



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**LAW OF SUCCESSION ACT**

CHAPTER 160

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**CHAPTER 160**  
**LAW OF SUCCESSION ACT**

[Date of assent: 13th November, 1972.]

[Date of commencement: 1st July, 1981.]

**An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto**

[Act No. 14 of 1972, Act No. 7 of 1975, Act No. 8 of 1976, L.N. 256/1976, Act No. 16 of 1977, Act No. 13 of 1978, Act No. 10 of 1981, L.N. 93/1981, Act No. 6 of 1984; Act No. 19 of 1984, Act No. 18 of 1986, Act 21 of 1990, Act No. 26 of 2015]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Law of Succession Act.

**2. Application of Act**

(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.

(3) Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the intent that *in lieu* of such provisions the devolution of the estate of any such person shall be governed by Muslim law.

(4) Notwithstanding the provisions of subsection (3), the provisions of Part VII relating to the administration of estates shall where they are not inconsistent with those of Muslim law apply in case of every Muslim dying before, on or after the 1st January, 1991.

[Act No. 16 of 1977, Sch., Act No. 13 of 1978, Sch., Act No. 21 of 1990, Sch.]

**3. Interpretation**

(1) In this Act, except where the context otherwise requires—

**"active service"** means service with the armed forces or merchant marine on a field of military operations or at sea, or proceeding to or from or such field or sea, or under orders to proceed to such field or sea, or in being in some place for the purpose of proceeding to such field or sea;

**"administrator"** means a person to whom a grant of letters of administration has been made under this Act;

**"agricultural land"** means land used for agricultural purposes which is not within a municipality or a township or a market but does not include land registered under the provisions of any written law;

**"authorized investment"**, with reference to the investment of any fund, means an investment of such type as is authorized for investment of that fund by any will applying thereto, or as is for the time being authorized by any written law for the investment of trust funds;

**"charitable purpose"** includes the relief of poverty, the advancement of education, the advancement of religion, and any other purpose of a public nature and capable of administration by a court of law which benefits the community at large or the inhabitants or a particular class of inhabitants of a particular locality;

**"codicil"** means a testamentary instrument made in relation to a will, explaining, altering or adding to its dispositions or appointments, and duly made and executed as required by the provisions of this Act for the making and execution of a will;

**"competent witness"** means a person of sound mind and full age;

**"court"** means a court having jurisdiction under this Act in the matter in question;

**"demonstrative legacy"** means a testamentary gift which is in its nature general but which manifests an intention that the gift shall be primarily satisfied out of a specified fund or a specified part of the property of the testator, but shall, upon failure of that fund or property, be met from the general estate;

**"estate"** means the free property of a deceased person;

**"executor"** means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided;

**"free property"**, in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death;

**"full age"** means having attained the age of eighteen years;

**"general legacy"** means a testamentary gift, whether specific or general, of property described in general terms to be provided out of the general estate of the testator, whether or not also charged on any specific part of his estate;

**"general power of appointment"** means an unfettered power of appointment to such object or objects as the appointer may think fit;

**"general residuary bequest"** means a testamentary gift of all the property of the testator not otherwise disposed of;

**"house"** means a family unit comprising a wife, whether alive or dead at the date of the death of the husband, and the children of that wife;

**"income"** includes rents and profits;



**"independent witness"** means a witness who is not a beneficiary under a will or the spouse of any such beneficiary;

**"limited residuary bequest"** means a testamentary gift which, but for some specific limitation therein expressed or implied, would constitute a general residuary bequest;

**"minor"** means any person who is not of full age;

**"Muslim"** means any person who professes the religion of Islam and accept the unity of God and Mohammed as his prophet;

**"Muslim law"** means the law applicable to a person who is a Muslim at the time of his death;

**"net estate"** means the estate of a deceased person after payment of reasonable funeral expenses, debts and liabilities, expenses of obtaining probate or letters of administration, other reasonable expenses of administration and estate duty, if any;

**"net intestate estate"** means the estate of a deceased person in respect of which he has died intestate after payment of the expenses, debts, liabilities and estate duty set out under the definition of "net estate", so far as the expenses, debts, liabilities and estate duty are chargeable against that estate;

**"particular residual bequest"** means a testamentary gift of all of a particular property not otherwise disposed of;

**"pecuniary legacy"** includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the specified fund or property, and any other general direction by the testator for the payment of money, including all death duties free from which any gift is made to take effect;

**"personal and household effects"** means clothing and articles of personal use and adornment, furniture, appliances, pictures, ornaments, food, drink, utensils and all other articles of household use or decoration normally to be associated with a matrimonial home, but does not include any motor vehicle or any other thing connected with the business or profession of the deceased;

**"personal representative"** means the executor or administrator, as the case may be, of a deceased person;

**"portion"** means provision by a parent or person *in loco parentis* to establish a child in life;

**"power of appointment"** means power vested in some person to determine the disposition of property of which that person is not the owner;

**"probate"** means the certificate of a court of competent jurisdiction, that a will, of which a certified copy is attached in the case of a written will, has been proved a valid will, with a grant of representation to the executor in respect of the estate;

**"purchaser"** means a purchaser for money or money's worth;

**"representation"** means the probate of a will or the grant of letters of administration;

**"special legacy"** means a testamentary gift of a particular part of the property of the testator, which identifies that part by a sufficient description, whether in specific or in general terms, and manifests an intention that that part shall be enjoyed or taken in the state and condition indicated by that description;

**"special power of appointment"** means power of appointment to such object or objects within a special description or class as the appointer may think fit;

**"trust corporation"** means an incorporated banking or insurance or guarantee or trust company having a subscribed capital of not less than five hundred thousand shillings, or any body corporate which has a subscribed capital of not less than five hundred thousand shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers), to undertake trusts, but for so long a time only as that body corporate shall not, by any prospectus, circular, advertisement or other document issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of that body corporate when acting as an executor or administrator:

Provided that a body corporate which would be a trust corporation but for the fact that its subscribed capital is less than five hundred thousand shillings may act as executor or administrator in any case with the leave of the court on giving such security as the court may determine, and thereupon for the purpose of so acting as executor or administrator that corporation shall have all the rights and privileges conferred on a trust corporation by this Act;

**"wife"** includes a wife who is separated from her husband and the terms "husband" and "spouse", "widow" and "widower" shall have a corresponding meaning;

**"will"** means the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to the provisions of Part II, and includes a codicil.

(2) References in this Act to **"child"** or **"children"** shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.

(3) A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.

(4) Where the date of birth of any person is unknown or cannot be ascertained, that person shall be treated as being of full age for the purposes of this Act if he has apparently attained the age of eighteen years, and shall not otherwise be so treated.

(5) Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act.

[Act No. 8 of 1976, s. 2, Act No. 10 of 1981, Sch., Act No. 21 of 1990, Sch.]

#### **4. Law applicable to succession**

(1) Except as otherwise expressly provided in this Act or by any other written law—

- (a) succession to immovable property in Kenya of a deceased person shall be regulated by the law of Kenya, whatever the domicile of that person at the time of his death;
- (b) succession to the movable property of a deceased person shall be regulated by the law of the country of the domicile of that person at the time of his death.

(2) A person who immediately before his death was ordinarily resident in Kenya shall, in the absence of proof of domicile elsewhere, be presumed to have been domiciled in Kenya at the date of death.

### PART II – WILLS

#### *Capacity*

#### **5. Persons capable of making wills and freedom of testation**

(1) Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses.

(2) A female person, whether married or unmarried, has the same capacity to make a will as does a male person.

(3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.

(4) The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.

[Act No. 8 of 1976, s. 3.]

#### **6. Appointment by will or executor**

A person may, by will, appoint an executor or executors.

#### **7. Wills caused by fraud, coercion, importunity or mistake**

A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake, is void.

*Formalities***8. Form of wills**

A will may be made either orally or in writing.

**9. Oral wills**

(1) No oral will shall be valid unless—

- (a) it is made before two or more competent witnesses; and
- (b) the testator dies within a period of three months from the date of making the will:

Provided that an oral will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.

(2) No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by sections 18 and 19.

**10. Proof of oral wills**

If there is any conflict in evidence of witnesses as to what was said by the deceased in making an oral will, the oral will shall not be valid except so far as its contents are proved by a competent independent witness.

[Act No. 13 of 1978, Sch.]

**11. Written wills**

No written will shall be valid unless—

- (a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
- (b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
- (c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

**12. Incorporation of papers by reference**

If a testator, in a will or codicil, refers to another document then actually written, and expressing any part of his intentions, that document, where it is clearly identified as the document to which the will refers, shall be considered as forming part of the will or codicil in which it is referred to.

**13. Effect of gift to attesting witness**

(1) A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment to any person attesting it, or to his or her spouse.

(2) A bequest to an attesting witness (including any direction as to payment of costs or charges) or a bequest to his or her spouse shall be void, unless the will is also attested by at least two additional competent and independent witnesses, in which case the bequest shall be valid.

[Act No. 8 of 1976, s. 4.]

**14. Witness not disqualified by being executor**

No person, by reason of his being an executor of a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

**15. Existing wills**

Notwithstanding the provisions of this Part, any written will executed before the commencement of this Act shall, whether the testator dies before or after the commencement of this Act, be treated as properly executed if it was executed according to the requirements of the law in force at the date of execution.

**16. Formal validity of other wills**

Notwithstanding the provisions of this Part, every will, whether of movable or immovable property, and whether executed before or after the commencement of this Act, shall be treated as properly executed if its execution conformed, either at the time of execution or at the time of the testator's death, to the law in force—

- (a) in the state where it was executed; or
- (b) in the state where the property is situated; or
- (c) in the state where, at the time of its execution or the testator's death, he was domiciled; or
- (d) in a state of which the testator was a national either at the time of its execution or on his death.

*Revocation, Alteration and Revival***17. Will may be revoked or altered**

A will may be revoked or altered by the maker of it at any time when he is competent to dispose of his free property by will.

**18. Revocation of will**

(1) Save as provided by section 19, no will or codicil, or any part thereof, shall be revoked otherwise than by another will or codicil declaring an intention to revoke it, or by the burning, tearing or otherwise destroying of the will with the intention of revoking it by the testator, or by some other person at his direction.

(2) A written will shall not be revoked by an oral will.

**19. Revocation of will by testator's marriage**

A will shall be revoked by the marriage of the maker; but where a will expressed to be made in contemplation of marriage with a specified person, it shall not be revoked by the marriage so contemplated.

**20. Effect of obliteration, interlineation or alteration in will**

(1) No obliteration, interlineation or other alteration made in a written will after the execution thereof shall have any effect unless the alteration is signed and attested as a written will is required to be under section 11:

Provided that a will as so altered shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to the alteration, or is referred to in a memorandum written at the end or some other part of the will and so signed and attested.

(2) Where a typewritten or printed will purports to have been executed by the filling in of any blank spaces, there shall be a presumption that the will has been duly executed.

**21. Revival of will**

(1) No will which has been in any manner wholly revoked shall be revived otherwise than by the re-execution thereof.

(2) Where only part of a will has been revoked that part shall not be revived otherwise than by the re-execution thereof or by a subsequent will or codicil showing an intention to revive it.

*Construction***22. Construction of wills**

Wills shall be construed in accordance with the provisions of the First Schedule to this Act.

*Failure of Dispositions***23. Failure of testamentary dispositions**

Testamentary gifts and dispositions shall fail by way of lapse or ademption in the circumstances and manner and to the extent provided by the Second Schedule.

*Election***24. Election**

Beneficiaries under testamentary gifts or dispositions shall be put to election in the circumstances and manner and to the extent provided by the Third Schedule.

*Perpetuities, Remoteness and Accumulations***25. Repealed by Act No. 6 of 1984, Sch.**

## PART III – PROVISIONS FOR DEPENDANTS

**26. Provisions for dependants not adequately provided for by will or on intestacy**

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.

[Act No. 8 of 1976, s. 5.]

**27. Discretion of court in making order**

In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.

**28. Circumstances to be taken into account by court in making order**

In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the defendant;
- (c) the existing and future means and needs of the dependant;
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- (e) the conduct of the dependant in relation to the deceased;
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

[L.N. 256/1976.]

**29. Meaning of dependant**

For the purposes of this Part, "**dependant**" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

### 30. Limitation of time

No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.

## PART IV – GIFTS IN CONTEMPLATION OF DEATH

### 31. Characteristics

A gift made in contemplation of death shall be valid, notwithstanding that there has been no complete transfer of legal title, if—

- (a) the person making the gift is at the time contemplating the possibility of death, whether or not expecting death, as the result of a present illness or present or imminent danger; and
- (b) a person gives movable property (which includes any debt secured upon movable or immovable property) which he could otherwise dispose of by will; and
- (c) there is delivery to the intended beneficiary of possession or the means of possession of the property or of the documents or other evidence of title thereto; and
- (d) a person makes a gift in such circumstances as to show that he intended it to revert to him should he survive that illness or danger; and
- (e) the person making that gift dies from any cause without having survived that same illness or danger; and
- (f) the intended beneficiary survives the person who made the gift to him:
 

Provided that—

  - (i) no gift made in contemplation of death shall be valid if the death is caused by suicide;
  - (ii) the person making the gift may, at any time before his death, lawfully request its return.

## PART V – INTESTACY

### 32. Excluded property

The provisions of this Part shall not apply to—

- (a) agricultural land and crops thereon; or
- (b) livestock,

in various Districts set out in the Schedule:

West Pokot	Wajir	Samburu	Lamu
Turkana	Garissa	Isiolo	Kajiado
Marsabit	Tana River		
Mandera	Narok		



**33. Law applicable to excluded property**

The law applicable to the distribution on intestacy of the categories of property specified in section 32 shall be the law or custom applicable to the deceased's community or tribe, as the case may be.

[Act No. 8 of 1976, s. 6.]

**34. Meaning of intestacy**

A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect.

**35. Where intestate has left one surviving spouse and child or children**

(1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

- (a) the personal and household effects of the deceased absolutely; and
- (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

(3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so, what order, shall have regard to—

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
- (c) the existing and future means and needs of the applicant and the surviving spouse;
- (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
- (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
- (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

[Act No. 8 of 1976, s. 7, Act No. 16 of 1977, Sch.]

### **36. Where intestate has left one surviving spouse but no child or children**

(1) Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to—

- (a) the personal and household effects of the deceased absolutely; and
- (b) the first ten thousand shillings out of the residue of the net intestate estate, or twenty *per centum* thereof, whichever is the greater; and
- (c) a life interest in the whole of the remainder:

Provided that if the surviving spouse is a widow, such life interest shall be determined upon her re-marriage to any person.

(2) The Minister may, by order in the *Gazette*, vary the amount specified in paragraph (b) of subsection (1).

(3) Upon the determination of a life interest created under subsection (1), the property subject to that interest shall devolve in the order of priority set out in section 39.

[Act No. 8 of 1976, s. 8.]

### **37. Powers of spouse during life interest**

A surviving spouse entitled to a life interest under the provisions of section 35 or 36 of this Act, with the consent of all co-trustees and all children of full age, or with the consent of the court shall, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:

Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.

[Act No. 8 of 1976, s. 9.]

### **38. Where intestate has left a surviving child or children but no spouse**

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

### **39. Where intestate has left no surviving spouse or children**

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority

—

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

#### **40. Where intestate was polygamous**

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

#### **41. Property devolving upon child to be held in trust**

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

#### **42. Previous benefits to be brought into account**

Where—

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act,

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

### **PART VI – SURVIVORSHIP**

#### **43. Presumption of survivorship**

Where two more persons have died in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for all purposes of this Act, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder:

Provided that, in the case of spouses who died in those circumstances, the spouses shall be presumed to have died simultaneously.

## PART VII – ADMINISTRATION OF ESTATES

**44. Application of Part**

(1) The provisions of this Part shall not, in cases of intestacy, apply to those types of property mentioned in section 32.

(2) The Minister may, after consultation with the Chief Justice, by order in the *Gazette*, suspend in any area referred to in the order all or any of sections 45, 46, 48 and 49.

(3) Where the operation of sections 48 and 49 is suspended in any area, the High Court may make a grant of representation in respect of the estate of a deceased person whose last known place of residence was in that area, whether the value of the estate exceeds or does not exceed one hundred thousand shillings.

(4) In this section "**area**" means a province, district or other part of Kenya.

[Act No. 7 of 1975, Sch.]

*Protection***45. No intermeddling with property of deceased person**

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

**46. Duties of officers in relation to protection, etc., of deceased's property**

(1) Whenever it becomes known to any police officer or administrative officer that any person has died, he shall, unless aware that a report has already been made, forthwith report the fact of the death to the sub-chief of the sub-location or to the chief or administrative officer of the area where the deceased had his last known place of residence.

(2) Any person to whom a report is made under subsection (1) shall—

- (a) at the request of any person who appears to have a legitimate interest in the estate of the deceased; or
- (b) if no application for representation in respect of the estate has been made within one month after the date of the death of the deceased,

forthwith proceed to the last known place of residence of the deceased, and take all necessary steps for the protection of his free property found there, for ascertainment of his other free properties (if any), for ascertainment of all

persons appearing to have any legitimate interest in succession to or administration of his estate, and for the guidance of prospective executors or administrators as to formalities and duties:

Provided that if the last known place of residence of the deceased is situated in a municipality, or when the deceased dies outside Kenya wherever his property is situated, the person to whom a report is made under subsection (1) shall not take the action which he is required to take under this subsection unless and until he has first reported the death to the Public Trustee, who may if he so wishes himself take the action instead of that person.

(3) If any person to whom a report is made under subsection (1) finds that there is any free property of the deceased, or that the person appearing to have the greatest legitimate interest in succession to or administration of his estate are resident in any other sub-location or area, he shall forthwith report those facts to the sub-chief, chief or administrative officer of that other sub-location or area, who shall thereupon take, in respect of the property or persons, the steps prescribed by subsection (2).

(4) An assistant chief, chief or administrative officer becoming aware that there is in his sub-location or area any free property of a deceased person, or that there are resident in his sub-location or area any persons appearing to have the greatest legitimate interest in succession to or administration of the estate of a deceased person, but that no grant of representation in respect of that estate has yet been made, shall, at the request of any person who appears to have any legitimate interest in that estate, and without waiting for a report under this section, forthwith take, in respect of the property or persons, all such steps prescribed by subsection (2).

(5) A person who is required to take the steps referred to in subsection (2)—

- (a) shall forthwith report to the Public Trustee the death of the person concerned; and
- (b) notify the Public Trustee of the steps taken by him pursuant to that subsection.

[Act No. 8 of 1976, s. 10.]

#### **47. Jurisdiction of High Court**

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

[Act No. 16 of 1977, Sch.]

#### **48. Jurisdiction of magistrates**

(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the Magistrates' Courts Act, 2015.

(2) For the avoidance of doubt it is hereby declared that the Kadhi's courts shall continue to have and exercise jurisdiction in relation to the estate of a deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates.

[Act No. 16 of 1977, Sch., Act No. 21 of 1990, Sch, Act No. 26 of 2015, s.23.]

#### **49. Territorial jurisdiction of magistrates**

The Magistrate's Court within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed the pecuniary limits set out in section 7(1) of the Magistrate's Courts Act, 2015, have in respect of that estate the jurisdiction conferred by section 48:

Provided that—

- (i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other Magistrate's Courts where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;
- (ii) if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;
- (iii) every Magistrate's Court shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.

[Act No. 8 of 1976, s. 10C, Act No. 26 of 2015, s.24.]

#### **50. Appeals to High Court**

(1) An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.

(2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhi's Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.

[Act No. 8 of 1976, s. 10D, Act No. 13 of 1978, Sch., Act No. 21 of 1990, Sch.]

#### **50A. Power to make rules**

The Chief Justice may in consultation with the Chief Kadhi, make rules of court for the better carrying into effect in relation to the estates deceased

Muslims of the provisions of sections 47, 48, 49 and 50 and, in particular regulating the exercise of the jurisdiction conferred by this Act.

[Act No. 21 of 1990, Sch.]

*Application for Grant*

**51. Application for grant**

(1) Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) Every application shall include information as to—

- (a) the full names of the deceased;
- (b) the date and place of his death;
- (c) his last known place of residence;
- (d) the relationship (if any) of the applicant to the deceased;
- (e) whether or not the deceased left a valid will;
- (f) the present addresses of any executors appointed by any such valid will;
- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
- (h) a full inventory of all the assets and liabilities of the deceased; and
- (i) such other matters as may be prescribed.

(3) Where it is alleged in an application that the deceased left a valid will—

- (a) if it was written, the original will shall be annexed to the application, or if it is alleged to have been lost, or destroyed otherwise than by way of revocation, or if for any other reason the original cannot be produced, then either—
  - (i) an authenticated copy thereof shall be so annexed; or
  - (ii) the names and addresses of all persons alleged to be able to prove its contents shall be stated in the application;
- (b) if it was oral, the names and addresses of all alleged witnesses shall be stated in the application.

(4) No omission of any information from an application shall affect the power of the court to entertain the application.

**52. Wilful and reckless statements in application for grant**

Any person who, in an application for representation, wilfully or recklessly makes a statement which is false in any material particular shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

*Forms and Grants***53. Forms of grant**

A court may—

- (a) where a deceased person is proved (whether by production of a will or an authenticated copy thereof or by oral evidence of its contents) to have left a valid will, grant, in respect of all property to which such will applies, either—
  - (i) probate of the will to one or more of the executors named therein; or
  - (ii) if there is no proving executor, letters of administration with the will annexed; and
- (b) if and so far as there may be intestacy, grant letters of administration in respect of the intestate estate.

[Act No. 21 of 1990, Sch.]

**54. Limited grants**

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

**55. No distribution of capital before confirmation of grant**

(1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.

(2) The restriction on distribution under subsection (1) does not apply to the distribution or application before the grant of representation is confirmed of any income arising from the estate and received after the date of death whether the income arises in respect of a period wholly or partly before or after the date of death.

[Act No. 8 of 1976, s. 11, Act No. 18 of 1986.]

*Persons Entitled to a Grant***56. No grant to certain persons**

(1) No grant of representation shall be made—

- (a) to any person who is a minor, or of unsound mind, or bankrupt; or
- (b) to more than four persons in respect of the same property.

(2) No grant of letters of administration, with or without the will annexed, shall be made to a body corporate other than the Public Trustee or a trust corporation.

**57. Grant to body corporate**

No grant of representation shall be made to a syndic or nominee on behalf of a body corporate:

Provided that, where a body corporate applies for a grant of probate or (in the case of a trust corporation) letters of administration, the application may be



signed, and any necessary affidavits may be sworn, by an officer authorized in that behalf by the body corporate or the directors or governing body thereof.

**58. Number of administrators where there is a continuing trust**

(1) Where a continuing trust arises—

- (a) no grant of letters of administration in respect of an intestate estate shall be made to one person alone except where that person is the Public Trustee or a Trust Corporation;
- (b) no grant of letters of administration with the will annexed shall be made to one person alone except where—
  - (i) that person is the Public Trustee or a Trust Corporation, or
  - (ii) in the will the testator has appointed one or more trustees for the continuing trust who are willing and able to act.

(2) Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant which failing as chosen by the court of its own motion.

[Act No. 8 of 1976, s. 12, Act No. 18 of 1986, Sch.]

**59. Renunciation of executorship**

Any person who has been appointed by a will as an executor thereof may, either by oral declaration before the court or by writing under his hand, renounce executorship, and shall thereafter be finally precluded from applying for grant of probate of that will.

**60. Probate where there are several executors**

When several executors are appointed, probate may be granted to them all simultaneously, or at different times.

**61. Discovery of codicil after grant of probate**

(1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

(2) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

**62. No grant of administration until citation issued to executor**

When a person who has been appointed by a will as an executor thereof has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to renounce his executorship or apply for a grant of probate of the will:

Provided that—

- (i) when one or more of several executors have proved a will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved; and

- (ii) there may be such limited grants of letters of administration in accordance with the provisions of section 54 of this Act as may, in the opinion of the court, be necessitated by any special circumstances.

**63. Grant of administration to universal or residuary legatee**

When a deceased has made a will, but—

- (a) he has not appointed an executor; or
- (b) the only executors appointed are legally incapable of acting, or have renounced their executorship, or have died before the testator or before receiving a grant of probate of the will, or have failed within the time limited by a citation to apply for probate thereof; or
- (c) all proving executors have died before completing administration of all the property to which the will applies,

a universal or residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

**64. Right to administration of representative of deceased residuary legatee**

When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative shall have the same right to administration with the will annexed as the residuary legatee.

**65. Grant of administration where no executor nor residuary legatee nor representative of legatee**

When there is no executor, and no residuary legatee or representative of the residuary legatee, or if every such person declines or is incapable of acting, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or the Public Trustee, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

[Act No. 8 of 1976, s. 13.]

**66. Preference to be given to certain persons to administer where deceased died intestate**

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

[Act No. 8 of 1976, s. 14.]

#### *Procedure on Grants*

### **67. Notice of application for grant**

(1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.

(2) A notice under subsection (1) shall be exhibited conspicuously in the court-house, and also published in such other manner as the court directs.

### **68. Objections to application**

(1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.

(2) Where notice of objection has been lodged under subsection (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period.

### **69. Procedure after notice and objections**

(1) Where a notice of objection has been lodged under subsection (1) of section 68, or no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.

(2) Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.

[L.N. 256/1976, Act No. 16 of 1977, Sch.]

### **70. Powers of courts**

Whether or not there is a dispute as to the grant, every court shall have power, before making a grant of representation—

- (a) examine any applicant on oath or affirmation; or
- (b) call for further evidence as to the due execution or contents of the will or some other will, the making of an oral will, the rights of dependants and of persons claiming interests on intestacy, or any other matter which appears to require further investigation before a grant is made; or
- (c) issue a special citation to any person appearing to have reason to object to the application.

*Confirmation of Grants***71. Confirmation of grants**

(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—

- (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
- (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
- (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
- (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.

(2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly with the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion.

(3) The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied—

- (a) that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;
- (b) that it would be expedient in all circumstances of the case so to direct.

(4) Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that—

- (a) there is no dependant, as defined by section 29, of the deceased other than the petitioner;

- (b) no estate duty is payable in respect of the estate; and
- (c) it is just and equitable in all circumstances of the case,

immediately issue a confirmed grant of representation.

[Act No. 19 of 1984, Sch., Act No. 18 of 1986, Sch.]

## **72. Grants not to be confirmed in certain circumstances**

No grant of representation shall be confirmed until the court—

- (a) is satisfied that no application under Part III of this Act is pending; and
- (b) has received a certificate from the Estate Duty Commissioner that he is satisfied that all estate duty payable in respect of the estate concerned has been or will be paid, or that no estate duty is payable in respect thereof; or
- (c) is itself satisfied that no estate duty is payable in respect of the estate concerned.

## **73. Duty of court to give notice to holder of grant to apply for confirmation**

The court shall within one year from the date of any grant of representation, give notice to the holder of the grant to apply for confirmation thereof.

### *Alteration and Revocation of Grants*

## **74. Errors may be rectified by court**

Errors in names and descriptions, or in setting fourth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

## **75. Procedure where codicil discovered after grant**

If, after the grant of letters of administration with the will annexed or after confirmation thereof, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

### **75A. Continuing trust arising**

(1) If, after confirmation of the grant of letters of administration at any time there is a continuing trust and only one surviving administrator, that administrator shall without delay apply to the court to appoint, subject to section 66, as administrators jointly with him not less than one or more than three persons as proposed by him, which failing as chosen by the court of its own motion.

(2) If a sole surviving administrator fails to apply to the court in accordance with subsection (1) within three months of there being a continuing trust and only one surviving administrator, on the application of any interested party in, or a creditor or debtor of the estate or of its own motion, the court may appoint additional administrators in accordance with subsection (1).

[Act No. 18 of 1986, Sch.]

**76. Revocation or annulment of grant**

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.

*Sealing of Commonwealth and Foreign Grants***77. Sealing of Commonwealth and foreign grants**

(1) Where a court or other authority, having jurisdiction in matters of probate or administration in any Commonwealth country or in any other foreign country designated by the Attorney-General by notice in the *Gazette*, has, either before or after the commencement of this Act, granted probate or letters of administration, or an equivalent thereof in respect of the estate of a deceased person, such grant may, on being produced to, and a copy thereof deposited with the High Court, be sealed with the seal of that court, and thereupon shall be of like force and effect, and have the same operation in Kenya, as if granted and confirmed by that court.

(2) Before sealing a grant under subsection (1) the High Court—

- (a) shall satisfy itself as to the payment of estate duty as provided by section 72;
- (b) may require such evidence if any as it thinks fit concerning the domicile of the deceased person;
- (c) may, on the application of any creditor of the estate, require that adequate security be given for the payment of debts due from the estate to creditors residing in Kenya.

**78. Duplicate or copy of foreign grant to have same effect as original**

For the purposes of this Act, a duplicate of any grant sealed with the seal of a court or other authority in a Commonwealth or foreign country, or a copy thereof certified as correct by, or duly on behalf of, that court or authority, shall have the same effect as the original.

*Powers and Duties of Personal Representatives***79. Property of deceased to vest in personal representative**

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.

**80. When grant takes effect**

(1) A grant of probate shall establish the will as from the date of death, and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.

(2) A grant of letters of administration, with or without the will annexed, shall take effect only as from the date of such grant.

**81. Powers and duties of personal representatives to vest in survivor on death of one of them**

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

**82. Powers of personal representatives**

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) no immovable property shall be sold before confirmation of the grant;

- (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;
- (d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:

Provided that except so far as otherwise expressly provided by any will—

- (i) no appropriation shall be made so as to affect adversely any specific legacy;
- (ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.

### **83. Duties of personal representatives**

Personal representatives shall have the following duties—

- (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;



- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

[Act No. 18 of 1986, Sch.]

#### **84. Personal representatives to act as trustees in certain cases**

Where the administration of the estate of a deceased person involves any continuing trusts, whether by way of life interest or for minor beneficiaries or otherwise, the personal representatives shall, unless other trustees have been appointed by a will for the purpose of the trust, be the trustees thereof:

Provided that, where valid polygamous marriages of the deceased person have resulted in the creation of more than one house, the court may at the time of confirmation of the grant, appoint separate trustees of the property passing to each or any of those houses as provided by section 40.

#### **85. Assent necessary to complete legatee's title**

(1) The assent of the executor shall be necessary to complete the title of the legatee to a specific legacy.

(2) Such assent may be verbal, and either express or implied from the conduct of the executor, and shall be sufficient to divest his interest as executor therein, and (subject to any registration required by any other written law) to transfer the subject of the bequest to the legatee.

(3) When the executor is a legatee, his assent to his own specific legacy shall be necessary to complete his title thereto as legatee.

(4) The assent of the executor to a specific legacy shall give effect thereto from the death of the testator.

#### **86. Debts to be paid before legacies**

Debts of every description enforceable at law and owed by or out of an estate shall be paid before any legacy.

#### **87. Personal representatives not bound to pay legacies without indemnity**

If an estate is subject to any contingent liabilities, a personal representative shall not be bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

**88. Abatement and refunding of legacies**

Legacies shall abate and be refunded according to the provisions of the Sixth Schedule.

**89. Insolvent estates**

(1) Where an application for a grant of probate or letters of administration shows by the inventory therein that the estate the subject thereof will, after payment of funeral and other expenses, be insolvent, the court shall of its own motion order the administration of that estate in bankruptcy as provided by section 121 of the Bankruptcy Act (Cap. 53).

(2) If and so soon as any personal representative knows or has reason to believe that the estate in respect of which probate or letters of administration have been granted to him will prove to be insolvent, he shall forthwith petition for administration thereof in bankruptcy as aforesaid.

(3) This section shall have effect notwithstanding anything contained in the Bankruptcy Act (Cap. 53).

**90. Investment of funds to provide for legacies and interest on legacies**

Personal representatives shall invest funds to provide for legacies in the manner and according to the provisions set out in the Seventh Schedule to this Act; and legacies shall carry interest in accordance with those provisions.

**91. Transfer of assets from Kenya to personal representatives in country of domicile for distribution**

Where a person not having his domicile in Kenya has died leaving assets both in Kenya and in the country in which he had his domicile at the time of his death, and there has been a grant of representation in Kenya with respect to the assets there, and a grant of representation in the country of domicile with respect to the assets in that country, the personal representatives in Kenya, after having given such notices as are required by paragraph 5 of the Sixth Schedule and after having discharged, at the expiration of the time therein named, such lawful claims as have come to their notice, may, instead of themselves distributing any surplus or residue of the deceased's property to persons residing out of Kenya who are entitled thereto, transfer, with the consent of the personal representatives in the country of domicile, the surplus or residue to those personal representatives for distribution to those persons.

**92. Protection of persons acting on representation**

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

(2) Where a grant of representation is revoked or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation thereof shall be a valid discharge to the person making the same, and a personal representative who has acted under the

revoked or varied grant may retain and reimburse himself in respect of any other person to whom representation is afterwards granted might have properly made:

Provided that a personal representative who so acted shall account for all payments, dispositions, retentions or reimbursements made by him to the person or person to whom representation is afterwards granted.

### **93. Validity of transfer not affected by revocation of representation**

(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.

### **94. Neglect or misapplication of assets by personal representatives**

When a personal representative neglects to get in any asset forming part of the estate in respect of which representation has been granted to him, or misapplies any such asset, or subjects it to loss or damage, he shall, whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.

### **95. Offences by personal representatives**

(1) Any personal representative who, as regards the estate in respect of which representation has been granted to him—

- (a) wilfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
- (b) wilfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or
- (c) wilfully or recklessly produces any such inventory or account which is false in any material particular; or
- (d) knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy,

shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) Any personal representative who, as regards the estate in respect of which representation has been granted to him if at any time there is a continuing trust and he is the sole surviving administrator, wilfully fails to apply to the court

within three months in accordance with section 75A for the appointment of further administrators shall be guilty of an offence and shall be liable to a fine not exceeding five thousand shillings.

[Act No. 18 of 1986, Sch.]

## PART VIII – MISCELLANEOUS

### **96. Sane murderer not to share in victim's estate**

(1) Notwithstanding any other provision of this Act, a person who, while sane, murders another person shall not be entitled directly or indirectly to any share in the estate of the murdered person, and the persons beneficially entitled to shares in the estate of the murdered person shall be ascertained as though the murderer had died immediately before the murdered person.

(2) For the purpose of this section the conviction of a person in criminal proceedings of the crime of murder shall be sufficient evidence of the fact that the person so convicted committed the murder.

### **97. Rules**

The Rules Committee may make rules of procedure generally for the carrying out of the purposes and provisions of this Act, and without prejudice to the foregoing generality, any such rules of procedure may prescribe—

- (a) the procedure to be followed by a court in determining applications under section 26 or subsection (3) of section 35;
- (b) the procedure to be followed by a court in granting probate or letters of administration;
- (c) the procedure to be followed in the case of a dispute as to a grant;
- (d) the form and manner in which applications under section 26 and subsection (3) of section 35 and applications for grants are to be made, grants are to be issued, grants are to be limited, notices are to be given, or inventories or accounts are to be produced;
- (e) the fees to be paid on any application or grant, or on any other procedure related thereto.

### **98. Transitional**

All proceedings commenced under any written law or part thereof repealed by this Act shall, so far as practicable be continued under this Act.

### **99. Repeal**

The laws set out in the Eighth Schedule are repealed.

### **100. Amendments**

The Acts set out in the first column of the Ninth Schedule are amended, in relation to the provisions thereof specified in the second column of that Schedule, in the manner specified in relation thereto in the third column of that Schedule.

**101. Saving**

Except as otherwise expressly provided in this Act, nothing in this Act therein shall affect the provisions of—

- (a) the Trustee Act (Cap. 167);
- (b) the Public Trustee Act (Cap. 168);
- (c) the Trusts of Land Act (Cap. 290);
- (d) sections 218 to 222 of the Armed Forces Act (Cap. 199) concerning estates of deceased soldiers.

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**FIRST SCHEDULE**

[Section 22, Act No. 8 of 1976, ss. 16 and 17.]

**CONSTRUCTION OF WILLS***General Rules***1. Wording of will**

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. Meaning of clause to be collected from entire will**

The meaning of any clause in a will is to be ascertained from the entire instrument, and all the provisions of the 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. Will speaks from death as to property comprised in it**

Every will shall be construed, with reference to the property 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 appears by the will:

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

**4. Negative words insufficient to exclude person entitled on intestacy**

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.

**5. Express gift cannot be controlled by reason assigned, etc.**

Subject to the provisions of paragraph 2, an express and positive gift cannot be controlled by reason assigned, or by subsequent ambiguous words, or by inference and argument from other parts of the will, and is not affected by a subsequent inaccurate recital of, or reference to, its contents:

Provided that, in cases of ambiguity or doubt, recourse may be had to such reference in order to assist the construction.

**6. Implication admissible only in absence of express disposition**

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

**7. Words may be supplied, rejected, etc.**

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.

**8. Technical words**

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

**9. Words in general**

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

**10. Words occurring more than once**

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.

**11. Additional words**

Where a testator uses an additional word or phrase, an additional meaning shall be presumed unless the context clearly indicates the contrary.

**12. Words construed so as to make them operative**

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

**13. Intention to be given effect to**

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

**14. Rules of construction not to be strained to validate gift**

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:

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 manner as to render the preceding gift void for remoteness, the modifying clause, if separable from the original gift, shall be rejected as if such will or codicil had never contained the same.

**15. Inconvenience or absurdity of gift**

The inconvenience or absurdity of a gift, or the fact that the testator did not foresee all the consequences of his 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.

**16. Construction not to be varied by subsequent events**

The construction of a will shall not be varied by events subsequent to its execution, but in determining the meaning of particular expressions regard may be had to circumstances which, at the date of execution, were capable of arising subsequent to that date.

**17. Presumption against intestacy**

A testator shall be presumed to calculate against intestacy, and, subject to the provisions of paragraph 14, a construction avoiding intestacy shall be preferred.

**18. Presumption as regards gift over**

A testator shall be presumed to calculate on the dispositions 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.

**19. Independent gifts**

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.

**20. References to child, etc., to include illegitimate child, etc.**

Unless a contrary intention appears from the will, the terms "child", "son", "daughter", "grandchild", and "issue" and similar words shall be construed in accordance with the definition of "child" in subsection (2) and with the provisions of subsection (3) of section 3 of this Act.

[Act No. 8 of 1976, s. 16.]

**21. References to application of Islamic law to mean law of sect or school of testator**

Unless a contrary intention appears from the will, where a testator declares that his property shall devolve according to Islamic law, the Islamic law applicable shall be the law of the sect or school of Islamic law to which the deceased belonged.

**22. Particular rules of construction**

The several particular rules of construction provided by the following paragraphs 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***23. Misnomer or misdescription of object**

(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, and 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 that legatee and a mistake in the description of a legatee may be corrected by the name of that legatee.

(3) Where the words used in a 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.

**24. Rejection of erroneous particulars in description of subjects**

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 parts 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 property in respect of which all those circumstances existed at the date of execution of the will, the gift shall be considered as limited to that 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 that part of the description does not apply.

**25. Gift or disposition void for uncertainty**

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

Provided that—

- (i) no gift for charitable purposes shall be void for uncertainty of the object; or
- (ii) 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.

**26. Gift presumed to comprise whole interest of testator**

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.

**27. Construction of bequest which refers to person as existing**

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.



*Residuary Bequests***28. Effect of general residuary bequest**

A general residuary bequest shall comprise all free 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 free property of which he may have attempted but failed to dispose, even though expressly excepted from the gift.

**29. Effect of limited residuary bequest**

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

**30. Effect of particular residuary bequest**

A particular residuary bequest shall comprise all free 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.

**31. Effect of failure of share of residue**

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

*General Legacy of Property not Possessed***32. General legacy of property not in testator's possession**

Notwithstanding the provisions of paragraphs 8 to 14 of the Second Schedule to this Act, 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 that gift shall, if it can be ascertained, be met from the testator's general estate, but if the value thereof cannot be ascertained the gift shall fail.

*Annuities***33. Annuity created by will payable for life only, unless contrary intention appears by will**

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.

**34. Annuities for maintenance and education**

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

**35. Where will directs that annuity be provided out of property or where money bequeathed to be invested in purchase of annuity**

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 for that purpose by the will.

**36. Relation of annuity to residuary estate**

(1) Where there is a direct gift of an annuity, or where a will manifests an intention that an annuity shall be charged on the capital of the testator's residuary estate, the annuity shall constitute a charge upon that capital.

(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 provision 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 the income.

**37. Commencement of annuity and time for payment when no time fixed by will**

When 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 representatives shall not be bound to pay it until the expiry of twelve months after the testator's death.

**38. Dates of successive payments directed to be made within given time or on day certain**

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 next payment to be made, and subsequent payments shall be made accordingly.

**39. Apportionment**

If an annuitant dies in the interval between the times for payment of his annuity, an apportioned share of the annuity shall be paid to his personal representatives.

*Gifts of Income***40. Gift of income for indefinite period**

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.

*Gifts for Special Purposes***41. Effect of gift for special purpose**

Where a gift is bequeathed solely for the benefit of the 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 be expressed in obligatory terms:

Provided that—

- (i) where the gift is made subject to a gift over of any surplus remaining after the purpose has been fulfilled, the provisions of this paragraph shall apply only to so much of the gift as is necessary for such purpose;
- (ii) the provisions of this paragraph shall not apply where the purpose specified is so expressed as to create a condition or a discretionary trust with gift over, nor where the legatee is a minor.

**42. Effect of discretion as to time**

Where a gift of a 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 is left in the discretion of the personal representatives or of trustees, the beneficiary shall not, so long as the personal representatives 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***43. Express words unnecessary**

No precise form of words shall be necessary to create a condition in a will, and any expression disclosing such an intention of the testator shall have that effect.

**44. Void conditions**

Any condition shall be void which—

- (a) requires the performance of an illegal act, or is not legally enforceable; or
- (b) is contrary to law, morality or public policy; or
- (c) is uncertain, or is too vague to be enforced; or
- (d) offends against any law as to accumulations, remoteness, or perpetuities; or
- (e) is impossible *ab initio*, or becomes impossible by the act or default of the testator, or by an act of any court; or
- (f) is repugnant to the gift to which it is annexed; or
- (g) is in total restraint of the marriage of any person other than a widow; or
- (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; or

- (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 this subparagraph shall affect or render void any discretionary trust with gift over, or any life estate made determinable on bankruptcy.

#### **45. Condition either precedent or subsequent**

(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 to 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.

#### **46. Effect of void condition**

(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 motive 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 the gift shall be absolute.

#### **47. Effect of impossibility supervening**

(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 precedent 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.

#### **48. Legatee bound by legal conditions**

Where a legatee has taken a gift subject to a valid condition, he shall be estopped by his act of taking the gift from subsequently insisting on rights which, by the terms of the conditions, he is bound to release, or from declining a duty which he is required by the condition to perform.

#### **49. One or two separate and independent bequests to same person may be accepted and the other refused**

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 or both of the gifts was made upon condition.

**50. Time in which conditions must be performed**

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—

- (i) 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 that other person;
- (ii) where the condition is the happening of a specified uncertain event beyond the control of the legatee, the gift shall take effect if that event happens before the gift is payable or distributable, but not thereafter.

**51. Performance generally**

The performance of a condition shall be such as to constitute a substantial compliance with the terms of the condition:

Provided that, in respect of time, there shall be strict compliance where there is any express gift over.

**52. Ignorance of condition**

Where a gift is made upon a valid condition, ignorance of that condition shall not protect the legatee from the consequences of his default, unless ignorance is attributable to the act of default of some person who benefits by breach of that condition.

*Gifts to Executors*

**53. Legatee named as executor cannot take unless he shows intention to act as executor**

If a gift is bequeathed to a person who is named an 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.

*Vesting and Divesting of Gifts*

**54. Meaning and effect of vesting**

(1) A gift shall vest in the legatee in interest when his entitlement to the 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, that gift, unless divested by his death, shall pass to his personal representative.

(3) Where the legatee dies before a gift vests in him in interest, the 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 representatives of the legatee if that event happens after his death.

**55. Direction for vesting**

A direction that a gift shall vest at any given time shall, unless it appears from the will to refer to vesting in possession, be construed as referring to vesting in interest.

**56. Time of vesting of general terms**

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.

**57. Vesting of contingent gifts**

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 performance of a void condition not itself avoiding the gift), such interest shall not vest in the legatee until the event has happened.

**58. Gift may vest subject to subsequent divesting**

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.

**59. Absolute gift with enjoyment postponed**

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.

**60. Direction for payment without substantive gift**

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 that future age is attained or such future event occurs:

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 paragraph.

**61. Gift subject to attaining certain age or marrying**

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.

**62. Effect of interim direction for maintenance**

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.

**63. Ambiguity of vesting contingency or divesting**

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***64. Presumed satisfaction of debt**

Where a debtor bequeaths a gift to his creditor, and the gift is equal to or greater than the debt, there shall be a 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 contracted before the date of execution of the will.

**65. Presumed satisfaction of portion**

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 that child or other person by will, there shall be a presumption that the gift is intended to satisfy that portion, so far as the gift extends.

**66. No presumed satisfaction of gift made previously in contemplation of death**

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 Substituted Gifts***67. Two gifts to same person**

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 he intended, the following rules 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 the same quantity or amount of anything, he shall be entitled to one of those gifts 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 Gifts***68. Liability for charges**

(1) Where the free property of a deceased person includes an interest in property which at the time of his death is charged with the payment of money, whether by way of mortgage, charge, lien (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 interest, according to its value, shall bear a proportionate part of the payment.

(2) Any contrary or other intention shall not be deemed to be signified by a general direction for payment of debts out of any residuary estate, or by a charge of debts upon any residuary estate, unless the intention is further signified by words expressly or by necessary 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 contemplated by this rule.

**69. Completion of testator's title to things bequeathed to be at cost of his estate**

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.

**70. Exoneration of legatee's immovable property for which land revenue or rent payable periodically**

Where there is a gift of any interest in immovable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between the estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death.

**71. Exoneration of specific legatee's securities**

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 the estate, but if any call or other payment becomes due in respect of those securities after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the gift.



**72. Order of payment when legacy directed to be paid out of fund the subject of specific legacy**

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 the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator, in exoneration of the specific legacy.

**73. Expenses to be borne by legatee**

The costs of preservation, transfer or delivery of the subject of a specific legacy shall be borne by the legatee.

*Gifts to Survivors***74. Gifts to such of certain persons as shall be surviving at some period not specified**

(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 paragraph 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 be subject to all other rules of construction, be construed as referring to the happening of the former event exclusively.

*Exercise of Powers***75. Execution of power of appointment by general legacy or residuary bequest**

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 falling 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 execution of that 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 execution of that 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.

**76. Execution of special powers**

No general legacy or general residuary bequest shall be construed as an execution of any special power of appointment, unless an intention in that behalf is clearly expressed or implied in the will.

**77. Particular residuary bequests**

No particular residuary bequest shall be construed as an execution of any general or special power of appointment, unless an intention in that behalf is clearly expressed or implied in the will.

**78. Implied gifts to objects of special power in default of appointment**

Where by a will any special power of appointment is given over property, but no provision is made in the event of default of appointment, the property shall, in default of any such appointment or so far as it may not extend, belong to all the objects of such power in equal shares, subject to all appointments made thereunder being brought into account.

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**SECOND SCHEDULE**

[Section 23.]

**FAILURE OF TESTAMENTARY DISPOSITIONS***By Lapse***1. Principle of lapse**

(1) Save as is provided in this 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".

(2) Subject to the provisions of section 43 of this Act, the burden of proving that a legatee or appointee under a will has survived the testator shall lie upon the person alleging 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. Exceptions**

(1) 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 the child or other issue and the child or other issue, as the case may be, leaves issue surviving the testator,

but in either 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 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. Gift to several named persons**

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 those persons predecease the testator, then—

- (a) if an intention appears from the will that those 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 those 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 those persons predeceasing the testator, subject only to the provisions of paragraph 2.

### **4. Charges of gifts on gifts**

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 the 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. Lapse of limited interests**

The lapse of a limited interest shall accelerate the interests in remainder expectant on the determination of the limited interest.

### **6. Effect on gifts over**

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. General effect of lapse**

Subject only to the foregoing provisions 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 the gift or disposition, would have applied to such property or interest:

Provided that, if there is no such residuary bequest, or if the lapsed gift or disposition is itself a share of such residuary bequest and there is no ulterior residuary bequest under which it can pass, then there shall be intestacy in respect of the property or interest.

*By Ademption***8. Principle of ademption**

(1) If property which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the gift cannot take effect, by reason of the subject thereof having been withdrawn from the operation of the will; and where a gift fails on this account, it is said to be "adeemed".

(2) There must be a substantial change in the subject of a specific legacy to cause ademption and a merely nominal change shall not have that effect.

**9. Change of subject without testator's consent**

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 the conversion provides otherwise.

**10. Gift of interest in fund**

The gift of an interest in a fund shall not be adeemed by any sale or change of investment of the fund by the persons having control thereof, nor shall it be adeemed by the testator receiving it before his death, whether or not thereafter sold or re-invested by him, if it can at his death be followed and distinguished.

**11. Non-ademption of demonstrative legacy**

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 that case, be paid out of the general estate of the testator.

**12. Revival of will does not revive adeemed legacy**

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.

**13. No presumption of intention**

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 not 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.

**14. Ademption by subsequent provision**

Where a testator makes a gift by will to any person for a specific purpose, or to any child or other person to 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 the gift is adeemed by the subsequent provision, so far as the subsequent provision extends.

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### THIRD SCHEDULE

[Section 24.]

#### ELECTION

##### **1. Principle of election**

(1) Where a person, by a will validly made in accordance with Part II of this Act, purports to dispose of any property which is not his own, and bequeaths a gift to the person to whom that property belongs, the legatee accepting the 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.

(2) If a legatee elects under this paragraph to enforce proprietary rights, he shall make compensation, out of the gift bequeathed to him, to the person whom he has thereby disappointed, and the amount of the 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 bequeathed to the person electing to enforce his proprietary rights.

##### **2. Where property belongs to more than one person**

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 paragraph 1, to the extent of his interest in that property.

##### **3. Testator's ignorance immaterial**

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 belonged to him.

##### **4. Legatee's ignorance material**

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 that election.

##### **5. Implied election**

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.

##### **6. Postponement in case of disability**

In case of any disability of a legatee entitled to elect, the election shall be postponed until the disability ceases, or until the election is made by some competent authority or representative.

**7. Extrinsic evidence inadmissible to prove intention**

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.

**8. Cases to which doctrine does not apply**

The principles of election set out in this Schedule shall not apply—

- (a) to creditors; or
- (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; or
- (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 act give effect to that disposition; or
- (d) where the legatee, although subsequently becoming the owner of the property of which the testator has attempted to dispose, is not the owner of that property at the date of the testator's death; or
- (e) to persons who, although taking direct gift under the will, derive an indirect benefit therefrom.

**9. Application to appointments under powers**

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 proviso in favour of strangers to the power; or
- (c) the appointment is void for remoteness.

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**FOURTH SCHEDULE**

*Repealed by Act No. 6 of 1984, Sch.*

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**FIFTH SCHEDULE**

[Section 54.]

**FORMS OF LIMITED GRANT**

*Grant Limited in Duration*

**1. Probate of copy or draft of lost will**

When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy

or the draft of the will has been preserved, probate may be granted of the copy or draft, limited until the original or a properly authenticated copy of it be produced.

## **2. Probate of copy where original exists**

When a will is in the possession of a person residing out of Kenya, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

## **3. Administration until will produced**

Where no will of a deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

*Grants for the Use and Benefit of Others having Right*

## **4. Administration with will annexed to attorney of absent executor**

When any executor is absent from Kenya and there is no executor within Kenya willing to act, letters of administration with the will annexed may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

## **5. Administration with will annexed, to attorney of absent person, who if present would be entitled to administer**

When any person to whom, if present, letters of administration, with the will annexed might be granted, is absent from Kenya, letters of administration, with the will annexed, may be granted to his attorney, limited as above-mentioned.

## **6. Administration to attorney of absent person entitled to administer in case of intestacy**

When a person entitled to administration in case of intestacy is absent from Kenya, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

## **7. Administration during minority of sole executor or residuary legatee**

When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of the minor, or to such other person as the court shall think fit until the minor has attained full age, at which period, and not before, probate of the will shall be granted to him.

## **8. Administration during minority of several executors or residuary legatees**

When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained full age.

**9. Administration for use and benefit of person of unsound mind**

If a sole executor or a sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate according to the rules for the distribution of intestates estates, be a person of unsound mind, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the court may think fit to appoint for the use and benefit of the person of unsound mind until he becomes of sound mind.

**10. Administration pendente lite**

Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its direction.

*Grants for Special Purposes***11. Probate limited to purpose specified in will**

If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

**12. Administration with will annexed limited to particular purpose**

If an executor appointed generally gives an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

**13. Administration limited to property in which person has beneficial interest**

Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to that property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

**14. Administration limited to suit**

When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.



**15. Administration limited to purpose of becoming party to suit to be brought against administrator**

If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the grant has been made is absent from Kenya, it shall be lawful for any court to grant to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

**16. Appointment of person not normally entitled to a grant**

Where it appears to the court to be necessary or convenient to appoint some person to administer an estate or any part thereof other than the person who would in ordinary circumstances be entitled to a grant of representation, the court may, in its discretion and having regard to all the circumstances of the case, appoint such other person to be administrator and grant letters of administration, whether limited or otherwise, as it shall think fit.

*Grants with Exception***17. Probate or administration with will annexed subject to exception**

Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to that exception.

**18. Administration with exception**

Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to that exception.

*Grants of the Rest***19. Probate or administration of rest**

Whenever a grant, with exception, of probate, or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

*Grants of Effects Unadministered***20. Grant of effects unadministered**

If the executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

**21. Administration when limited grant expired and still some part of estate unadministered**

When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

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## SIXTH SCHEDULE

[Sections 88 and 91.]

## ABATEMENT AND REFUNDING OF LEGACIES

*Abatement***1. Abatement of general legacies**

(1) If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportion, and the personal representative has no right to pay one legatee in preference to another nor to retain any money on account of legacy to himself or to any person for whom he is a trustee:

Provided that nothing contained herein shall prejudice or affect the priority of the remuneration to which any personal representative may be entitled under the will (including any general legacy which is expressly or impliedly conditional on his proving the will) or otherwise.

(2) For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

**2. Non-abatement of specific legacy when assets sufficient to pay debts**

Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

**3. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses**

Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee shall have a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and, if, after the fund is exhausted, part of the legacy still remains unpaid, he shall be entitled to rank for the remainder against the general assets as for a legacy of the amount of the unpaid remainder.

**4. Rateable abatement of specific legacies**

If the assets are not sufficient to answer the debts and the specific legacies, and abatement shall be made from the latter rateably in proportion to their respective amounts.

**5. Distribution after notice**

Where personal representatives have given such notice as may be prescribed for creditors and others to send in their claims against the estate of the deceased, the personal representatives shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets of the estate or any part thereof, in discharge of any lawful claims of which they have notice, and shall not be liable for the assets so distributed to any person of whose claim they have not had notice at the time of distribution:

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof, in the hands of the persons who may have received them respectively.

*Refunding***6. Refund of legacy to personal representatives**

Where personal representatives have paid any legacy which, but for the payment, would have been liable to abatement in accordance with the foregoing provisions of this Schedule, they shall be entitled to call upon the legatee to refund the amount by which the legacy should have been abated—

- (a) if the legacy was paid under any order of the court; or
- (b) if and so far as the abatement is rendered necessary by discovery of a debt of which notwithstanding compliance with the provisions of section 90 of this Act, the personal representatives had no notice at the time of voluntary payment of the legacy,

but not otherwise.

**7. Creditors may call upon legatee to refund**

A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund the legacy whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the personal representatives was voluntary or not.

**8. When legatee not satisfied or compelled to refund, he cannot oblige one paid in full to refund**

If the assets of a testator's estate were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund the legacy in accordance with the provisions of paragraph 7, cannot oblige another legatee who has received payment in full to refund his legacy, whether that legacy was paid to him with or without suit, although the assets have subsequently become deficient by waste on the part of the personal representatives.

**9. When unsatisfied legatee must first proceed against personal representatives if solvent**

If the assets of the testator's estate were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy shall, before he can call on a satisfied legatee to refund, first proceed against personal representatives, if they or any of them be solvent, but, if no personal representative be solvent or liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion:

Provided that the refunding by one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been abated if the estate had been properly administered.

**10. Refund when legacy has become due on performance of condition within further time allowed**

Where the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the personal representatives have thereupon, without fraud, distributed the assets of the testator's estate, in such case, if further time has for any reason been allowed by

the court for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the personal representatives, but those to whom he has paid it shall be liable to refund the amount.

**11. Refunding to be without interest**

In all cases arising under this Schedule, any refunding shall be without interest.

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**SEVENTH SCHEDULE**

[Section 90.]

**INVESTMENT OF FUNDS TO PROVIDE FOR  
LEGACIES AND INTEREST ON LEGACIES***Investment***1. Investment of sum bequeathed where general legacy given for life**

Where a general legacy is given for life, the sum bequeathed shall, at or before the end of a year after the death of the testator be invested in any authorized investment:

Provided that, where an annuity is given and no fund is charged by the will with its payment or appropriated by the will to answer it, a sum sufficient to produce the annuity shall be invested in any authorized investment.

**2. Investment of general legacy to be paid at future time**

(1) Where a general legacy is given to be paid at a future time, the personal representatives shall invest a sum sufficient to meet it in any authorized investment.

(2) The intermediate interest from the investment shall, unless expressly or by implication payable to the legatee or another, form part of the residue of the testator's estate.

**3. Transfer to residuary legatee subject to contingent gift**

Where a gift is contingent, the personal representatives shall not be bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the legacy if and when it becomes due.

**4. Investment of residue bequeathed for life without direction to invest in particular securities**

Where a testator has given any property to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's death invested in an authorized investment, shall be converted into money, and invested in such an investment.

**5. Interest payable pending conversion and investment**

Until conversion and investment are completed in accordance with the provisions of this Schedule, or with the terms of the will, as the case may be, the person who would for the time being be entitled to the income of the fund when so invested shall receive interest at the rate of six *per centum* per annum upon the market value (to be computed as at the date of the testator's death) of such part of the fund as has not yet been so converted and invested.

*Interest***6. What contingent and future testamentary gifts carry the immediate income**

(1) A contingent or future as well as an immediate specific legacy and a residuary bequest not contingent in its terms of property, whether immovable or movable, shall, subject to the provisions of section 25 of this Act and paragraph 5 of this Schedule, carry the intermediate income of that property from the death of the testator, except so far as the income, or any part thereof, may be otherwise expressly disposed of.

(2) In the case of any contingent or future gift, either specific or residuary, not falling under the provisions of subparagraph (1), the bequest shall not comprise the intermediate income of the property or fund bequeathed between the death of the testator and the vesting of the bequest.

**7. Interest on general legacy**

Where no time has been fixed for the payment of a general legacy, interest shall begin to run from the expiration of one year from the testator's death, but where a time has been fixed for payment, interest shall begin to run from the time fixed; and, in either event, the interest up to such period shall form part of the residue of the testator's estate:

Provided that interest shall run from the death of the testator where—

- (i) the legacy is bequeathed in satisfaction of a debt; or
- (ii) the testator was a parent or more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, and no specific sum is given by the will for maintenance; or
- (iii) the legacy is bequeathed to a minor with a direction to pay for his maintenance thereout.

**8. No interest on arrears of annuity within first year of testator's death**

No interest shall be payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

**9. Interest on sum to be invested to produce annuity**

Where a sum of money is directed to be invested to produce an annuity, interest shall be payable on that sum from the death of the testator until so invested.

**10. Rate of interest**

The rate of interest payable under paragraphs 6 to 9 (inclusive), shall, unless otherwise expressly provided, be six *per centum* per annum.

**11. Application**

The provisions of paragraph 6 to 9 (inclusive) shall apply in so far as a contrary intention does not appear from the will.

**EIGHTH SCHEDULE**

[Section 99, Act No. 7 of 1975, Sch.]

**LAWS REPEALED**

The Indian Succession Act of India .....	Act X of 1865.
The Hindu Wills Act of India .....	Act XXI of 1870.
The Probate and Administration Act of India .....	Act V of 1881.
The Hindu Succession Act .....	Cap. 158.
The Administration of Estates by Corporations Act .....	Cap. 163.
The Commonwealth Probates Act .....	Cap. 166.
The Africans' Wills Act .....	Cap. 169.
The Colonial Probates Act 1892 of England (as applied to Kenya)	

**NINTH SCHEDULE**

[Section 100.]

**LAWS AMENDED**

The Evidence Act (Cap. 80).	s. 113	Delete.
	s. 114	Delete.
		Insert after section 118—
	Presumption of death	118A. Where it is proved that a person has not been heard of for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.
The Mohammedan marriage, Divorce and Succession Act (Cap. 156).	s. 4	Delete.

*Law of Succession*

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NINTH SCHEDULE—*continued*

The Workmen's Compensation Act (Cap. 236).	s. 3(1)	Delete the definition of "member of the family" and substitute— "member of the family" means any of the following, that is to say, husband, wife, parent, stepparent, grandparent, son, daughter, stepchild, grandchild, brother or sister, half-brother or half-sister, and includes also an adopted child and a child whom the workman had accepted as a member of his family.
The Registered Land Act (Cap. 300).	ss. 120 and 121	Delete.
The Estate Duty Act (Cap. 483).	s. 49(1)	Delete "no grant of representation shall be made" in the second line and substitute "and save as provided in section 72 of the Law of Succession Act, 1971, no grant of representation shall be confirmed".

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