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LAGOS – ADMINISTRATION OF ESTATES LAW

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ADMINISTRATION OF ESTATES LAW

CHAPTER A3 LAWS OF LAGOS STATE

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CHAPTER A3

ADMINISTRATION OF ESTATES LAW

A Law relating to the Administration of the Estates of Deceased Persons.

[W.N. 1959, Cap. 1. L.S.L.N. 16 of 1972.]

COMMECNCEMENT –

[23rd April, 1959]

PART 1 – Preliminary

1. Citation and application

(1) This Law may be cited as the Administration of Estates Law.

(2) Save as otherwise expressly provided this Law does not apply in any case where the death occurred before the commencement of this Law.

(3) Nothing in this Law affects the administration of the estates of deceased persons by or under the authority of any customary court nor unless otherwise expressly provided the distribution, inheritance or succession of any estate where such distribution, inheritance or succession is governed by customary law whether such estate is administered under this Law or by or under the authority of a customary court.

2. Interpretation

(1) In this Law unless the context otherwise requires—
[L.S.L.N. 16 of 1972.]

“administration” means, with reference to the real and personal estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise;

“administrator” means a person to whom administration is granted;

“conveyance” includes a mortgage, charge given under the Registration of Titles Law or the Registered Land Law, lease, assent, vesting declaration, disclaimer, release and every other assurance of property or of an interest therein by any

instrument, except a will, and "convey" has a corresponding meaning, and "disposition" includes a "conveyance", also a devise, bequest and an appointment of property contained in a will, and "dispose of" has a corresponding meaning;

[Cap. R4. Cap. R1.]

"the court" means the High Court;

"income" includes rents and profits;

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

"legal estates" mean the estates charges and interests in or over land (subsisting or created at law) which are by statute authorised to subsist or to be created at law; and

"equitable interests" means all other interests and charges in or over land or in the proceeds of sale thereof;

"lunatic" includes a lunatic whether so found or not;

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

"personal chattels" mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable

stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money;

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

“possession” includes the receipt of rents and profits or the right to receive the same, if any;

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

“probate” means the probate of a will;

“probate rules” mean rules and orders made by the Chief Judge for regulating the procedure and practice of the High Court in regard to non-contentious or common form probate business;

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

“purchaser” means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser; and

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

“real estate” save as provided in Part 5 of this Law means real estate, including chattels real, which by virtue of Part 2 of this Law devolves on the personal representative of a deceased person;

“representation” means the probate of a will and administration, and the expression “taking out representation” refers to the

obtaining of the probate of a will or of the grant of administration;

“rent” includes an annual or periodical payment in money or money’s worth, issuing out of or charged upon land, but does not include mortgage interest;

“rules of court” include, in relation to non-contentious or common form probate business, probate rules;

“securities” include stocks, funds, or shares;

“trust corporation” means the public trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under the Public Trustee Law to act as custodian trustee;

[Cap. P27.]

“will” includes codicil.

(2) References to a child or issue living at the death of any person include a child or issue en ventre sa mere at the death.

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

PART 2-Devolution of Real Estate

3. Devolution of real estate on personal representative

(1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the

deceased, in like manner as before the commencement of this Law chattels real devolved on the personal representative from time to time of a deceased person.

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

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

4. Application to real estate of law affecting chattels real

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

(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving

under this Part of this Law shall not, save as otherwise provided as respects trust estates, be made without the concurrence therein of all such representatives or an order of the court, but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the court, and shall be as effectual as if all the persons named as executors had concurred therein.

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

(a) any rule as to marshalling or as to administration of assets;

(b) the beneficial interest in real estate under any testamentary disposition;

(c) any mode of dealing with any beneficial interest in real estate, or the proceeds of sale thereof;

(d) the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the personal representative.

5. Interpretation of Part 2

(1) In this Part of this Law “real estate” includes—

(i) Chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death; and

[L.S.L.N. 16 of 1972.]

(ii) Real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.

(2) A testator shall be deemed to have been entitled at his death to any interest in real estate passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

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

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

PART 3-Executors and Administrators

6. Cesser of right of executor to prove

Where a person appointed executor by a will—

- survives the testator but dies without having taken out probate of the will; or
- is cited to take out probate of the will and does not appear to the citation; or
- renounces probate of the will;

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

7. Withdrawal of renunciation

(1) Where an executor who has renounced probate has been permitted, whether before or after the commencement of this Law, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously proved the will or taken out letters or administration, and a memorandum or the subsequent probate shall be endorsed on the original probate or letters of administration.

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

8. Executor of executor represents original testator

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

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

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

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

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

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

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

(a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living; and

(b) is, to the extent to which the estate whether real or personal of that testator has come to his hands, answerable as if he were an original executor.

9. Right of proving executors to exercise powers

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

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

10. Vesting of estate of intestate between death and grant of administration

Where a person dies intestate and administration is granted under this Law in respect of his real and personal estate, that estate shall be deemed to have been vested, from the date of his death until administration is granted, in the Chief Judge in the same manner and to the same extent as it vests in the probate judge of Her Majesty's High Court of Justice in England.

[L.S.L.N. 16 of 1972.]

11. Executor not to act while administration is in force

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

12. Continuance of legal proceedings after revocation of temporary administration

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

13. Rights and liabilities of administrator

Every person to whom administration of the real and personal estate of a deceased person is granted shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

Duties, Rights, and Obligations

14. Duty of personal representative as to inventory

The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the court a true and perfect inventory and account of the real and personal

estate of the deceased, and the court shall have power as heretofore to require personal representatives to bring in inventories.

15. Rights of action by or against personal representative

(1) Subject to the provisions of this section, on the death of any person after the commencement of this Law all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

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

—

(a) proceedings against him in respect of that cause of action were pending at the date of his death; or

(b) the cause of action arose not earlier than three years before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Law, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Law for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Law, or the Carriage by Air Act, 1932 of the United Kingdom and so much of this Law as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Law and the said Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

[Cap. F1.]

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding

that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

16. Rights of distress

A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

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

The statutory enactments relating to distress for rent apply to any distress made pursuant to this section.

17. Protection of persons acting on probate or administration

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

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

18. Liability of person fraudulently obtaining or retaining estate of deceased

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

- any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and

(b) any payment made by him which might properly be made by a personal representative.

19. Liability of estate of personal representative

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

PART 4-Grants of Probate and Administration

20. Application for grants

An application for the grant or revocation of probate or administration may be made through the probate registry of the court.

21. Caveats

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

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

Probate or administration in respect of the real estate of a deceased person, or any part thereof, may be granted either separately or together with probate or administration of his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of administration to real estate may be limited in any way the court thinks proper;

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

23. Summons of executor to prove or renounce

The court shall have power to summon any person named; as executor in a will to prove or renounce probate of the will and to do such other things concerning the will as were customary before the commencement of this Law.

24. Provisions as to the number of personal representatives

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

Provided that the court in granting administration may act on such prima facie evidence, furnished by the applicant or any

other person, as to whether or not there is a minority or life interest, as may be prescribed by probate rules and orders.

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

(3) This section shall apply to grants made after the date of the commencement of this Law whether the testator or intestate died before or after that date.

25. Power to grant representation to a trust corporation

(1) The court may—

(a) where a trust corporation is named in a will as executor whether alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require; and

(b) grant administration to a trust corporation, either solely or jointly with another person

and the corporation may act accordingly as executor or administrator, as the case may be.

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

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do

any other act or thing which the court may require with a view to the grant to the corporation of probate or administration, and the acts of an officer so authorised shall be binding on the corporation.

(4) Where, at the commencement of this Law, any interest in any estate is vested in a syndic on behalf of a trust corporation acting as the personal representatives of a deceased person, the said interest shall, by virtue of this Law, vest in the corporation, and the syndic shall be kept indemnified by the corporation in respect of the said interest.

This subsection shall not apply to securities registered or inscribed in the name of a syndic or to land or a charge registered under the Registration of Titles Law or the Registered Land Law, in the name of a syndic, but any such securities, land or charge shall be transferred by the syndic to the corporation or as the corporation may direct.

[L.S.L.N. 16 of 1972. Cap. R4. Cap. R1.]

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

26. Discretion of court as to persons to whom administration is to be granted

(1) In granting administration the court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof, and, in particular, administration with the will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the court thinks fit—

Provided that:

- where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons interested in the residuary estate of the deceased, if they make an application for the purpose; and

(b) if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the court may in its discretion, notwithstanding anything in this Law, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the court thinks fit.

(2) This section shall apply only in the case of persons dying after the date of the commencement of this Law, and the court in granting administration in the case of persons dying at any time before that date shall act in accordance with the principles and rules in accordance with which it would have acted if this Law had not been passed.

27. Administration pendente lite

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

(2) The court may, out of the estate of the deceased, assign to an administrator appointed under this section such

reasonable remuneration as the court thinks fit.

28. Grant of special administration where personal representative is abroad

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

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

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

29. Administration during minority of executor

(1) Where an infant is sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the court thinks fit, until the infant attains the age of twenty-one years, and on his attaining that age and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints an infant to be an executor the appointment shall not operate to transfer any

interest in the property of the deceased to the infant, or to constitute him a personal representative for any purpose unless and until probate is granted to him under this section.

30. Administration with will annexed

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

31. Administration bonds

(1) Every person to whom a grant of administration is made shall give a bond (in this section referred to as an "administration bond") to the probate registrar by the name of his office, and, subject to the provisions of this section, if the probate registrar so requires, with one or more sureties, conditioned for duly collecting, getting in, and administering the real and personal estate of the deceased.

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

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

(4) Where it appears to the satisfaction of the court or a judge that the condition of an administration bond has been broken, the court or judge may, on an application in that behalf, order that the bond shall be assigned to such person as may be specified in the order, and the person to whom the bond is ordered to be assigned shall be entitled (by virtue of the order) to sue thereon in his own name as if it had been originally given to him instead of to the probate registrar, and to recover

thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the condition thereof.

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

(6) Probate rules and orders may be made for providing that sureties to administration bonds shall not be required when the grant is made to a trust corporation or to two or more individuals, or in any other proper case.

32. Transfer by private executor or administrator to Administrator-General

(1) Any private executor or administrator may, with the previous consent of the Administrator-General by instrument in writing under his hand, notified in the State Gazette, transfer the assets of the estate vested in him by virtue of a grant of probate or letters of administration to the Administrator-General by that name.

(2) As from the date of such transfer, the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts or omissions done or committed before the date of such transfer.

33. Places for deposit of original wills and other documents

All original wills and other documents which are under the control of the court shall be deposited and preserved in such place as the Chief Judge may direct and any wills or other documents so deposited shall, subject to the control of the court

and the provisions of probate rules and orders, be open to inspection.

34. Official copies of wills

An official copy of the whole or any part of a will or an official certificate of any grant of administration may, on payment of the fee prescribed by probate rules and orders, be obtained from the probate registry.

35. Depositories of wills of living persons

There shall, under the control and direction of the court, be provided safe and convenient depositories for the custody of the wills of living persons, and any person may deposit his will therein on payment of such fees and subject to such regulations as may from time to time be prescribed by the Chief Judge.

PART 5-Administration of Assets

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

(1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power disposes by his will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

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

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

37. Trusts on which estate held

(1) Subject to the powers, rights, duties and liabilities conferred or imposed by this Law or by any other enactment the personal representatives of a deceased person shall hold the real and personal estate as trustees for the persons beneficially entitled thereto with power, so far as may be required for purposes of administration, to sell the real estate and to call in, sell and convert into money such part of the personal estate as may not consist of money, so that any reversionary interest shall not be sold until it falls into possession, unless the personal representatives see special reason for sale, and so also that, unless required for purposes of administration for want of other assets, personal chattels shall not be sold except for special reason.

[L.S.L.N. 16 of 1972.]

(2) Out of the net money to arise from any sale or conversion of such real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Law and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any

pecuniary legacies bequeathed by the will (if any) of the deceased.

[L.S.L.N. 16 of 1972.]

(3) During the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

[L.S.L.N. 16 of 1972.]

(4) The residue of the said money and any investments for the time being representing the same, including any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is in this Law referred to as "the residuary estate of the intestate".

[L.S.L.N. 16 of 1972.]

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

(6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the State in respect of death

duties.

[L.S.L.N. 16 of 1972.]

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

38. Administration of assets

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

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Law affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part 2 of the Schedule to this Law.

39. Charges on property of deceased to be paid primarily out of the property charged

(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an

interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

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

40. Effect of assent or conveyance by personal representative

(1) A personal representative may assent to the vesting in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, and which devolved upon the personal representative.

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

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

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

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

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

A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

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

(8) A conveyance of a legal estate 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 been discharged or provided for.

(9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of

such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge given under the Registration of Titles Law or the Registered Land Law.

[L.S.L.N. 16 of 1972. Cap. R4. Cap. R1.]

(11) This section shall not operate to impose any stamp duty in respect of an assent, and in this section "purchaser" means a purchaser for money or money's worth.

(12) This section applies to assents and conveyances made after the commencement of this Law whether the testator or intestate died before or after such commencement.

41. Validity of conveyance not affected by revocation of representation

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

(2) This section takes effect without prejudice to any order of the court made before the commencement of this Law, and

applies whether the testator or intestate died before or after such commencement.

42. Right to follow property and powers of the court in relation thereto

(1) An assent or conveyance by a personal representative to person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance the court may, on the application of any creditor or other person interested—

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

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

(c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;

(d) make any vesting order, or appoint a person to convey in accordance with the provisions of the law relating to trustees.

[L.S.L.N. 16 of 1972.]

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the

testator or intestate died before or after the commencement of this Law.

43. Powers of management

(1) In dealing with the real and personal estate of the deceased his personal representatives shall, for purposes of administration, or during the subsistence of any life interest, or until the period of distribution arrives, have—

[L.S.L.N. 16 of 1972.]

(a) the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Law, with respect to personal estate vested in him, and such power of raising money by mortgage may in the case of land be exercised by way of legal mortgage; and

(b) all the powers and discretions conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale); and

[L.S.L.N. 16 of 1972.]

(c) all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

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

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

44. Powers of personal representative as to appropriation

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

Provided that:

- an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents:
- when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
- when made in respect of any settled legacy share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income;

If the person whose consent is so required as aforesaid is an infant or a lunatic the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, or committee, or if, in the case of an infant, there is no such

parent or guardian, by the court on the application of his next friend;

- no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
- if no committee of a lunatic has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic;

(e) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.

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

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

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose

consent is not hereby made requisite.

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

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

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

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

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this

Law and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

45. Power to appoint trustees of infants' property

(1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Law (in this subsection called "the deceased") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise or trustee or trustees of such legacy, residue or share for the infant, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(2) Where a personal representative has before the commencement of this Law retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the court made before such commencement, he shall not be

deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into court.

46. Obligations of personal representative as to giving possession of land and powers of the court

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

(2) Any person who as against the personal representative claims possession of real estate, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor thereof under the Registration of Titles Law or the Registered Land Law may apply to the court for directions with reference thereto, and the court may make such vesting or other order as may be deemed proper, and the provisions of the law relating to trustees which provide for the making of vesting orders and the appointment of a person to convey, shall apply.

[L.S.L.N. 16 of 1972. Cap. R4. Cap. R1.]

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

47. Power to postpone distribution

Subject to the foregoing provisions of this Law a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from death.

PART 6-Distribution of Residuary Estate

48. Abolition of descent of heir, curtesy, dower and escheat

(1) With regard to the real estate and personal inheritance of every person dying after the commencement of this Law, there shall be abolished—

(a) All existing modes rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or otherwise howsoever; and

(b) Tenancy by the curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or otherwise; and

(c) Dower and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or otherwise; and

(d) Escheat to the Sate for want of heirs.

[L.S.L.N. 16 of 1972.]

49. Succession to real and personal estate on intestacy

(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely—

(a) If the intestate leaves a husband or wife, then in accordance with the following table:

If the intestate;

(1) leaves;

(a) no issue; and

(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood.

The residuary estate shall be held in trust for the surviving husband or wife absolutely.

(2) leaves issue (whether or not persons mentioned in subpara-graph (b) above also survive). The surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of money equivalent to the value of one-third of the residuary estate free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of two and a half naira per cent per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—

(a) as to one-third upon trust for the surviving husband or wife during his or her life, and subject to such life interest, on the statutory trusts for the issue of the intestate, and

(b) as to the other two-thirds, on the statutory trusts for the issue of the intestate.

(3) leaves one or more of the following, that is to say, a parent, a brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but leaves no issue. The surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of money equivalent to the value of two-thirds of the residuary estate free of costs, to the surviving husband or wife with interest thereon from the date of the

death at the rate of two and a half naira per cent per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon the residuary estate (other than the personal chattels) shall be held—

(a) as to one-half in trust for the surviving husband or wife absolutely; and

(b) as to the other half;

- where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive) in trust for the parent absolutely or, as the case may be, for the two parents in equal shares absolutely;
- where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate.

- If the intestate leaves issue but no husband or wife the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;
- If the intestate leaves no husband or wife and no issue but both parents, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;
- If the intestate leaves no husband or wife and no issue but one parent, then the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;
- If the intestate leaves no husband or wife and no issue and no parent, then the residuary estate of the intestate shall be held in trust for the following persons living at the death

of the intestate, and in the following order and manner, namely:

First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then

Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate);

(f) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the State as bona vacantia, and in lieu of any right to escheat.

[L.S.L.N. 16 of 1972.]

The State may, out of the whole or any part of the property devolving on it, provide, in accordance with the existing practice, for dependents, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

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

(4) The interest payable on the net sum of money equivalent to one-third or two-thirds of the residuary estate as the case may be, payable to a surviving husband or wife shall be primarily payable out of income.

(5) Where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Act and such person dies intestate after the commencement of this Law leaving a widow or husband or any issue of such marriage, any property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of this Law, any customary law to the contrary notwithstanding—

[L.F.N. Cap. 218.]

Provided that:

(a) Where by virtue of paragraph (f) of subsection (1) of this section the residuary estate would belong to the State as bona vacantia such residuary estate shall be distributed in accordance with customary law and shall not belong to the State; and

[L.S.L.N. 16 of 1972.]

(b) any real property the succession to which cannot by customary law be affected by testamentary disposition shall

descend in accordance with customary law anything herein to the contrary notwithstanding.

50. Statutory trusts in favour of issue and other classes of relatives of intestate

(1) Where under this Part of this Law the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely—

(a) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;

(b) When an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest;

(c) Where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or

the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;

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

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

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

(b) references in this Part of this Law to the intestate “leaving no issue” shall be construed as “leaving no issue who attain an absolutely vested interest”;

(c) references in this Part of this Law to the intestate “leaving issue” or “leaving a child or other issue” shall be construed as “leaving issue who attain an absolutely vested interest”.

(3) Where under this Part of this Law the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the

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

(4) References in paragraph (a) of subsection (1) of the last foregoing section to the intestate leaving, or not leaving, a member of the class consisting of brothers or sisters of the whole blood of the intestate and issue of brothers or sisters of the whole blood of the intestate shall be construed as reference to the intestate leaving, or not leaving, a member of that class who attains an absolutely vested interest.

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

51. Right of surviving spouse to have own life interest redeemed

(1) Where a surviving husband or wife is entitled to a life interest in part of the residuary estate, and so elects, the personal representative shall purchase or redeem the life interest by paying the capital value thereof reckoned according to tables selected by the personal representative to the tenant for life, or the persons deriving title under the tenant for life, and the costs of the transaction; and thereupon the residuary

estate of the intestate may be dealt with and distributed free from the life interest.

(2) An election under this section shall only be exercisable if at the time of the election the whole of the said part of the residuary estate consists of property in possession, but, for the purpose of this section, a life interest in property partly in possession and partly not in possession may be treated as consisting of two separate life interests in those respective parts of the property.

(3) An election under this section shall be exercisable only within the period of twelve months from the date on which representation with respect to the estate of the intestate is first taken out:

Provided that if the surviving husband or wife satisfies the court that the limitation to the said period of twelve months will operate unfairly—

- in consequence of the representation first taken out being probate of a will subsequently revoked on the ground that the will was invalid; or
- in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out; or
- in consequence of some other circumstances affecting the administration or distribution of the estate;

the court may extend the said period.

(4) An election under this section shall be exercisable, except where the tenant for life is the sole personal representative, by notifying the personal representative (or, where there are two or more personal representatives of whom one is the tenant for life all of them except the tenant for life) in writing; and a

notification in writing under this subsection shall not be revocable except with the consent of the personal representative.

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

(6) An election under this section by a tenant for life who is an infant shall be as valid and binding as it would be if the tenant for life were of age; but the personal representative shall, instead of paying the capital value of the life interest to the tenant for life, deal with it in the same manner as with any other part of the residuary estate to which the tenant for life is absolutely entitled.

(7) In considering for the purposes of the foregoing provisions of this section the question when representation was first taken out, a grant limited to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

52. Powers of personal representatives in respect of interests of surviving spouse

The personal representative may raise—

- the net sum of money equivalent to the value of one-third or two-thirds of the residuary estate, as the case may be, or any part thereof and the interest thereon payable to the surviving husband or wife of the intestate on the security of the whole or any part of the residuary estate of the

intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by an appropriation under the statutory power available in that behalf; and

- in like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving husband or wife of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate;

and in either case the amount, if any, properly required for the payment of the costs of the transaction.

53. Application to cases of partial intestacy

Where any person dies leaving a will effectively disposing of part of his property, this Part of this Law shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications—

- where the deceased leaves a husband or wife who acquires any beneficial interests under the will of the deceased (other than personal chattels specifically bequeathed) the references in this Part of this Law to the net sum of money equivalent to one-half or two-thirds of the residuary estate payable to a surviving husband or wife and to interest on that sum, shall be taken as references to the said sum diminished by the value at the date of death of the said beneficial interests, and to interest on that sum as so diminished and, accordingly, where the said value exceeds the said sum, this Part of this Law shall have effect as if references to the said sum, and interest thereon, were omitted;

- the requirements of section 50 of this Law as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons;

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

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

(3) For the purposes of paragraph (a) in the foregoing provisions of this section the personal representative shall employ a duly qualified valuer in any case where such employment may be necessary.

(4) The references in subsection (2) of section 51 of this Law to property are references to property comprised in the residuary estate and, accordingly, where a will of the deceased creates a life interest in property in possession, and the remaining interest in that property forms part of the residuary estate, the said references are references to that remaining interest (which until the life interest determines, is property not in possession).

54. Construction of documents

(1) References to any Statutes of Distribution in an instrument inter vivos made or in a will coming into operation

after the commencement of this Law, shall be construed as references to this Part of this Law; and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part of this Law.

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

55. Savings

(1) Nothing in this Part of this Law affects the right of any person to take beneficially, by purchase, as heir.

(2) The foregoing provisions of this Part of this Law do not apply to any beneficial interest in real estate (not including chattels real) to which a lunatic living and of full age at the commencement of this Law, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death, and any such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the general law in force before the commencement of this Law applicable to freehold land.

For the purposes of this subsection, a lunatic who dies intestate as respects any beneficial interest in real estate shall not be deemed to have recovered his testamentary capacity unless his committee has been discharged.

56. Interpretation of Part 6

In this Part of this Law "real and personal estate" means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will.

PART 7-Supplemental

57. Savings as to power of court

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

58. Application to State

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

[L.S.L.N. 16 of 1972.]

(2) Nothing in this Law affects or alters the descent or devolution of any property for the time being vested in the State or the Governor or any other person on behalf of or in trust for the government of the State.

[L.S.L.N. 16 of 1972.]

59. Power to make rules

(1) Rules of Court may be made by the Chief Judge for giving effect to the provisions of this Law.

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

60. Repeal of Cap. 2 of Laws of Nigeria, 1948

The Administration (Real Estate) Ordinance is hereby repealed:

Provided that where any estate is, at the commencement of this Law, being administered in accordance with the provisions of that Ordinance, that estate shall, notwithstanding the provisions of this Law, continue to be administered in accordance with the provisions of that Ordinance.

SCHEDULE

[Section 38.]

Part 1 – RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS INSOLVENT

1. The funeral, testamentary, and administration expenses have priority.
2. (a) Subject as aforesaid there shall be paid in priority to all other debts—
 - (i) All local rates due from the deceased at the date of his death and having become due and payable within twelve months next before that date, and all assessed taxes, including income tax, assessed on the deceased up to the 31st day of

March next before the date of his death and not exceeding in the whole one year's assessment;

(ii) All wages or salary of any clerk or servant in respect of services rendered to the deceased during four months before the date of his death, not exceeding one hundred naira;

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

(iv) All amounts due in respect of compensation under the Workmen's Compensation Act, the liability whereof accrued before the date of the death of the deceased.

[L.F.N. Cap. 470.]

(b) The foregoing debts shall rank equally between themselves and shall be paid in full unless the property of the deceased is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(c) Subject to the retention of such sums as may be necessary for the purposes of

Rule 1, the foregoing debts shall be discharged forthwith so far as the property of the deceased is sufficient to meet them.

3. Subject to the foregoing rules all other debts of the deceased shall be paid *pari passu*.

Part 2-ORDER OF APPLICATION OF ASSETS WHERE ESTATE IS SOLVENT

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

pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.
4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.
5. The fund, if any, retained to meet pecuniary legacies.
6. Property specifically devised or bequeathed, rateably according to value.
7. Property appointed by will under a general power, rateably according to value.
8. The foregoing order of application may be varied by the will of the deceased.

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