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would in law have been entitled to the grant of administration.

the court may in its discretion, notwithstanding anything in this Law, appoint as administrator such person as it thinks expedient, and an administration granted under this provision may be limited in any way the court thinks fit.

(2) Subject to the provisions of this Law, the following persons shall be deemed to be interested in the estate of a deceased intestate and shall be entitled to a grant of administration in respect of his estate in the following order of priority—

- (a) the surviving husband or wife of the deceased;
- (b) children of the deceased or the surviving issue of a child who died in the lifetime of the deceased;
- (c) father or mother of the deceased;
- (d) brothers or sisters of the whole blood or the issue of any such brother or sister who died in the lifetime of the deceased;
- (e) brothers or sisters of the half blood or the issue of any such brother or sister who died in the lifetime of the deceased;
- (f) the grandfather or grandmother of the deceased;
- (g) uncles and aunts of the whole blood or the issue of any uncle or aunt who died in the lifetime of the deceased;
- (h) uncles and aunts of the half blood or the issue of any such uncle or aunt who died in the lifetime of the deceased;
- (I) creditors of the deceased, or

(j) failing all of the aforementioned persons, the Administrator-General.

Provided that where the person entitled to a grant is a minor the court shall make the grant to his guardian or to such other person as the court may deem fit and upon the attainment of full age by the infant, the court may on his application make the grant to him or add his name as a co-

administrator, subject to the provisions of this Law as to the maximum number of administrators.

(3) The foregoing provisions of this section shall apply only in the case of a person dying after the commencement of this Law.

(4) Where the grant of administration is to be made in respect of the estate of any person who died intestate before the commencement of this Law, the persons who shall be entitled to such grant and the order of priority in which they shall be so entitled shall be as follows—

- (a) the husband or wife of the deceased;
- (b) the personal representative of the husband if the husband died in the lifetime of the wife;
- (c) the next of kin;
- (d) the person entitled on distribution though not the next of kin;
- (e) personal representative of the next of kin or of the person entitled on distribution;
- (f) creditors of the deceased; or
- (g) failing any one of the aforementioned persons, the

Administration
pendent lite

97. (1) Where 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 such administrator shall be subject to the immediate control of the court and act under its direction.

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

Grant of special
administration
where personal
representative
aboard..

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

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

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

99. (1) Where an infant is sole executor of a will, probate shall not be granted to him; but administration with the will annexed shall be granted to his guardian, or to such other person as the court thinks fit; Provided that when the infant attains the age of eighteen years, probate of the will may be granted to him.

Administration during minority of executor.

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

100. (1) The High Court shall have and exercise jurisdiction to grant probate to a person named as executor in the will whether the testator was at the time of his death domiciled in Nigeria or elsewhere

Administration with will annexed

(2) Notwithstanding subsection. (1) the High Court may grant letters of administration with the will annexed to such persons (not exceeding four in number) as are, in its opinion and having regard to the interest of the estate and of the beneficiaries thereof, best suited to administer the estate, where—

- (a) the executor has renounced probate or, having been cited to accept or refute a grant, has failed to appear to the citation; or
- (b) the appointment of an executor in the will is void by reason of uncertainty or otherwise; or
- (c) the executor is incompetent to act by reason of infancy, bankruptcy, insanity or other legal disability; or
- (d) the executor resides outside the country and desires to apply through an attorney; or
- (e) a corporation, association, charitable organization or other body corporate (not being a Trust Corporation) is to be appointed as sole executor; or

- (f) for any reason the court decides to appoint a person other than the executor named in the will: or
- (g) upon an application made in that respect by a person other than the executor mentioned in the will for any sufficient reason the court allows that person to prove the will of the deceased,

and in every such case the will of the deceased shall be performed and observed in like manner as if probate of the will had been granted to an executor named in the will.

Administration
bonds.

101. (I) A person to whom a grant of administration is made shall give a bond (in this section referred to as an “administration bond”) to the court and, subject to this section, if the probate registrar so requires with one or more sureties conditioned for duly collecting, getting in, and administering the real and personal estate of the deceased.

(2) The probate registrar for the time being shall have power to enforce an administration bond or to assign it, in accordance with the provisions of this section, to some other person.

(3) An administration bond shall be in such form as may be directed by probate rules and orders.

(4) Where it appears to the satisfaction of the court or a Judge that the condition of an administration bond has been broken, the court or Judge may, on an application in that behalf, order that the bond be assigned to such person as may be specified in the order

(5) The person to whom the bond is ordered to be assigned under subsection (1) is entitled (by virtue of that order) to sue on the bond in his own name as if it had been originally given to him instead of the probate registrar, and to recover Thereon as trustee for all persons interested the full amount recoverable in respect of the breach of its condition.

(6) Without prejudice to any proceedings instituted before the commencement of this Law, an administration bond given before that date under an enactment in force before the commencement of this Law or which is to be enforceable as if it had been given under that enactment, may be enforced or assigned as if it had been given to the court under this section.

(7) The High Court Rules Committee may make probate rules for providing that sureties to administration bonds shall not be required when the grant is made to a trust corporation or to two or more individuals, or in other proper cases.

102. All original wills and other documents which are under the control of the court shall be deposited and preserved in such place as the Chief Judge may direct, and the wills and other documents so deposited shall, subject to the control of the court and the provisions of probate rules and orders, be open to inspection.

Places for deposit of original will and other documents.

103. An official copy of the whole or a part of a will, or an official certificate of a grant administration may, on payment of the prescribed fee, be obtained from the court or the probate registry.

Official copies of wills.

104. There shall, under the control and direction of the High Court, be provided safe and convenient depositories for the custody of the wills of living persons, and a person may deposit his will therein on payment of such fees and subject to such regulations as may from time to time be made by the High Court Rules Committee.

Depositories of wills of living persons.

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

105. A private executor or administrator may, with the previous consent of the Administrator-General, by instrument in writing under his hand notified in the *State Gazette*, transfer the assets of the estate vested in him by virtue of a grant of letters of administration to the Administrator-General.

Transfer by private executor or administrator to Administrator-General.

106. (1) The real and personal estate, whether legal, equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate which a deceased person in pursuance of a general power disposes of by his will, are, without prejudice to the rights of encumbrancers assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

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

107.(1) Where a person dies intestate after the commencement of this Law leaving real property of any kind which the intestate might have disposed of by will, that real property shall, for the purposes of administration, be deemed to be part of the personal estate of the intestate and shall be administered accordingly; except that—

- (a) real property the succession to which cannot by customary law be affected by testamentary disposition shall descend in accordance with the provisions of that customary law notwithstanding anything in this Law to the contrary; and
- (b) The real estate shall not be administered unless the administrator shows to the satisfaction of the court that the personal estate is insufficient to pay the intestate's debts and the expenses of his funeral and of taking out administration.

(2) Subject to this section, on the death of a person intestate as to any real or personal estate, that estate shall be held by his personal representative—

- (a) as to the real estate, upon trust to sell it;
- (b) as to the personal estate, upon trust to call in, sell, and convert into money such part of it as may not consist of money, with power to postpone the sale or conversion for such period as the personal representatives, without being liable to account, may think proper, and so that -
 - (i) any reversionary interest be not sold until it falls into possession, and
 - (ii) personal chattels be not sold unless required for purposes of administration owing to want of other assets, or except for other special reason.

(3) The personal representative shall—

- (a) out of the net money to arise from the sale and conversion of the real and personal estate (after payment of costs) and out of the ready money of the deceased (so far as not disposed of by his will, if any), pay all such funeral, testamentary and administration expenses, debts, and other liabilities as are properly payable thereout, having regard to the rules of administration contained in this Part and the appropriate rules of court;

(b) out of the residue of the money, set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.

(4) During the minority of a beneficiary of the subsistence of a life interest, and pending the distribution of the whole or a part of the estate of the deceased, the personal representatives may invest the residue of the money or so much of it as may not have been distributed, in any investments authorized by statute for the investment of trust money, with power, at their discretion to change the investments for others of a like nature.

Administration
Of Assets.

(5) The residue of the money and any investments for the time being representing that residue, including (without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and if not required for the administration purposes aforesaid, is in this Law referred to as "the residuary estate or the intestate".

(6) As from the death of the deceased, the income of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid (including net rents and profit of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income) may, however the estate is invested, be treated and applied as income, and, for that purpose, necessary apportionment may be made between tenant for life and remainder man.

(7) Nothing in this section affects the rights of a creditor of the deceased or the rights of the estate in respect of death duties.

(8) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

(9) Where under the will of a deceased person one legatee is entitled to be paid out of two or more separate funds, and he so elects to be paid that another legatee entitled to be paid out of only one of such funds cannot be paid in full out of the one fund, then and in every such case the legatee who is thus adversely affected by such election shall be entitled to have his legacy, or such portion thereof as cannot be paid out of the fund to which he originally has a claim, paid out of the other fund or funds to which the beneficiary making the election has a claim.

Charge to be
paid out of
property
charged.

108. (1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in the Second Schedule

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person, and except as provided in this subsection, nothing in this Law, affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent, his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable out of the estate, in the order prescribed in the Third Schedule.

109. (1) Where—

(a) 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 purchase money); and

(b) the deceased has not by will, deed, or other document, signified a contrary or other intentions, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of that interest, according to its value, shall bear a proportionate part of the charge.

(2) A 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 the testator out of his personal estate, or his residuary personal and real estate, or

(b) by a charge of debts upon any estate.

unless the 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 rights of a person entitled to the charge to obtain payment or satisfaction out of the other assets of the deceased or otherwise

110. (1) Where, at his death, a testator or intestate was entitled to, or exercised some power of appointment by will over an estate or interest in real estate which at such death devolved upon his personal representative, the personal representative may assent to the vesting of that estate or interest in real estate in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled to it either beneficially or as a trustee or personal representative.

Effect of assent
or conveyance
by personal
representative.

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

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

(4). An assent to the vesting of a legal estate—

- (a) shall be in writing, signed by the personal representative; and
- (b) shall name the person in whose favour it is given; and
- (e) shall operate to vest in that person the legal estate to which it relates; and on assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

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

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

that estate has been placed on or annexed to the probate or administration.

(7) A conveyance by a personal representative of a legal estate to a purchaser accepted on the face of such a statement as is mentioned in the last preceding subsection shall, without prejudice to a previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

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

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

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

(11) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of the duties, debts or liabilities mentioned in subsection (9), but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debts or liability, if reasonable arrangements

have been made for discharging them; and an assent may be given subject to a legal estate or charge by way of legal mortgage.

(12) This section —

- (a) shall not operate to impose any stamp duty in respect of an assent;
- (b) applies to assents and conveyances made after the commencement of this Law whether the testator or intestate died before or after the commencement

(13) In this section ‘purchaser’ means a purchaser for money or money’s worth.

(14) A personal representative who makes a false statement regarding a matter mentioned in subsection (6) or (7) is liable in like manner as if the statement had been contained in a statutory declaration.

111. (1) A conveyance of an interest in real or personal estate made to any person either before or after the commencement of this Law by a person to whom probate or letters of administration have been granted is valid notwithstanding any subsequent revocation or variation, either before or after the commencement of this Law, of the probate or letters of administration

Validity of conveyance not affected by revocation of representation

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

112. (1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing it, into the hands of—

- (a) the person in whom it is vested by the assent or conveyance; or
- (b) other person (not being a purchaser) who may have received it or in whom it may be vested.

(2). Notwithstanding an assent or conveyance under subsection (1), the court may, on the application of a 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 persons, not being a purchaser, in whom the property is vested is a trustee for such purpose;
- (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to other matter required for giving effect to the order.

(3). This section—

- (a) does not prejudice the rights of a purchaser or person deriving title under him; but
- (b) applies whether the testator or intestate died before or after the commencement of this Law.

113.(I) In dealing with the real and personal estate of the deceased, his personal representatives shall, for purposes of administration, or during the minority of a beneficiary, or during the subsistence of a life interest, or until the period of distribution arrives, have—

- (a) all such powers and discretions, including power to sell or to raise money by mortgage or charge (whether or not by deposit of documents) as are requisite for proper administration of the estate of the deceased, and the power to raise money by mortgage may in the case of land be exercised by way of legal mortgage; and
- (b) all the powers, discretion, and duties, conferred or imposed by law on trustees holding land upon an immediate binding trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale); and
- (c) all the powers conferred by statute on trustees for sale, and so that contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or varied or rescinded by him, as in the case of a contract entered into by himself

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

Power of
management

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

114.(I) For giving effect to beneficial interest, the personal representative may—

Powers of
personal
representative
for raising
money, etc.

- (a) limit or demise land for a term of years absolute (with or without impeachment for waste) to trustees on the usual trust for raising or securing a principal sum and the interest thereon; or
- (b) limit or grant a rent-charge for giving effect to any annual or periodical sum of which the land or the income thereof or any part thereof is liable.

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

115.(I) Subject to this section, the personal representative may appropriate any part of the real or personal estate (including things in action) of the deceased in its actual condition or state of investment at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of other interest or share in his property as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased

Powers of
personal
representative as
to appropriation

(2) An appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest, nor without the following consents, namely—

- (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 of the settlement, if any (not being also the personal representative), or the person who may be entitled to the income.

(3) If the person whose consent is required in subsection (2) is an infant, or a lunatic or mentally defective, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee or receiver, as the case may be, or if in the case of an infant there is no parent or guardian, by the court on the application of his next friend but—

- (a) a consent is not required (save of the trustee of the Settlement) on behalf of a

person who may come into existence after the time of appropriation or who cannot be found or ascertained at that time;

- (b) if no committee or receiver of a lunatic or defective has been appointed, then if the appropriation is of an investment authorized by law or by the will (if any) of the deceased for the investment of money subject to the trust, a consent is not required on behalf of the lunatic or defective;
- (c) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income of the settlement consent is not required to an appropriation in respect of such legacy, share or interest if the appropriation is of an investment authorized as in this section.

(4) Property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorized investment and may be retained or dealt with accordingly.

(5) For the purpose of an appropriation, the personal representative may—

- (a) ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in a case where such employment may be necessary;
- (b) make any conveyance (including an assent) which may be requisite for giving effect to appropriation.

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

(7) This section—

- (a) does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and
- (b) make any conveyance (including an assent) which may be requisite for giving effect to the appropriation, and where an appropriation is made under this section in respect of a settled legacy, share, or interest, the property

appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

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

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

(10) This section—

(a) applies whether the deceased died intestate or not and whether before or after the commencement of this Law; and

(b) extends to property over which a testator exercises a general power of appointment and authorizes the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

116.(1) Where—

(a) an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Law (in this subsection called "The deceased") to a devise or legacy, or to the residue of the estate of the deceased or a share therein; and

(b) the devise, legacy, residue or share is not under the will (if any) of the deceased devised or bequeathed to trustees for the infant, the personal representative of the deceased may—

(i) appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of them) to be trustee or trustees for sale of the devise, or trustees of the legacy, residue or share for the infant, and

(ii) execute or do any assurance or thing requisite for vesting the devise, legacy, residue or share in the trustee or trustees so appointed-

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

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

117. (1) A personal representative, before giving an assent or making a conveyance in favour of a person entitled may permit that person to take possession of the land, and that possession shall not prejudicially affect that right of the personal representative to take or resume possession nor his power to convey the land if he were in possession of it, but subject to the interest of a lessee, tenant or occupier in possession or in actual occupation of the land.

Obligations of personal representatives as to giving possession of land, and powers of the Court.

(2) A person who as against the personal representative claims possession of real estate, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor 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.

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

117.(1) Subject to the foregoing provisions of this law, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from his death.

Power In postpone distribution, liability to account; and completion of administration

(2) Subject to subsection (1) and to any order of the court in, relation to an estate, a personal representative of a deceased person shall keep true and fair account of his administration of the estate and shall, once in every year, prepare and file with the court a statement of such account, until such time as the administration is completed.

(3) Subject to the provisions of subsection (2) (b) (i) of section 107 regarding the sale of reversionary interest, every administration shall be complete—

(a) where there is a life interest, within one year from the cessation of the life interest, or

five years from the date of the grant, whichever is the longer period, or
(b) where there is a minority, with one year of the last or youngest minor attaining his majority, or five years from the date of the grant, whichever is the longer period;
or

(c) where there is no minority or life interest, not later than. Five years from the date of the grant of probate or letters of administration, as the case may be.

(4) A person representative shall within twelve months after the completion of administration apply to the court for discharge from his obligations and liabilities under this Law.

(5) Where a personal representative fails or neglects to file with the court a statement of account as provided in subsection (2) or to complete administration within the period specified in subsection (3) or within any such extended period as the court may order, any person entitled to any interest in the estate may apply to the court for an order requiring the personal representative to file such account or to complete the administration, as the case may be, within such period as shall be specified in the order.

(6) If the personal representative fails or neglects to carry out the order of court made under subsection (5), he shall be guilty of an offence and shall be liable on conviction to a fine of not more than four hundred naira or to imprisonment not exceeding six months.

Distribution of Residue

Abolition of certain
modes of descent.

119. With regard to the real and personal estate of a person dying after the commencement of this Law and to which this Law applies, there are abolished—

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

120. (1) In all cases to which this Law applies, the residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, and the distribution of the residuary estate of an intestate shall be in accordance with the following table -

TABLE

(a) If the intestate leaves a husband or wife but does not leave any children or parent or children's children or brothers or sisters of whole blood or children of brothers or sisters of the whole blood:	the residuary estate shall be held on trust for the surviving spouse absolutely: Provided that where the surviving spouse is the wife, and the intestate leaves brothers or sisters of the half blood such wife's interest shall be for her life or until she marries (whichever first occurs) after which the residue of her interest shall go to the intestate's brothers and sisters absolutely in equal shares, the children of a deceased brother or sister taking the share to which their father or mother would have been entitled had he or she not predeceased the surviving spouse.
(b) If the intestate leaves a husband or wife as well as children or children's children (whether or not he also leaves parents or brothers or children of brothers or sisters)	the residuary estate shall be held on trust as to the value of one third thereof for the surviving spouse whose interest shall be absolute in the case of a husband, or for her life or until her remarriage (whichever first occurs) in the case of a wife; the remainder of such estate together with the residue upon Caesar of the wife's interest (if any) shall be held on trust for the children on trust for the children of the intestate's children in equal shares absolutely:

	Provided that the children of a deceased child shall take the share to which such child would have been entitled had the child not predeceased the intestate.
(c) If the intestate leaves a husband or wife as well as one or more of the following. namely a parent- a brother or sister of the whole blood or children of a brother or sister of the whole blood, but docs not leave a child;	two-thirds of the residuary estate shall be held on (first for the surviving spouse whose interest shall be absolute in the case of a husband and for her life or until her remarriage (whichever shall first occurs) in the case of a wife: the remaining one-third of the estate together with the residue upon cesser of the wife's interest (if any) shall be held on trust; (i) for the brothers of the whole blood in equal shares absolutely, the children of a deceased brother taking the share to which their father would have been entitled had he not predeceased the intestate; failing brothers of the whole blood or their children, then (ii) for the parents absolutely (in equal shares if both parents survive)
(d) If the intestate leaves children or children of deceased children but no husband or wife;	the residuary estate of the intestate shall be held on trust for the children of the intestate, as to the value of two-thirds thereof equally; for the parents as to one- sixth. and for brothers and sisters as to one- sixth. if no parents or brothers or sisters survive, their shares to go to the children
(e) If the intestate leaves no husband or wife and no children or children of deceased children, but leaves both parents.	the residuary estate of the interstate shall be held on trust for the parents, as to the value of two-thirds thereof in equal shares absolutely.

	for brothers and sisters, if any, as to the value of one-third thereof in equal share absolutely; if no brother or sisters survive, their share go to the parents.
(f) If the intestate leaves no husband or wife and no issue but leaves one parent;	the residuary estate of the intestate shall be held on trust for the surviving father or mother as to the value of two-thirds thereof; for brothers and sisters, as to the value of one-third thereof in equal shares absolutely, if no brothers or sisters, their shares go to the surviving father or mother.
(g) if the intestate leaves no husband or wife and no issue and no parent:	the residuary estate of the intestate shall be held on trust for the following persons living at the death of the intestate and in the following order and manner— <i>First</i>, upon trust for the full brothers and full sisters of the intestate: but if no person takes an absolutely vested interest under such trusts, then— <i>Secondary</i>, on trust for half brothers and half sisters of the intestate: but if no person takes an absolutely vested interest under such trusts, then— Thirdly. on trust for the grand-parents of the intestate and. if more than one survive the intestate, in equal shares; but il there is no member of this class, then Fourthly, on trust for the uncles and aunts of the intestate (being full-brothers or full-

	sisters of a parent of (lie intestate). but if no person takes an absolutely vested interest under such trust, then— Fifthly, on trust for the uncles and aunts of the intestate (being half-brothers or half-sisters of a parent of the intestate):
(h) In default of any person fating an absolute interest under the foregoing provisions	the residuary estate of the intestate -shall belong to the head of the family of which the deceased was a member, and such head of family shall, out of the whole of the property devolving on him, provide for the dependants whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) References in this section to "brother" or "sister" shall be construed as references to a brother of the whole blood or to a sister of the whole blood, as the case may be;

Provided that where there is no brother or sister of the whole blood, such references shall be construed as references to brother and sisters of the half blood respectively,

(3) A husband and his wife shall, for purposes of distribution or division under subsection (1) be treated as two persons.

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

121. (1) Where, under section 120, the residual- estate of an intestate or a part thereof, is directed to be held on trust for the children of thee intestate absolutely, then—

(a) that estate shall be held in trust, in equal shares if more than one—

(i) for the children of the intestate living al the death of the intestate; and

(ii) for the children (living at the death of the intestate who attain the age of eighteen years) of any sons of the intestate who predeceased the intestate; such children taking according to their

stocks, in equal shares, if more than one, the share which their father would have taken if living at the death of the intestate, and so that no child shall take whose father is living at the death of the intestate and so capable of taking.

(b) if the property concerned is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to that child by the intestate or settled by the intestate for the benefit of that child (including any life or less interest and including property covenanted to be settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate) in accordance with the requirements of the personal representatives;

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

Provided that when an infant marries, such an infant shall be entitled to give valid receipts for the income of the infant's share or interest

(2) If the trust in favour of the issue of the intestate fails by reason of no child or other issue attaining an absolutely vested interest—

(a) the residuary estate of the intestate and the income thereof and all statutory accumulations if any of the income thereof, or so much as may not have been paid or applied under any power affecting it, shall go, devolve and be held under the provisions of section 120 as if the intestate had died without leaving issue living at the death of the intestate; and

(b) reference in section 120 to the intestate "leaving no issue" shall be construed as "leaving no issue who attains an absolutely vested interest", and

(c) reference in section 120 to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attains an absolutely vested interest".

(3) Where under section 120 the residuary estate of an intestate or a part thereof is directed to be held on trust for a class of relatives of the intestate not being issue of the intestate, that estate shall be held on trusts corresponding to the trusts for the issue of the intestate (other than the

provision for bringing any money or property into account) as if those (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

(4) Reference in paragraph (a) of subsection (1) of section 120 to the Intestate leaving or not leaving, a member of the class consisting of brothers or sisters of the whole blood of the intestate shall be construed as references to the intestate leaving, or not leaving, a member of the class who attains an absolutely vested interest.

(5) It is hereby declared that, where the trust in favour of a class of relatives of the intestate, other than issue of the intestate, fails by reason of no member of that class attaining an absolutely vested interest, the residuary estate of the intestate and the income thereof and all statutory accumulation if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting it. shall, by virtue of subsections (2) and (3) of this section, go, devolve and be held under the provisions of section 120 as if the intestate had died without leaving any member of that class, or issue of any member of that class, living at the death of the intestate.

Power of personal
representative in
respect of interest of
surviving spouse

122. (1) The personal representative may where a surviving spouse so elects, raise—
(a) the net sum of money equivalent to the life interest in one-third or, as the case may be, two-thirds of the residuary estate, or any part of the amount, and the interest thereon, to which the surviving spouse is entitled under section 120, on the security of the whole or a part of the residuary estate of the intestate (other than the personal chattels) so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by an appropriation under the statutory power available in that behalf; and
(b) in like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving spouse of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate; and in either case, the amount, if any, properly required for the payment at the cost of the transaction, Thereafter, the residuary estate of the intestate may be dealt with and distributed free from the life interest.
(2) An election the whole of the said part of the residuary estate consists of property in possession, but, for the purposes of this section, a life interest in property partly in possession and partly not in possession shall be treated as consisting of two separate life interests in those respective parts of the property.

(3) An election under this section shall be Exercisable only within the period of twelve months from the date on which representation with respect to the estate of the intestate is first taken out. But the court may extend the said period if the surviving spouse satisfies the court that the limitation of that period of twelve months will operate unfairly in consequence of—

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

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

(c) some other circumstances affecting the administration or distribution of the estate

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

(5) Where the tenant for life is the sole personal representative, an election under this section is not effective unless written notice of it is given to the probate registrar within the period within which it must be made; and provisions may be made by probate rules for keeping a record of the notices and making the record available to the public

(6) An election under this section by a tenant for life who is an infant shall be as valid and binding as it would be if the tenant for life were of age,

(7) In considering for the purposes of the provisions of this section, the question when representation was first taken out. a grant limited 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,

123.(1) Where a persons dies leaving a will effectively disposing of parts of his estate, sections 119 to 126 of this Law shall have effect as respects the part of his property not so disposed of .subject to the provisions of the will and to the following modifications—

(a) where the deceased leaves a husband, or wife who acquires a beneficial interest under the will of the deceased (other than personal chattels specifically bequeathed), the references in section 120 to the net sum of money equivalent to one-quarter or one-third of the residuary estate payable to a surviving husband or wife, shall be taken as references to that sum diminished by

the value at the date of death of the said beneficial interest, and accordingly, where the value exceeds that sum. Section 120 shall have effect as if references to that sum were omitted;

(b) the requirements of section 121 as to bringing property into account shall apply to any beneficial interest acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other person;

(c) the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the person entitled under section 120 in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

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

(3) For the purposes of paragraph (a) of subsection (1) of this section, the personal representatives shall employ a duly qualified valuer in any case where such an employment may be necessary

(4) The references in subsection (2) of section 122 to property are references to property comprised in the residuary estate and. Accordingly, where a will of the deceased creates a life interest in property in possession and the remaining interest in that property forms part of the residuary estate, the references are references to that remaining interest (which, until the life interest determines, is properly not in possession).

Construction of
document

124. (1) Reference to any Status of Distribution in an instrument made *inter vivos* or in a will coming into operation after the commencement of this Law shall be construed as references to sections 119 to 126 of this Law and references in such an instrument or will to statutory next- of- kin shall be construed, unless the context otherwise requires, as references to the persons who would take beneficially or an intestacy under the provisions of the said sections

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

125.(1) The High Court shall have and exercise jurisdiction to grant probate of any will, where such will affects only property situate within the State, whether or not the testator is a person of

Probate or
administration
involving foreign
element

Enugu State origin and whether or not he died within the State.

(2) Where a will made by a person of Enugu State origin disposes of property situate within the State and other property situate outside the State, the high Court may grant either—

(a) probate of such will; or

(b) letters of administration with the will annexed, in respect of only the property situate within the State

(3) Where a will made by a person other than a person of Enugu State, origin disposes of property situate within the State and other property situate outside the State, the High Court may grant letters of administration, with the will annexed, in respect of the property situate within the State, but shall not grant probate

(4) That court shall have and exercise jurisdiction to grant letters of administration in respect of any property situate within the state of which the owner shall die intestate, whether or not the intestate died within the State,

(5) Where a person of State origin dies intestate in respect of personal property situate outside the State, the court may grant letters of administration in respect of such property whether or not he died possessed of other property within the State.

(6) The High Court shall have and exercise jurisdiction to grant probate of any will made in any language.

Provided that—

(a) where the will is made in the Igbo language, probate shall not be granted unless application therefor is accompanied by a document true and accurate translation of such will in the English language;

(b) where the will is made in any language other than English or Igbo, probate shall not be granted unless application therefor is accompanied by a document certified to be a true and accurate certification is done by a person holding an office equivalent at least to that of a Magistrate or a High Court Registrar in the country or other place where such language is generally spoken.

(7) The High Court shall have and exercise jurisdiction to re-seal probate of any will granted by a court of competent jurisdiction outside the State, and probate so re-sealed shall have force and effect as if the same were originally granted by the High Court that re-sealed it:

Provided that every application filed for re-sealing probate of a will made in a language other

than English shall be accompanied by a translation of such will certified in accordance with the provisions of subsection (6) of this section.

(8) Subject to the provisions of this section regarding wills made in a language other than English, probate may be granted in respect of any will made in accordance with any law other than the law of the State, by affidavit of law made by a legal practitioner conversant with that law, that all the formal and other requirements of that law are satisfied by the will and that the will is not invalid by reason of incapacity or otherwise on the part of the testator.

Provided that no applicant for probate or for letters of administration with the will annexed and no legal practitioner representing such applicant shall be competent to make affidavit of law under this section.

(9) In this section

“State” means Enugu State of Nigeria.

126. Under sections 50 to 56 this Law “real and personal estate” means a beneficial interest (including rights of entry and reverter) of the intestate in real and personal property which he could, if of full age and captivity, have disposed of by his will

Red and
personal estate
redefined

Family Provisions

127. (1) Where after the commencement of this law, a person dies domiciled in the State leaving any of the following—

(a) a wife or husband;

(b) a child who—

(i) being male has not attained the age of eighteen years, or being female has not attained that age and has not married at a younger age, or

(ii) is attending an educational or vocational training institution, or

(iii) is by reason of some physical or mental disability incapable of maintaining himself or herself.

Power of Court
to order payment
and out in not
estate of
deceased or
benefit or
surviving spouse

then, if the court, on application by or on behalf of such a wife, husband, daughter, or son (in this Part referred to as a “dependant” of the deceased) is of the opinion that the disposition of the deceased's estate effected by his will or the law relating to intestacy or a combination of these is not such as to make reasonable provisions for such dependant the court shall, subject to such conditions or restrictions, if any, as the court may impose, make out of the deceased's net estate such provisions as the court thinks fit for the maintenance of that dependant

(2) No application shall be made to the court under this section by or on behalf of a person in a case where the disposition of the deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than one-third of the income of the net estate, and the only other dependant or dependants if any, is or are a child or children of the surviving spouse,

(3) The provision for maintenance to be made by an order shall be by such lump sum payment or such periodical payments as the court may decide, having regard to all the circumstances of the case.

(4) The order shall provide for the termination of any periodical payment not later than—

(a) in the case of a husband or wife, his or her remarriage';

(b) in the case of a daughter who has not been married or who is under disability, her marriage or the cesser of the disability, whichever is the later:

(c) in the case of an infant son, his attaining the age of eighteen years;

(d) in the case of a son under disability, the cesser of his disability; or in any case, his or her earlier death

(5) In deciding whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's net estate and shall not order provision to be made as would necessitate a realization that would be improvident having regard to the interests of the deceased's dependants and of the person who apart from the order, would be entitled to that property.

(6) The court shall on an application made under this section, have regard —

(a) to the past, present, or future capital or income from any source of the dependant of the deceased to whom the application relates:

(b) to the conduct of that dependant in relation to the deceased and otherwise; and

(c) to other matter or thing in the circumstances of the case the court may consider relevant or material in relation to that dependant to persons interested in the estate of the deceased, or otherwise.

(7) The court shall also, on such an application, have regard to the deceased's reasons, so far as ascertainable—

(a) for making the dispositions made in this will, if any, or

(b) for refraining from disposing by will of his estate or part of his estate; or

(c) for making any provision, or any further provision as the ease may be, for a dependant; and the court may accept such evidence of those reasons as it considers sufficient including a statement in writing signed by the deceased and dated, so that in estimating the weight, if any, to be attached to that statement the court shall have regard to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement

(8) The court, in considering for the purpose of subsection (1) whether the disposition of the deceased's estate makes reasonable provision for the maintenance of a dependant, shall not be bound to assume that this Law makes reasonable provisions in all cases.

128. (1) Except as provided in this section and in section 58, an order under section 127 shall not be made save on application made within six months from the date on which representation in regard to the deceased's estate is first taken out

Time within which to make application

(2) If it is shown to the satisfaction of the court limitation to the period of six months would operate unfairly, the court may extend that period

(a) in consequence of the discovery of a will or codicil involving a substantial change in the disposition of the deceased's estate (whether or not involving a further grant of representation); or

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

(c) in consequence of some other circumstances affecting the administration of distribution of the estate.

(3) The provisions of sections 127 to 130 of this Law shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months on the ground that they ought to have taken into account the possibility that the court might exercise its power to extend that period, but this subsection is without prejudice to a power to recover a part of the estate so distributed arising by virtue of the making of an order under the said sections,

(4) In considering under this section the question when representation was first taken out, a grant limited to trust property shall be left out of account and a grant limited to real estate or 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.

(5) For the purposes of subsection (1) of section 127, a dependant of a Deceased person by whom or on whose behalf an application under the said sections is proposed to be made shall be deemed to be a person interested in his estate.

Effect and form
of order

129.(1) Where an order is made under section 127, then for all purposes, including the purposes of the enactments relating to death duties, the will or the law relating to intestacy as the case may be, shall have effect, and shall be deemed to have had effect as from the deceased's death, subject to such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.

(2) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under section 127, but no larger part of the net estate shall be set aside or appropriated to answer by its income the provisions for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by its income the amount of the provision.

(3) An office copy of an order made under section 127 shall be sent to the probate registry for entry and filing, 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.

130. (1) On an application made at a date after the expiration of the period specified in subsection (1) of section 128, or, as the case may be, of that period as extended under subsection (2) of that section, the court may make such an order as is hereinafter mentioned, but only as respects property the income of which is at the date applicable for the maintenance of a dependant of the deceased, namely—

Variation

(a) an order for varying the previous order on the ground that a material fact was not disclosed to the court when the order was made, or that a substantial change has taken place in the circumstances of the dependant or of a person beneficially interested in the property under the will or, as the case may be, under the law relating to intestacy; or

(b) an order for making provision for the maintenance of another dependant of the deceased

(2) An application to the court for an order under paragraph (a) of subsection (1) of this section may be made—

(a) by or on behalf of a dependant of the deceased, or

(b) by the trustee of the property; or

(c) by or on behalf of a person beneficially interested therein under the will or, as the case may

be, under the law relating to intestacy.

Miscellaneous

131. Nothing in this Law shall derogate from the powers of the court which exist independently of this Law

General saving

132. (1) The provisions of this Law bind the State as respects the estates of persons dying after the commencement of this Law, but not so as to affect the time within which proceedings for the recovery of real or personal estate vesting in or devolving on the State may be commenced.

Application to the State

(2) Nothing in this Law effects or alters the descent or devolution of any property for the time being vested in the State.

133. (1) Rules of court may be made by the High Court Rules Committee for giving effect to the provisions of this Law.

Rules of court

(2) Rules of court made under the High Court Law with respect to the grant of probate or administration of estates shall until other rules are made pursuant to subsection (1) of this section and in so far as they are not inconsistent with this Law have effect as if they are made under this section and may be amended or revoked accordingly.

134. An administration which at the commencement of this Law is being carried out under other Law shall, notwithstanding the provisions of this Law, be continued in accordance with the provisions of that other Law.

PART IV—WILLS

135. (1) Except as is otherwise expressly provided, this Part shall not apply to any will made before the commencement of this Law

(2) This Part shall not apply to any disposition of property made in accordance with any customary law and intended to take effect at the death of the person making such disposition

136. In this Part—

"armed forces" means the Nigeria Army, Air Force and Navy;

"demonstrative legacy" means a gift of personalty which is made by will and is to be met out of a specified fund or property;

"disposable property " means property which a person shall be entitled to under any systems of law in force in the State for an interest not ceasing at his deaths and which, if not sold or otherwise disposed of in that person's lifetime or by his will, would devolve upon his heirs , executors or administrator;

“person” includes a man as well as a woman;

"personal estate" includes leasehold estates and other chattels real, moneys, shares, government bonds, securities for money (not being real estates), debts, chooses in action, rights, goods, credits and all other property whatsoever (not being real property) which by law devolves upon the heir, executor or administrator and any share or interest therein:

“property” includes real estate and personal estate;

“real estate” means buildings, messuages, lands, rents and hereditaments whether freehold, customary or of any other tenure, and whether corporeal or personal and any undivided share thereof and any estate, right of interest (other than a chattel interest) therein, but does not include any undivided share or interest in family or communal land

"State" means Enugu State of Nigeria;

"will" includes a testament, codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

137 (1) Subject to this Part, it shall be lawful for any person to devise, bequeath or otherwise dispose of any disposable property which he shall be entitled to at the time of his death, or any part thereof, by a will made in writing and executed in manner shall be valid and binding on the estate of the testator.

Who may
make a will

(2) A gift of any property made by a person in contemplation of his death shall be valid, and shall take effect on the occurrence of such death, if such gift—

(a) is made in the presence of not less than two credible witnesses of full age and understanding, one or more of whom shall be members of the family to which the donor belongs; and

(b) is accompanied, at the time it is made, by physical delivery of, or the means of taking possession of the subject-matter thereof to the donee, or the donee is put in possession where the subject-matter is immovable property:

Provided that if the death in contemplation whereof the gift is made shall fail to occur, the gift shall become void, and the property shall revert to the donor.

138.(1) The power of testamentary disposition given in this Part of this Law shall extend to—

(a) all contingent, executory or other future Interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested and whether he may be entitled thereto under the instrument by

All property
may be
disposed of by
will.

which the same respectively were created or under any disposition thereof by deed or will;

(b) all rights of entry for condition broken and other rights Of entry ;

(c) estate *pur autre vie* whether there shall or shall not be any special occupant thereof and whether the same shall be freehold or of any other tenure and whether the same shall be a corporeal or an incorporeal hereditament, and

(d) such of the same estates, interests and rights respectively and other real and personal estate as the testator may be entitled to at the time of his death, notwithstanding that he becomes entitled to the same subsequently to the execution of his will.

(2) Tenancy by special occupancy is hereby abolished in the State

139.(1) No will made by any person under the age of eighteen years, and no gift made in contemplation of death by any person under the age of eighteen years, shall be valid:

Provided that a person under the age of eighteen years, and no gift made in contemplation of death by any person under the age of eighteen years, shall be valid;

(2) No will made by any person who is insane shall be valid: Provided that —

(a) a will made by any person before he became insane shall not be revoked by the subsequent insanity of such person;

(b) a person who is insane may make a valid will during a lucid interval, that is to say, at a time when he is in possession of all his mental faculties

140. No will shall be valid unless it shall be executed in the manner hereinafter mentioned, that is to say —

(a) it shall be signed or thumb-impressed or otherwise marked at the foot or end thereof by the testator or by some other person in his presence and at his direction; and

(b) such signature, thumb-impression or mark, as the case may be, shall be made or acknowledged by the testator in the presence of two or more witnesses who shall actually be present at the same time and shall see the testator's signature, thumb-impression or mark at the time the same shall be affixed or acknowledged; and

(c) such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary

141.(1) Notwithstanding the provisions of section 140 every will shall, so far only as regards the position of the signature, thumb-impression or mark of the testator or of the person signing for him as herein provided. he deemed to be valid if the signature, thumb-impression or mark is so

Requirements
for executions
of wills

Position of
testator's
signature.

all property
may be
disposed of by
will.

placed at or after, or following, or under, or opposite to the end of the will that it shall be apparent on the face of the will that the testator intended to give effect by such his signature, thumb-impression or mark to the writing signed as his will

(2) The validity of such will shall not be affected by the circumstance- —

(a) that the signature shall not follow or be immediately after the foot or end of the will; or

(b) that a blank space shall intervene between the concluding word of the will and the signature; or

(c) that the signature shall be placed among the words of the *testimonium* clause or of the attestation, or shall follow or be after or under the clause of attestation either with or without a blank space intervening or shall follow or be after, or under, or beside the names or one of the names of the subscribing witness; or

(d) that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon clause or paragraph or disposing part of the will shall be written above the signature.

(3) The enumeration of the above circumstances shall not restrict the generality of subsection (1) hereof.

(4) No signature, thumb-impression or mark under this section or under any other provision of this Part shall be operative to give effect to any disposition or direction which is underneath or follows, it unless such disposition or direction was written prior in time to such signature, thumb-impression or mark and was intended by the testator to be governed by it.

{5) No signature, thumb-impression or mark under this section or under any other provision of this Part shall be operative to give effect to any disposition or direction inserted later in time than the signature, thumb-impression or mark.

(6) The provision of this section shall extend and apply to every will already made where administration or probate has not already been granted or ordered by a court of competent jurisdiction in consequence of the defective execution of such will or where the property has not been possessed or enjoyed by some person or persons claiming to be entitled thereto has not been decided to be in some other person or persons than the person claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of the will.

142. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner herein before required and every will executed in such manner shall, so far

as respects the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity

143. (1) Nothing in this Part contained as regards the requirement for writing, execution, attestation, attainment of the age of eighteen years or number of witnesses shall apply to a will made by any member of witnesses shall apply to a will made by any member of the armed forces on active military service or any seaman or mariner at sea.

(2) Any member of the armed forces on active military service and any seaman or mariner at sea, may, notwithstanding that he has not attained the age of twenty-one years, dispose of his real, personal or any other property in the manner hereinafter mentioned, that is to say

(a) By writing signed by him or by another person under his direction, whether the same be attested or not;

(b) by word of mouth spoken in the presence or to the hearing of at least one credible witness, whether or not such witness has attained the age of eighteen years

(3) It shall not be necessary for the validity of a will made under this Section that at the material time, the maker thereof shall know he is making a will, provided he intends deliberately to express his wishes as to the disposal of his property after death.

(4) A will validly made under this section shall remain valid until revoked notwithstanding that the testator has ceased to be on active military service or at sea as the case may be.

(5) A will made under this section shall, unless a contrary intention be expressed therein, revoke every previous will made by the testator.

(6) For the purposes of this section —

(a) person on “active military service” shall include persons who have been summoned to go into active military service, and persons being given training with intent that they shall immediately thereafter be employed on active military service;

(b) seamen or mariners “at sea” shall include seamen or mariners in the course of a voyage or about to set out on a voyage.

(7) This section, insofar as it relates to members of the armed forces, shall not apply to wills made before the commencement of this Law

144. Every will made in the manner hereinbefore required shall be valid without any other publication thereof will not void because witness to incompetent

Will not void
because
witness is
incompetent

145. A will shall not be invalid by reason only that any person who attests the execution thereof is at the time of such attestation, or shall thereafter become, incompetent or be admitted as a witness to prove such execution.

gifts to an
attesting
witness or
wife or
husband of
attesting
witness void

146. (1) If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment affecting any real or personal estate (other than and except chargers and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will or the wife or husband, be utterly null and void; but such person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity, or invalidity thereof notwithstanding such devise, legacy estate, interest, gift or appointment mentioned in such will.

(2) Section(1)shall not apply to a will made under section 143 of this Law.

(3) A gift made in a will shall not be void by reason only that the person to whom such gift was made shall subsequently attest a codicil confirming the will if he does not receive any gift under the codicil itself.

Creditor as
witness to will
charging
estate

147. In case by any will any real or personal estate, shall be charged with any debt or debts and any creditor or the wife or husband of any creditor, whose debt is so charge, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof; and attestation by such creditor or his spouse shall not of itself invalidate the charge made in his favour.

148. (1) No person shall on account of his being an executor of a will, be incompetent to be admitted as witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

149.(1) Every will made by a man or woman shall be revoked by his or her subsequent marriage:

Marriages
revokes will

Provided that —

(a) this subsection shall not apply to a will expressed to be made in contemplation of marriage and the subsequent marriage is the same marriage as was contemplate by the will;

(b) where the wife or husband of a testator elects to take under a will which would otherwise be revoked by this section, he or she shall do so by an instrument in writing signed by such wife or husband and filed in the High Court within one year after the death of the testator whereupon

such will shall be deemed not have been revoked by the marriage of the testator.

(2) Notwithstanding anything in this section contained, an appointment by will made by a testator exercising a power of appointment shall be revoked by the subsequent marriage of such testator only where the instrument creating the power of appointment provides that in default of appointment the fund or estate concerned shall devolve as on an intestacy a part of the testator's estate.

(3) Where a will made in exercise of a power of appointment is not revoked by marriage as regards such exercise of power of appointment, it shall nevertheless be revoked as regards of other dispositions therein

150. No will shall be revoked by any presumption of an intention of the ground of an alteration to circumstances

Will not
revoked by
presumption
from altered
circumstances

151. (I) No will or codicil or any part thereof shall be revoked otherwise than as provided by section 149 of this Law. or by another will or codicil executed in manner herein before required or by some writing declaring an intention to revoke the same, and executed in the manner by the burning, tearing or otherwise destroying of the same by the testator or by some person in his presence and by his direction with the intention of revoking the same:

Revocation of
will otherwise
than by
marriage

Provided that any will made under section 143 of this Law shall be deemed to have revoked every previous will made by the testator, notwithstanding that no intention so to revoke was expressed therein

(2) Where a person revokes a prior disposition, with intention to make or revive some other disposition, such revocation shall be void if for any reason whatsoever the making or revival of that other disposition shall fail to take effect, and in every such case the disposition which was purported to have been revoked shall remain as operative as if there were no revocation.

152.No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except insofar as the words or effect of the will before such an alteration shall not be apparent unless such alteration shall be executed in like manner as s hereinbefore required for the execution of the will;

Provided that —

(a) the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a

Alteration in
will after
execution void

memorandum referring to such alteration and written at the end or some other part of the will,
(b) every interlineation or other alteration which is not executed and attested as hereinbefore required shall be deemed to have been made after the will had been executed and attested.

153. (1) No will or codicil or any part thereof which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof or by a codicil executed in the manner hereinbefore required and showing an intention to revive the same.

(2) When any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall be deemed to relate to so much thereof as was last revoked and shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

154. No conveyance or other act made or done subsequently to the execution of a will of relating to any property therein comprised, except an act by which such will shall be revoked aforesaid, shall prevent the operation of the will with respect to such estate or interest in such property, if any, as the testator shall have power to dispose of by will at the time of his death.

155. Every will shall be construed, with reference to the real and personal estate comprised in it to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will:

Provided that, in respect of the subject-matter of a specific legacy, there shall be a presumption that the will speaks as at the date of its actual execution

156. (1) Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in a will which shall fail or be void by reason of the death of the devisee in the lifetime of the testator or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in the will

(2) Unless a contrary intention shall appear by the will, such personal estate or interest therein as shall be comprised or intended to be comprised in any legacy in a will which shall fail or be void by reason of the death of the legatee in the lifetime of the testator or by reason of such legacy being contrary to law or otherwise incapable of taking effect, shall be included in the residuary legacy (if any) contained in the will.

(3) The foregoing provisions of this section shall apply to property which is subject to a general power of appointment but shall not apply to property which is subject to a special power of

Revival of
revoked will

Effect of
conveyance or
other act after
execution of
will

Will to speak
from death of
testator

Void or lapsed
devisees to fall
into residuary
devise or
residuary

General
devise of land
to include
leasehold and
freehold

appointment.

157. A devise of the land of the testator, or of the land of the testator in any place in the occupation of any person mentioned in his will, or otherwise describe in a general manner, and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, or any of them, to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

158. (1) A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power unless a contrary shall appear by the will.

(2) A bequest of the personal estate of the testator, or a bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint to any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

159. (1) Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the freehold or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

(2) A devise of all the rents and profits or other income of real estate shall be construed to pass the freehold or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

160. In any devise of bequest of personal estate the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which may import either a want or failure of issue of any person in his life time or at the time of his death or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not any indefinite failure of his issue, unless a contrary intention shall appear by the will:

General gift to
include
property
under general
power of
appointment

Sence of
words of in
rise of real
perty

Meaning of
"die" without
issue etc

Provided that this provision shall not extend to estates where such words as aforesaid import if no issue described in a preceding gift shall be born or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue

161. Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the freehold or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or other lesser estate or interest shall thereby be given to him expressly or by implication.

Devise of real estate to trustee or executor

162. Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rent and profits thereof shall not be given to any person, or such beneficial interest shall be given to any person for life but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the freehold or the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devise of real estate to trustee where beneficial interest not disposed of.

163.(1) Subject to the provisions of subsection (2), where the devisee or legatee under a will dies before the testator, any gift made to him under such will shall lapse and cease to have effect.

Effect of death of devisee or legatee before testator.

(2) Where any person, being a child or other issue of the testator, or whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue and such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the testator, unless a contrary intention shall appear by the will.

(3) Subject to this section, testamentary gifts and dispositions shall fail by way of lapse or adaptations in the manner and circumstances and to the extent set out in the Fifth Schedule.

164. (I) Subject to the other provisions of this section, the formalities and manner of making, and the intrinsic validity and effect of a will, so far as the will relates to an estate or interest in land, shall be governed by the law in the place where the land is situated.

(2) Subject to the other provisions of this section, the formalities and manner of making, and the intrinsic validity and effect of a will, so far as the will relates to an interest in movables, shall be governed by the law of the place where the testator was domiciled at the time of his death.

(3) As regards the formalities and manner of making a will, whether made in or outside the State, the will shall be valid and admissible to probate if it is made —

(a) in accordance with the law under which it appears on the face thereof to have been made; or

(b) in accordance with the law in force at the time of its making, or of the testator's death, in the place where

(i) the will was made, or

(ii) the testator was domiciled when the will was made, or

(iii) the testator had his domicile of origin, or

(iv) the testator was a national, or

(v) the testator had his habitual residence.

(4) A change of domicile of the testator occurring after a will is made shall not render such will invalid by reason only that different formalities and manner of making a will, are required by the law of the new domicile, nor shall the construction of such will be altered on account of such change

(5) Nothing in this section shall preclude resort to the law under which the will was made, or appears to be made, for purposes of construction as regards interests in property created or disposed of thereunder.

(6) This section applies to wills made before or after the commencement of this Law

(7) A will executed on board a vessel or aircraft of any description shall be deemed to have been made at the place with which, have regard to its registration (if any) and other relevant circumstance, the vessel or aircraft may be taken to have been most closely connected.

Construction of will; Fourth Schedule.

165. Wills shall be construed in accordance with the rules set out in the Fourth Schedule.

166. Beneficiaries under a will shall be put to election in the manner and circumstances and to the extent set out in the Sixth Schedule

FIRST SCHEDULE

(Section 13)

FORM OF PETITION FOR GRANT OF LETTERS OF ADMINISTRATION

To the Chief Judge of Enugu State of Nigeria;

The petition of the Administrator-General humbly shows —

1. That your petitioner has been informed and believes that A.B. late of ----- (called the deceased) died on the ----- day of ----- 20----- (state why the property of the deceased is “unrepresented estate”)

2. And that the deceased died possessed of property in Enugu State of Nigeria

Your petitioner therefore prays your Honourable Court will be pleased to order that a Grant of Probate be made or Letters of Administration do issue (as the case may be) to him to administer the estate of the deceased

Dated this ----- day of ----- 20-----

Administrator-General

SECOND SCHEDULE

(Section (108(1))

RULES AS TO THE PAYMENT OF DEBTS WHERE THE ESTATE IS INSOLVENT

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

2. (1) Subject to the provisions of rule 1 there shall be paid in priority—

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

(b) the wages of salary of a clerk or service in respect of service rendered to the deceased during four months immediately before the date of his death, not exceeding one hundred naira.

(c) the wages of a labourer or workman not exceeding fifty naira, whether payable for time or piece work, in respect of services rendered to the deceased during two months immediately before the date of his death

(d) any amount due in respect of compensation under the woman’s Compensation Act Law, the liability whereof accrued before the date of the death of deceased.

(2) The debts payable in paragraph (a) to (d) of subrule (1) shall rank equally between themselves and shall be paid in full, but if the estate of the deceased is insufficient to meet them, they shall abate in equal proportions between themselves.

(3) Subject to the retention of such as may be necessary for the purposes of rule 1, the debts mentioned in discharged forthwith so far as the estate of the deceased is sufficient to meet them.

3. Subject to rules 1 and 2, all other debts of the deceased shall be paid *pari passu*.

THIRD SCHEDULE

[Section 108(3)]

ORDER OF AN APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT

1. Property of the deceased undisposed of by will subject to the retention out of it of a fund sufficient to meet pecuniary legacies.
2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of the property of a fund sufficient to meet pecuniary legacies, so far as not provided under rule I.
3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.
4. The fund, if any, retained to meet pecuniary legacies.
5. Property appointed by will under a general power, rateably according to value.
6. The foregoing order of application shall be subject to any contrary intention expressed in the will of the deceased

FOURTH SCHEDULE

(Section 165)

RULES OF CONSTRUCTION OF WILL

General

1. It is not necessary, in order to give effect to any disposition, that any technical words be used in a will, but only that the wording be such that the intention of the testator can be known therefrom.
2. The meaning of any clause in a will is to be ascertained from the entire instrument, and all the provisions of such will are to be construed with reference to each other; but where two clauses or provisions are irreconcilable, so that they cannot possibly stand together, the last shall prevail.
3. Merely negative words in a will shall not be sufficient to exclude a person entitled on intestacy, and in order to effect such an exclusion there must be an actual gift to some other definite object
4. Subject to rule 2, an express and positive gift cannot be controlled by reason assigned, or by

Wording of
will.

Meaning of
clause to be
collected

Negative
words
insufficient
to exclude

Express gift
cannot by
reason
assigned, etc

subsequent ambiguous words, or by inference and argument from other parts of the will, and is not affected by a subsequent inaccurate recital of, reference to, its contents;

5. Implication shall be admissible only in the absence of an express disposition and shall not be admissible to control an express disposition.

Implication
admissible

6. Words and limitations contained in a will may be transposed, supplied or rejected, where such a course is warranted by the immediate context or the general scheme of the will, but not merely on a conjectural hypothesis of the testator's intention; and obvious clerical errors may be corrected

Words may
be supplied
rejected, etc

7. Technical words shall be presumed to be employed in their technical sense, unless the context clearly indicates the contrary

Technical
words

8. Words in general shall be construed in their ordinary and grammatical sense unless clear intention to use them in another sense, can be collected from the will and that other sense can be ascertained

Words in
general

9 Words occurring more than once in a will shall be presumed to be used always in the same sense unless the context clearly indicates the contrary or unless the words are applied to different subjects.

Words
occurring
more than
once

10, Where a testator uses an additional word or phrase, an additional meaning is presumed unless the context clearly indicates the contrary

Additional
words

11 There a clause or disposition is capable of two meanings, according to one of which it has some effect, and according to the other of which it can have no effect, the former shall be preferred,

Words
construed so
as to make
them
operative

12. Where for any reason effect cannot be given completely to the testator's apparent intentions, effect shall nevertheless be given thereto so far as is possible

Intention to
be given
effect

13. The rules of construction shall not be strained in order to bring a gift within the rules of law, but where the will admits of two constructions, the construction which will render the gift valid shall be preferred.

Rules of
construction not
to be strained to
validate gift.

Provided that where a gift, valid in the first instance is modified by some subsequent clause in the same will or in a codicil thereto in such a manner as to render such preceding gift void for remoteness, such modifying clause, if separable from the original gift, shall be rejected as if such will or codicil had never contained the same

14. The inconvenience or absurdity of a gift or the fact that the testator did not before the

Inconvenience or
absurdity of
gift.

consequences of this disposition shall not be a ground for varying the construction of the will where the terms are unambiguous; but where the terms of any gift or disposition are ambiguous, the more rational of two constructions shall be preferred

15. The construction of a will shall not be varied by events subsequent to its execution, but in determining the meaning of particular expressions capable of arising subsequent to that date.

16. A testator shall be presumed to calculate against intestacy; and subject to the provisions of rule 13, a construction avoiding intestacy shall be preferred.

17. A testator shall be presumed to calculate on the disposition in his will taking effect; and a gift over shall not, in the absence of clear intention, be construed as providing exclusively for lapse or other initial failure of the original gift.

18. Unless a design to connect them appears from the will, independent gifts shall be construed separately and without relation to one another, notwithstanding that it may be conjectured from the circumstances that the testator had the same intention with regard to all such gifts.

19. The several particular rules of construction provided by the following rules of this Schedule shall apply if and so far only as a contrary intention is not expressed or implied in the will, and shall have effect subject to the terms of the will.

Descriptions

20. (1) Where the words used in a will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect; it shall be sufficient for this purpose if the legatee, or class of legatees, is so designated as to be distinguished from every other person or class.

(2) A mistake in the name of a legatee may be corrected by a description of such legatee and a mistake in the description of a legatee may be corrected by the name of such legatee.

(3) Where the words used in will to designate or describe a legatee are applicable to two or more persons or classes of persons, or partly to one and partly to another person or class, the legatee or class of legatees may be ascertained from the general context and the surrounding circumstances

21. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such part of the description shall be rejected as erroneous, and the gift shall take effect:

Provided that, if a will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there was any properly in respect of which all those

Rejection of erroneous particulars in description of subjects

Presumption regards gift over

Presumption regards gift over

Independent gifts

Particular rules of construction

Misnomer or misdescription of object

circumstances existed at the date of execution of the will, the gift shall be considered as limited to such property, and no part of the description shall be rejected as erroneous because the testator had at the date of his death other property to which such part of the description does not apply

22. A gift or disposition not expressive of any definite intention shall be void for uncertainty

Provided that —

(a) no gift for charitable purposes shall be void for uncertainty of the object; and

(b) no gift whereby the legatee is expressly or impliedly given a right of selection, purchase or disposition shall be void merely by reason of the uncertainty arising from such right.

23. Where property is bequeathed to any person, the gift shall be presumed to comprise the whole interest of the testator in such property, unless it appears from the will that only a restricted interest was intended for him.

24. the object of a gift which refers to a person or persons as existing shall be construed as at the date of the will unless a contrary intention clearly appears therein

Gift or
disposition
void for
uncertainty

Gift presumed
to comprise
whole interest
of testator

Residuary Request

25 A general residuary bequest shall comprise all disposable property of the testator as at the date of his death, whether or not acquired after the date of the will, of which he has not otherwise disposed; and shall include all disposable property of which he may have attempted but failed to dispose even though expressly excepted from the gift.

26. A limited residuary shall have the same effect as a general residuary bequest, subject only to any specific limitation therein expressed or implied.

27. A particular residuary bequest shall comprise all disposable property of the testator falling under the particular description as at the date of his death, of which he has not otherwise disposed; and shall include all such property of which he may have attempted but failed to dispose.

28. The failure of any gift of a share in a residuary bequest whether general limited or particular, shall not result in such share accruing to the other shares therein, but subject only to any subsequent residuary bequest, shall create an intestacy in respect of such share .

Property not in Possession

29. Notwithstanding the provisions of rules 8 to 14 of the Fourth Schedule regarding ademption of gifts, where a general legacy is in the form of a gift of a specified type of property which is not at the time of the testator's death included in his estate, the value of such gift shall, if it can be

Construction of
bequest which
refers to person
as existing

Effect of
general
residuary
bequest

Effect of
limited
residuary
bequest

Effect of part
bequest

Effect of
failure of
share
residue

General
legacy of
property not
in testator

Annuity
created by will
payable for life
only unless
contrary
intention
appears by will

ascertained, be met from the testator's general estate; but if the value thereof cannot be ascertained, the gift shall fail.

Annuities

30. Where an annuity is created by will, the legatee shall be entitled to receive it for his life only, unless a contrary intention appears by the will notwithstanding that the annuity is directed to be paid out of the income of a specified fund or specified property

Annuities for maintenance and education.

31. Where there is a gift of an annuity for the maintenance and education of the beneficiary, such annuity shall be deemed to be given for the life of the beneficiary.

32. Where a will directs that an annuity shall be provided for any person out of the proceeds of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, the legatee may either have an annuity purchased for him or receive forthwith the money appropriated or required for that purpose.

Where annuity to be provided out of property; or

33. (1) Where there is a direct gift of an annuity or where a will manifests intention that an annuity shall be charged on the capital of the testator's residuary estate, the annuity shall constitute a charge upon such capital.

Relations of annuity to residuary estate.

(2) In all other cases, in default of specific provision, the annuity shall be payable only out of the income of the residuary estate.

(3) In default of provisions to the contrary, an annuity payable only out of the income of the residuary estate, or of a specified fund or of specified property, shall constitute together with all arrears thereof a continuing charge on the whole of such income.

Commencement of annuity and time for payment when no time fixed by will

34. Where an annuity is given by will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of one year after that event:

Provided that, where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the quarter or month, as the case may be, immediately after the testator's death, and shall, if the personal representatives think fit, be paid when due, but the personal representative shall not be bound to pay it until the expiry of twelve months after the testator's death.

Date of successive payments directed to be made within given time or day certain

35. Where there is a direction that the first payment of an annuity shall be made within any specified period of time after the death of the testator, or on a day certain, the first payment to be made, and subsequent payment, shall be made accordingly.

Apportionment

36. If an annuitant dies in the interval between the times of payment of his annuity, an apportioned share of the annuity shall be paid to his personal representative

Gifts of income

Gift of income for indefinite period

37. Where the income of any fund, property or residuary estate is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the gift should be of limited duration, the principal, as well as the income, shall belong to the legatee

Effect of gift for special purpose

38. Where a gift is bequeathed solely for the benefit of legatee, then, notwithstanding that words are added to the gift expressing a purpose for which the gift is made, the legatee shall be entitled to claim the gift without applying it to that purpose, whether or not the purpose he expressed in obligatory terms.

Provided that

(a) where the gift is made subject to a gift over of any surplus remaining after the purpose has been fulfilled, the provisions of this rule shall apply only to so much of the gift as is necessary for such purpose;

(b) the provision in this rule shall not apply where the purpose specified is so expressed to create a condition or a discretionary trust with gift over, nor where the legatee is a minor

Effect of discretion

39. Where a gift sum of money is directed to be applied solely for the benefit of a person in a certain way, but the time within which the gift is to be expended in the discretion of the testator's personal representatives or the trustees, the beneficiary shall not, so long as the personal representative or the trustees properly exercise their discretion, demand payment of the money, but if he dies before the money is so applied his personal representatives shall be immediately entitled to the money

Conditional Gifts

40. No precise form of words shall be necessary to create a condition in a will and any expression losing such an intention of the testator shall have that effect

Express word unnecessary

41. A condition shall be void which__

(a) requires the performance of an illegal act, or is not legally enforceable;

(b) is contrary to law, morality or public policy;

(c) is uncertain or is too vague to be enforced;

(d) offends against any law, as to accumulations, remoteness or perpetuities

(e) is impossible *ab initio* or becomes impossible by the act or default of the testator or by an act

of any court

(f) is repugnant to the gift which it is annexed:

(g) is in total restraint of the marriage of any person other than a widow.

(h) is attached to a gift of capital to a widow, in total restraint of her marriage without providing for any gift over on default

(i) forbids dispute of the will, without providing for any gift over on default; or

(j) restrains alienation, voluntary or involuntary, of the subject of the gift;

Provided that nothing in paragraph (j) shall affect or render void any discretionary trust with gift over, or any life estate made determinable on bankruptcy

Condition
either
precedent of
subsequent

42. (1) A condition shall be either precedent, in that the performance thereof is made to precede the vesting of a gift in interest, or subsequent, in that the non performance thereof is made determine a gift antecedently vested in interest.

(2) In case of doubt, construction of a condition as a condition subsequent shall be preferred to construction as a condition precedent.

Effect of
void
condition

43. (1) Where a gift is made upon a condition subsequent which is void, the gift shall be absolute.

(2) Where a gift is made upon a condition precedent which is void, the gift shall be void if ____

(a) the void condition is the sole notice of the bequest; or

(b) the impossible nature of the condition was unknown to the testator, or

(c) the condition is illegal as involving the performance of an unlawful act; but in all other cases, such gift shall be absolute.

Effect of
impossibility

44. (1) Where a gift is made upon a condition subsequent which was valid *ab initio*, but which has, for any reason, become impossible before being performed, the gift shall be absolute.

(2) Where a gift is made upon a condition subsequent which was valid *ab initio*, but which has, for any reason, other than the act or default of the testator or an act of any court, become impossible before being performed, the gift shall be void.

Legatee
bound by
legal
conditions
One or two
separate
independent
bequests to
same person
may be accepted
and the other
refused

45. Where a legatee has taken a gift subject to a valid condition, he shall be estoppel by his act of taking the gift from subsequently insisting on rights which, by the terms of the condition, he is bound to release, or from declining a duty which he is required by the condition to perform.

46. Where a will contains two separate and independent gifts to the same person, the legatee may

take one of them, and may refuse the other, although either of both of such gifts was made upon condition

47. Where a gift is made upon a condition and no time is specified for its performance, the legatee shall perform the condition within a reasonable time.

Provided that —

(a) where the condition is for the benefit of another person, then, in the absence of any specified time in which the condition is to be performed.

The legatee shall perform the condition upon demand being made by such other person:

(b) where the condition is the happening of a specified uncertain event beyond the control of the legatee, the gift shall take effect if the event happens before the gift is payable or distributable but not thereafter.

48. The performance of a condition shall be such as to constitute a substantial compliance with the terms of the condition:

performance generally

Provided that, in respect of time, there shall be strict compliance where there is any express gift over.

49. When a gift is made upon a valid condition, ignorance of that condition shall not protect the legatee from the consequence of his default, unless such ignorance is attributable to act of default, of some person who benefits by breach of that condition,

Gift to Executor

50. If a gift is bequeathed to a person who is named as executor of the will for his own benefit, and is not given independently of the office of executor, there shall be a presumption that he is not intended to take the gift unless he proves the will, or otherwise unequivocally manifests an intention to act as executor

Legatee named as executor cannot take unless he shows intention

vesting and Divesting of Gifts

51.(1) A gift shall vest in the legatee in interest when his entitlement to such gift, whether in possession or reversion, or to be enjoyed in possession at some future time, becomes certain

(2) Where the legatee dies before receiving possession of a gift already vested in him in interest, such gift, unless divested by his death, shall pass to his personal representatives.

(3) Where the legatee dies before a gift vests in him in interest, such gift shall have no effect.

Provided that a gift over which is contingent only upon a collateral event, irrespective of the legatee attaining a specified age or surviving a specified period, shall vest in the personal

Time in which condition must be performed

Ignorance of condition

representatives of the legatee if the event happens after death

Direction
for vesting.

52. A direction that a gift shall best at a given time shall, unless it appears from the will to refer to vesting in possession, be construed as referring to vesting in interest.

Time of
nesting of gift
in general
terms

53 If a gift be made in general terms, without specifying any particular time for the vesting thereof, the legatee shall have a vested interest therein from the day of the death of the testator, or so soon thereafter as he comes into existence or the terms of the gift may otherwise permit

Veiling of
contingent
gifts.

54. If a gift be made in terms which clearly indicate that the interest of the legatee shall be contingent upon the happening of some uncertain event (other than the gift), such interest shall not vest in the legatee until such event has happened.

Gifts may
vest
subject to
subsequent
divesting

55. A gift may be made to vest immediately on the testator's death or on the happening of a specified event, notwithstanding that, by the terms of the will, it is subject to subsequent divesting on the happening or not happening of some uncertain event

Absolute
gift with
enjoyment
postponed

56. Where a substantive gift is made subject only to a direction that it shall not be paid or delivered to the legatee until the happening of some future event, the legatee shall acquire an immediate vested interest, although vesting in possession shall be postponed in accordance with the direction:

Provided that a mere direction that the legatee attains an age exceeding full age shall be inoperative after he attains full age.

57. Where the gift consists solely in a direction to pay or distribute at a future age, or upon the happening of some future event (other than performance of a void condition not itself avoiding the gift) without any substantive gift, the gift shall not vest in interest until such future age is attained or such future event occurs:

Direction for
payment
without
substantive gift

Provided that when the payment or distribution appears to be postponed merely for the convenience of the fund or the property, as the case may be, the vesting shall not be deferred as provided in this rule

Gift
subjected
to attaining
certain age
marrying

58. Where a gift is made to a legatee and the attainment of a certain age or marriage is introduced into and made a constituent part of the description or character of the legatee, the vesting of the gift in interest shall be postponed until the attainment of that age or marriage, as the case may be.

Effect of
interim
direction for
maintenance

59. Where Under the terms of any gift the vesting thereof purports to be postponed to a given age and the gift is accompanied by a direction that the intermediate income shall be applied for the maintenance of the legatee, the gift shall vest in interest immediately, whether or not he attains

that age-

Provided that this rule shall not apply to the gift of an entire fund to be distributed among a class of persons equally on attaining a given age.

60. Where the terms of a will are ambiguous in respect of the vesting, contingency or divesting of a gift, it shall, subject to all other rules of construction, be so construed as to give the legatee a vested rather than a contingent interest.

Satisfaction

61. Where a debtor bequeaths a gift to his creditor, and the gift is equal to or greater than the debt, there shall be presumption that the gift is intended to satisfy the debt, and not to be taken in addition to payment of the debt.

Provided that this presumption shall arise only in respect of a debt:

62. Where a person who is under an obligation by contract to provide a portion for his child, or for some other person to whom he stands in loco parentis, fails to do so, but makes a gift to such or other person by will, there shall be presumption that such gift is intended to satisfy such portion, so far as such gift extends.

63. A gift made by will shall not of itself raise any presumption that such gift is intended to satisfy or to take the place of a gift, whether or not of equal amount, previously made to the same person by the testator in contemplation of death.

Additional and Substitute Gifts

64. Where a testator has purported to make two gifts to the same person, and a question arises whether he intended to make the second gift instead of or in addition to the first, and if there is nothing in the will or wills to show what is intended, the following rule shall have effect in determining the construction to be put upon the will or wills—

(a) if the same specific thing is bequeathed twice to the same legatee by the same will, or by separate wills, he shall be entitled to receive that specific thing only;

(b) where one and the same will purports to make in two places, a gift to the same person of same quantity or amount of anything, he shall be entitled to one such gift only;

(c) where two gifts of unequal amount are given to the same person by the same will, the legatee shall be entitled to both gifts;

(d) where two gifts, whether equal or unequal in amount, are given to the same legatee by

separate wills, the legatee shall be entitled to both gifts.

Liabilities Incidental to Gift

65.(1) Where the disposable property of any deceased person includes any interest in property which at the time of his death is charged with the payment of money, whether by way of mortgage, charge, (including a lien for unpaid purchase money), Pledge or otherwise, 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 such payment and every part of the said interest, according to its values, shall bear a proportionate part of such payment.

(2) Any contrary or other intention shall not be deemed to be signified by a general direction for payment of debts out of a residuary estate, or by a charge of debts upon any residuary estate unless such intention is further signified by words expressly or by implication referring to the payment so charged.

(3) A periodical payment in the nature of land revenue or in the nature of rent in respect of any period prior to the death of the testator shall not be such a payment as is contemplated by this rule.

66. Where anything is to be done to complete the testator's title to the thing bequeathed, other than a payment with which that thing is charged at the date of his death, it shall be done at the cost of his estate.

67. Where there is a gift of any interest in immovable properly, in respect of which payment in the nature of land revenue or in the nature of rent has to be made such estate and the legatee may make good such pay meals or a proportion of them, as the case may be, up to the day of his death.

68. In the absence of any direction in the will, any call or other payment due from the testator at the time of his death in respect of any securities of which there is a specific legacy, if the same is not then charged upon those securities by way of lien or otherwise, shall, as between the testator's estate and the legatee, be borne by such estate; but if any call or the payment becomes due in respect of such securities after the testator's death, the same shall, as between the testator's estate and the legatee, be burnt by the legatee, if he accepts the gift.

69. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee thereof, and

Completion
for the title to
thing
bequeathed

Exoneration
legatee's
immovable
property for
each land
revenue or
rent payable
periodically

Payment out
of specific
legatee's
securities

Liability for
charges

Order of
payment when
legacy direct to
be paid out of
fund the
subject of
specific legacy

the demonstrative legacy shall be paid out of the residue of the fund, and. of the general assets of the testator, in exoneration of the specific legacy,

70. The costs of preservation, transfer or delivery of the subject of a specific legacy shall be borne by to the legatee.

Gifts to Survivors

71.(1) Where a gift is in effect made to such of certain persons as shall be surviving at some period, but the exact period is not specified, it shall go to such of them as shall be alive at the time of payment or distribution and capable of taking.

(2) The provisions of this rule shall apply whether the gift is to vest in possession immediately on the death of the testator, or at some time subsequent thereto upon the termination of a prior interest.

Provided that, where the time of payment or distribution depends upon the happening of two events, one of which is personal, and the other of which is not personal, to the legatee, the gift shall, subject to all other rules of construction, be construed as referring to the happening of the former event exclusively.

Exercise of Power

72. Unless a contrary intention is clearly expressed or implied in the will—

(a) a general legacy or limited residuary bequest shall be construed to include any property failing within the general description of such legacy or bequest over which the testator may have a general power of appointment by will and shall operate as an exercise of such power as regards such property: and

(b) a general residuary bequest shall be construed to include any property over which the testator may have a general power of appointment by will and shall operate as an exercise of such power; Provided that, unless an intention in that behalf is clearly expressed or implied in the will, no such gift shall in either event be construed as an exercise of any power of revocation and new appointment

73. No general legacy or general residuary bequests shall be construed as an exercise of any special power of appointment, unless an intention in that behalf is clearly expressed or implied in the will

74. No particular residuary bequest shall be construed as an exercise of any general or special power of appointment, unless an intention in that behalf is clearly expressed or implied in the

Particular
residuary
bequests

implied gift
objects of
special
power m
default of

will.

75. Where by a will any special power of appointment is given over property, but no provision is made in the event of default of any such appointment such property in default of any such appointment or so far as the same may not extend, belong to all the objects of such power in equal shares, subject to all appointments made thereunder being brought into account.

FIFTH SCHEDULE

[Section 163]

FAILURE OF TESTAMENTARY DISPOSITIONS

By Lapse

1. (I) Save as is provided in the Schedule, no gift or disposition shall confer any benefit on any person who predeceases the testator; and where a gift or disposition fails on this account it is said to "lapse"

Principle of
lapse.

(2) Subject to the provisions of this law, the burden of proving that a legatee or appointee under a will has survived the testator shall be upon the person alleging such survivorship.

(3) A statement in a will that there shall be no lapse shall have no effect, except and so far as a further legatee or appointee, capable of taking, is designated.

2. (I) Unless a contrary intention appears in the will, there shall be no lapse in either of the following cases -

(a) where the gift or disposition is made in discharge of a moral obligation recognized by the testator, or

(b) where the gift or disposition is in favour of any child or other issue of the testator, for any estate or interest not determinable at or before the death of such child or other issue, and such child or other issue, as the case may be, leaves issue surviving the testator; but in either such case the gift or disposition shall take effect as if the deceased legatee had died immediately after the testator.

(2) Where a gift or disposition is in favour of a described class of persons, notwithstanding that one or more of the class is named, and any member of that class survives to take a vested interest there shall be no lapse, but the survivor or survivors shall take the whole.

Provided that, if property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but the vesting of their interest is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at

Exemption

that time go to such of them capable of taking as are then alive and to the personal representatives of any of them otherwise capable of taking who have died since the death of the testator.

3. Where there is a gift or disposition to several named persons who do not constitute a class for the purpose of the will, and one or more of such persons predecease the testator, then—

(a) if an intention appears from the will that such persons should take as joint tenants, or that only the survivors of them should take, there shall be no lapse, if any of them survives the testator and is capable of taking the whole: but

(b) if an intention appears from the will that such persons should take as tenants in common, and no intention appears therefrom that only the survivors of them should take, there shall be a lapse in respect of the share or shares of any of such persons predeceasing the testator, subject only to rule 2.

4. Where one gift is charged on the subject of another gift—

(a) if the encumbered gift lapses, the charge shall continue to have effect notwithstanding such lapse.

(b) if the encumbering gift lapses, the legatee of the encumbered gift shall take the whole subject thereof free of the charge, unless a contrary intention is expressed or implied in the will.

5. The lapse of limited interest shall accelerate the interest in the remainder expectant on the determination of such limited interest.

6. Where a gift or disposition is made to one person with a gift over to another person in such circumstances that the gift over would fail if the original legatee survived the testator, the lapse of the original gift or disposition shall result in the gift over taking effect.

7. Subject only to the foregoing provision of this Schedule, if a gift or disposition lapses, the property or interest in the subject thereof shall pass under any residuary bequest which, but for such gift or disposition, would have applied to such property or interest:

Provided that, if there is not such residuary bequest, or if the lapsed gift or disposition is itself a share of such residuary bequest and there is not ulterior residuary bequest under which it can pass, then there shall be intestacy in respect of such property or interest.

By Ademption

8. If property which has been specially bequeathed does not belong to the testator at the time of

Charges of gifts on gifts.

Lapse of limited interest

Effect on gifts over

General effect of lapse

Gifts to Several named person

Principal of ademption

his death, or has been converted into property of a different kind, the gift cannot take effect because the subject thereof has been withdrawn from the operation of the will; and where a gift fails on this account, it is said to be "adeemed".

Change of subject
without testator's
consent

9. Where property specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change is caused by a wrongful conversion, the gift shall not be adeemed; but where the change is caused by the authority of any written law, whether or not approved by the testator, there shall be ademption unless the written law effecting such conversation provides otherwise:

Gift of interest in
fund

10. The gift of an interest in a fund shall not be adeemed by any sale or change of investment of such fund by the persons having control thereof, nor shall it be adeemed by the testator receiving the same before his death, whether or not thereafter sold or reinvested by him, if it can at his death be followed and distinguished.

Non-ademption
of Demonstrative
legacy

11. A demonstrative legacy shall not be adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind but it shall, in such case, be paid out of the general estate of the testator.

Revival of will
does not revive
adeemed legacy

12. The revival of a will shall not revive an adeemed gift, so as to give the legatee any interest in any property then representing the original subject of the adeemed gift.

No presumption
intention

13. Apart from any intention which may be expressed or implied in the terms of the will itself, there shall be no presumption of intention that ademption shall or shall in any particular circumstances result:

Provided that the intention of the testator, to be ascertained according to the ordinary rules of construction, shall always be relevant to determine the precise subject of the gift.

Ademption
subsequent
provision

14. Where a testator makes a gift by will to any person whom he stands in *loco parentis* by way of portion, and after the date of execution of that will provides by deed of settlement or otherwise for the same purpose or by way of portion for the same child or other person, there shall be a presumption that such gift is adeemed by the subsequent provision, so far as such subsequent provisions extend.

SIXTH SCHEDULE

[Section 166]

Election

ELECTION OF THE
beneficiary of
bequeaths

1. Where a testator purports to dispose of any property which is not his own, and bequeaths a gift to the person to whom that property belongs, that person accepting a gift so bequeathed to him may elect to give effect to the testator's attempted disposition or to enforce his proprietary rights against that disposition. If he elects to enforce his proprietary rights he shall make compensation out of the gift made to him, to the person whom he has thereby disappointed; and the amount of such compensation shall be assessed on the value of the attempted disposition as at the date of the testator's death, but shall not exceed the value of the gift made to the person electing to enforce his proprietary' rights.

Where property
belongs to more
than one person

2. Where a testator purports to dispose of property which belongs to more than one person, every such person, if also a beneficiary under the will of that testator, shall have the right of election provided by rule 1, to the extent of his interest in such property

Testator's
ignorance
immaterial

3. it shall be immaterial to any case of election whether the testator, in purporting to dispose of property which is not his own, was aware of his lack of title, or proceeded on the erroneous supposition that he was exercising a power of disposition which belongs to him.

Legatee's
ignorance
material

14. A person shall not be bound to elect, until all circumstances which may influence his election are known to him and, if a person elects in ignorance of any material facts, he shall not be bound by such election.

implied election

5. Where there is no express election, it may be implied or inferred from acts, or from failure to dissent, but such an inference shall not arise unless the legatee actually knows of his right to elect

Postponement in
case of disability

6. In case of any disability of a legatee entitled to elect, the election shall be postponed until the disability ceases, or until the election shall be made by some authority or representative.

Extrinsic evidence
inadmissible to
prove intention

7. In order to raise a case of election, the intention of the testator to dispose of the property not belonging to him must be apparent on the face of the will, and extrinsic evidence shall not be admissible.

Cases to which
doctrine does not
apply

8. The principle of election set out in this Schedule shall not apply__

(a) to creditors;

(b) to legatees who hold the property of which the testator has attempted to dispose in some capacity other than that in which the gift is made to them;

(c) where the property of which the testator has attempted to dispose does not belong either to

the testator or to the legatee; nor to any case where the legatee cannot by his own lawful give effect to that disposition;

(d) where the legatee, although subsequently becoming the owner the property of which the testator has attempted to dispose, is not the owner of such property as at the date of the testator's death; or

(e) to persons who, although taking no direct gift under the will, derive an indirect benefit therefrom.

9. The principles of election set out in this Schedule shall apply to cases of invalid appointments under powers but not where —

(a) the testator clearly shows he is aware that the appointment is of doubtful validity;

(b) the appointment is made to objects of the power absolutely with merely a condition or provision in favour of strangers to the power or

(c) the appointment is void for remoteness

SUBSIDIARY LEGISLATION

ADMINISTRATOR-GENERAL (FEES) RULES

(under section 60)

1. These rules may be cited as the Administrator-General (Fees) Rules.

2.(I) Subject to sub-rule (2) where assets are administrated under section 16 of the Law, the Administrator-General shall charge fees at the rates set out in the Schedule upon the amount or value of the assets collected.

(2) In any case where the administration of the estate of a deceased person is completed by the Administrator-General, allowances shall be made in respect of those fees when computing the amount to be paid under section 40 or section 58 of the Law

3.The percentages of the gross amount of money arising out of the realization of estates administrated by the Administrator-General to be paid into the Consolidated Revenue Fund under paragraph (b) of subsection (2) of section 40 of the Law shall be those set out in the Schedule.

4.The substituted fee payable under paragraph (b) of subsection (I) of section 58 of the Law on the remission of all fees and costs usually payable upon an administration by the Administrator-General of an estate not exceeding six hundred naira in value shall be a fee equivalent to one eighth of the gross value of the estate

Application to
appointments
underpowers

Short title

Fees under section
16

Fees under section
40(2) (b)

Fees under section
58

SCHEDULE

Amount or value of assets collected (if under section 16) or gross amount realized (if under section 40 (2) (b))	Percentage of fee to be charged thereon
not exceeding N300-----	Nil
exceeding N300 but not exceeding N 1.000-----	5 percent
exceeding N 1.000 but not exceeding N 2,000-----	7 percent
exceeding N 2,000 but not exceeding N 3,000-----	8 percent
subject to section 58 of the Law	9 percent