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ADMINISTRATION OF ESTATES LAW  
CAP. 189

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*This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.*

<b>Legislation incorporated in this Consolidation</b>	<b>Ordinance</b>	<b>Date in Force</b>
Administration of Estates Law	CAP.189	
Administration of Estates (Amendment) Ordinance 1986	3/1986	07/04/1986
Administration of Estates (Amendment) Ordinance 1990	10/1990	18/06/1990
Administration of Estates (Amendment) Ordinance 1994	2/1994	11/04/1994

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ADMINISTRATION OF ESTATES LAW  
CAP. 189

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A Law to consolidate and amend the Law relating to the Administration of the Estates of  
Deceased Persons

**PART 1**

**Preliminary**

**Short Title**

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

**Interpretation**

2. In this Law, unless the context otherwise requires—

“administration” includes all letters of administration of the estate of a deceased person, whether with or without a will annexed, and whether granted for general special or limited purposes;

“administrator” means a person to whom a Court has granted letters of administration or letters of administration with will annexed;

“Court” means the President of the District Court or a District Judge of the District Court of the district in which the deceased had his ordinary or last place of residence in the Colony, or the District Court of Nicosia if such place of residence is not known;

“disposable portion ” means that part of the movable property and immovable property of a person

which he can dispose of by will;

“estate” means the movable property and immovable property of which a person dies possessed;

“grant” means a grant of probate or of administration;

“grant in common form” means a grant obtained where there is no contention as to the right thereto or where the contest has terminated;

“heir” means a person who by operation of law succeeds to an estate;

“heir under disability” means a person who is an infant or a mental patient or is prohibited by the Court from the management of his affairs or is absent from the Colony;

“immovable property ” includes—

- (a) land;
- (b) buildings and other erections, structures or fixtures affixed to any land or to any building or other erection or structure;
- (c) trees, vines, and any other thing whatsoever planted or growing upon any land and any produce thereof before severance;
- (d) springs, wells, water and water rights whether held together with, or independently of, any land;
- (e) privileges, liberties, easements and any other rights and advantages whatsoever appertaining or reputed to appertain to any land or to any building or other erection or structure;

(f) an undivided share in any property hereinbefore set out;

“infant” means a person who has not attained the age of eighteen years:

Provided that a married woman shall not be deemed to be under disability because she has not attained the age of eighteen years.

“movable property” means all property of every description which is not immovable property;

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

“personal representative” means an executor or administrator;

“prescribed” means prescribed by Rules;

“property” means movable and immovable property;

“undisposed portion” means the whole or the part, as the case may be, of the disposable portion which has not been disposed of by will;

“Rules” means rules made under this Law;

“statutory portion ” means that part of the movable property and immovable property of a person which he cannot dispose of by will;

“Turkish Family Court” means the Turkish Family Court of the district in which the deceased had his ordinary or last place of residence in the Colony, or the Turkish Family Court of Nicosia if such place of residence is not known;

“value” in connection with a property, means the amount which the property if sold in the open market by a willing seller to a willing purchaser might be expected to realize;

“will” means the legal declaration in writing of the intentions of a testator with respect to the disposal of his movable property or immovable property after his death, and includes codicil.

## PART 2

### Probate Registrar and Registry

#### Principal probate registrar and probate registry

**3.—**(1) The Chief Registrar shall be the principal probate registrar, and the Supreme Court Registry shall be the principal probate registry.

(2) The powers and duties of the principal probate registrar may be exercised and performed by such officer of the Supreme Court Registry as the Chief Registrar with the approval of the Chief Justice may appoint to act for him.

(3) The Registrar of each District Court shall be the probate registrar for that district.

#### Duties of the probate registrar

**4.—**(1) A probate registrar shall send to the principal probate registry a notice in the prescribed form of every application made in the registry for a grant as soon as may be after the application has been made, and no grant shall be made by him until he has received from the principal probate registry a certificate that no other application appears to have been made in respect of the estate of the testator or intestate.

(2) The certificate aforesaid shall be forwarded as soon as may be to the probate registrar.

(3) All notices so transmitted to the principal probate registry shall be filed and kept in that registry.

(4) Where any such notice is received from a probate registry the principal probate registrar shall examine all notices of applications for grants received from the several other probate registries and all applications for grants made at the principal probate registry, so far as may be necessary, for the purpose of ascertaining whether application for a grant in respect of the estate of the same deceased person has been made in more than one registry, and shall communicate with the probate registrar as occasion may require in relation thereto.

(5) A probate registrar shall, once in every quarter, or oftener if required by Rules, transmit to the principal probate registry a list in the prescribed form of the grants made by him and not included in a previous return, and also copies of the wills to which the grants relate, certified by him to be correct.

(6) A probate registrar shall file and preserve all original wills of which probate or administration with the will annexed has been granted by him, subject to such regulations, with respect to the preservation and inspection of the wills, as may from time to time be made by the Chief Justice.

### **Calendars of grants**

**5.**—(1) The principal probate registrar shall cause to be prepared from time to time in the principal probate registry calendars of the grants made in that registry and in the several probate registries for such periods as the principal probate registrar may direct.

(2) Every such calendar shall contain a note of every probate or administration with the will annexed and of every other administration granted within the period specified in the calendar setting forth the date of the grant, the registry in which it was made, the name and the place and time of death of the testator or intestate, the names and descriptions of the executors or administrators, and the value of the estate, if any.

(3) A copy of every calendar so prepared shall be sent by post or otherwise to every probate registry and every copy so transmitted shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of fifty mils for each search, without reference to the number of calendars inspected.

### **Copies of wills, etc., to be delivered to the Commissioner of Estate Duty**

**6.** Subject to any arrangements which may from time to time be made between the Chief Justice and the Commissioner of Estate Duty, every probate registry shall, within such period after a grant as the Chief Justice may direct, deliver to the Commissioner of Estate Duty—

- (a) in the case of a probate or of letter of administration with will annexed, a copy of the will;
- (b) in every case of letters of administration, a copy or extract of the letters of administration.

### **Notice to Officer in charge of District Lands Office**

**7.**—(1) If any immovable property is affected by the will, the person to whom probate or letters of administration with will annexed is granted shall, within ten days after the grant, give notice in writing to the Officer in charge of the District Lands Office of the district in which such property is situated, setting out in the notice a list of the immovable property affected by the will.

(2) When a grant is made upon an intestacy, or an order is made under section 49 and any immovable property is comprised in the estate to be administered, the administrator or officer appointed under section 49 shall, within ten days of such grant or order, give notice in writing to the Officer in charge of the District Lands Office of the district in which such property is situated, setting out in the notice a list of the immovable property comprised in the estate.

### **Seals for use in probate registries**

**8.**—(1) In the principal probate registry and in every probate registry there shall be used such seal or seals as the Chief Justice may from time to time direct.

(2) All probates, letters of administration, orders and other instruments and copies thereof purporting to be sealed with any such seal as aforesaid shall be received in evidence in all parts of the Colony without further proof.

## PART 3

### **Deposit, Discovery and Production of Wills**

#### **Deposit of wills**

**9.**—(1) Any person may in his lifetime deposit his will for safe custody with a probate registrar upon payment of such fees and compliance with such Rules as may be prescribed.

(2) Save where a testator withdraws his own will a will so deposited may not be removed from the registry without the approval of the Court and may be opened except under such conditions as may be prescribed.

(3) When a will is opened, copies can be delivered to interested parties on payment of the prescribed fees.

(4) Notice of every will so deposited shall be sent to the principal probate registrar who shall keep a register and alphabetical index of testators in the same form as prescribed for probate registries.

#### **Notification to interested persons of deposited will**

**10.**—(1) If it is made to appear to the Court that a testator, who has deposited a will or codicil during his lifetime in accordance with the Rules, has died, and that no steps for the opening of such will have been taken or seem likely to be taken within a reasonable time (not exceeding four months) of the testator's death, the Court may take such action in the matter as the circumstances of the case appear to it to require in order to bring the existence of the will, and its contents, if necessary, to the notice of any person likely to be interested.

(2) A minute of any action taken under subsection (1) shall be made and signed by the Court and placed with the will.

#### **Production of documents, etc., respecting wills**

**11.**—(1) Any person having in his possession or under his control any paper or writing of a deceased person being or purporting to be testamentary, shall forthwith deliver the original to the probate registrar of the Court. If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding fifty pounds as the Court, having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

(2) Where it appears that any paper of the deceased being or purporting to be testamentary, is in the possession of or under the control of any person the Court may in a summary way, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

(3) Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceeding for probate or administration is pending or not, order that he may be examined respecting the same in Court, or on interrogatories, and that he do attend for that purpose, and after examination that he do produce the paper and bring it into Court.

## PART 4

### Grants

#### No grant until estate duty paid

12. No grant shall be made under this Law until the provisions of section 54 of the Estate Duty Law (a) have been complied with.

#### Grants in probate registries

13.—(1) Grants may be made in common form by probate registrars in the name and subject to the directions, special or general, of the Court and under the seal of the registry, and any such grant shall have effect over the estate of the deceased, in all parts of the Colony.

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

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

#### Will of no effect until proved

14. No will shall have any effect until it has been proved.

#### Notice to executor to come in and prove

15. The court may of its own motion, or on the application of any person claiming an interest under a will, give notice to the executors, if any, therein named, to come in and prove the will, or to renounce probate, any they, or some or one of them, shall, within fourteen days after notice, come in and prove or renounce accordingly.

#### Cessar of right of executor to prove

16. Where a person appointed executor by a will—

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

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

#### Discretion of Court as to persons to whom administration is to be granted

17. 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:

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(a) Cap.319 as amended

Provided that—

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

### **Administration with will annexed**

**18.** Administration with will annexed may be granted in the following cases:—

- (a) where no executor has been appointed;
- (b) where the executor appointed in the will has died in the life-time of the testator, or, after his death, without proving;
- (c) where the executor has renounced, or been cited by the usual process of the Court, and not appeared;
- (d) where the appointment of an executor is void for uncertainty;
- (e) where the Court exercises the discretion given to it by section 17;
- (f) where the executor is incompetent by reason of his minority, lunacy, or other disability or is resident out of jurisdiction.

### **Limited grants**

**19.** Grants may be limited in duration in respect of property, or for a special purpose, and, subject to the provisions of this Law and the Rules, the Court or registrars, in making such grants, shall follow the probate practice for the time being in England.

### **Administration *pendente lite***

**20.**—(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 any 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.

### **Grant of special administration where personal representative is abroad**

**21.**—(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 the jurisdiction of the Court, the Court may, on the application of any creditor or person interested in the estate of the deceased, grant to him 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 reside within the jurisdiction of the Court 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.

#### **Administration during minority of executor**

**22.**—(1) Where an infant is sole executor of a will, administration, with the will annexed shall be granted to his guardian, or to such other person as the Court thinks fit, until the infant attains the age of eighteen 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.

#### **Provisions as to the number of personal representatives**

**23.**—(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 public officer, with or without another person, or to not less than two persons.

(2) If there is only one personal representative, not being a public officer, 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, administrator 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.

#### **Appeal from probate registrar's refusal**

**24.**—(1) Where an application for probate or administration is not opposed but is nevertheless refused by the probate registrar, the applicant can apply, by motion, to the Court for a review of the decision of the probate registrar.

(2) Upon the hearing of such motion the Court may, of its own motion or on the application of any person, summon the persons who made the affidavit or affidavits in connection with the will or in connection with the application for letters of administration and further examine them, or take any further evidence that may be deemed necessary with a view to the granting or refusing of probate or of letters of administration whether with will annexed or otherwise.

(3) An appeal shall lie from the decision of the Court to the Supreme Court.

## **PART 5**

### **Vesting of Estate on Grant and After Administration**

#### **Vesting of estate where deceased left a will**

**25.** From and after a grant of probate or of letters of administration with will annexed the rights and liabilities attaching to the estate of the deceased (including the statutory portion and the undisposed portion) shall be deemed to have vested in the personal representative from the date on which the deceased died.

### **Vesting of estate where deceased left heir under disability**

26.—(1) Upon the death of any person wholly intestate leaving heirs under disability and property exceeding ~~one hundred pounds~~ *six thousand pounds* (a) in value, such property shall, until administration is granted in respect thereof, or an order is made that the estate be administered summarily under section 49 of this Law, vest in the President of the District Court where the deceased ordinarily resided and, if he was resident abroad, then in the President of the District Court of Nicosia.

(2) From and after the grant of letters of administration or the making of an order under section 49, the property of the deceased shall vest in the administrator or the officer appointed under section 49, as the case may be.

### **Vesting of an estate on intestacy where there is no grant**

27. Where no letters of administration have been granted in respect of an estate and a person dies wholly intestate who either leaves no heirs under disability or (if there are such heirs) only leaves property not exceeding ~~one hundred pounds~~ *six thousand pounds* (b) in value and an order is not made for summary administration under section 49, the following provisions shall apply:—

- (1) (a) the estate of the deceased shall stand charged with his debts and liabilities;
- (b) subject to such charge the estate shall vest in and devolve on the heirs;
- (c) an heir shall be liable to pay the debts and liabilities of the deceased up to the value of the property of the deceased that comes into his hands or up to the value of the proceeds from the sale of such property;
- (d) the Court may, either on its own motion or on the application of an interested party, call upon the heirs either to take out letters of administration or to account for the distribution of the estate.

- (2) (a) no property of the deceased shall be sold or transferred by way of execution for debt or otherwise to any person other than an heir of the deceased until a period of eighteen months has expired after the death of the deceased (which period is referred to in this section and in section 28 as “the period of eighteen months”):

Provided that the sale or transfer of the following property shall not be so prohibited:—

- (i) perishable commodities;
  - (ii) property sold or transferred in payment of the debts and liabilities of the deceased;  
and
  - (iii) immovable property exchanged or transferred by the Director of Lands and Surveys in exercise of the powers conferred upon him by sections 28 to 33 of the Immovable Property (Tenure, Registration and Valuation) Law (c);
- (b) notwithstanding anything contained in the Civil Procedure Law (d), or in the Immovable Property (Tenure, Registration and Valuation) Law, no immovable property of a deceased person shall be charged with any debt other than a debt of the deceased and such property shall not be registered in the name of any person other than the deceased or an heir of the deceased until the period of eighteen month has expired unless such transfer and registration is made for the purposes mentioned in paragraphs (ii) and (iii) of the proviso to the immediately preceding paragraph;
  - (c) any sale or transfer of the property of the deceased not permitted by this section shall be void.

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(a) Amended by Ordinance 2/1994 – came into force on 11 April 1994

(b) Amended by Ordinance 2/1994 – came into force on 11 April 1994

(c) Cap.224 as amended

(d) Cap.6 as amended

### **Grant of the estate vested in heirs**

**28.** Where letters of administration are granted in respect of an estate which is vested in and has devolved upon heirs under section 27 the following provisions shall apply:—

- (a) the property of the deceased shall no longer vest in the heirs but in the administrator:  
Provided that property of the deceased shall not vest in the administrator which is property appropriated to an heir, or is property sold or transferred in accordance with the proviso to sub-paragraph (a) of paragraph (2) of section 27;
- (b) in respect of property appropriated to an heir the following provisions shall apply:—
  - (i) the provisions of this paragraph shall not apply to property appropriated to an heir which after the period of eighteen months has expired and before such heir has notice of the application for letters of administration, or (where no such notice has been received) before the date of the grant, has been sold in execution of a judgment debt or has been transferred by such heir to a purchaser;
  - (ii) property appropriated to an heir and not sold or transferred as provided in sub-paragraph (i) shall not be sold or transferred until the expiration of one month after the date of the grant;
  - (iii) the administrator shall within one month of obtaining the grant, file in the registry where the grant is obtained a declaration stating whether such property or any part thereof is required to discharge the debts and liabilities of the deceased;
  - (iv) if the property is so required, the administrator shall, after filing the declaration, have all the rights of a judgment creditor of the heir in priority to any other such judgment creditors, including the right to register the debts of the deceased as a charge on such of the property as is immovable, in priority to any charge made by a judgment creditor of the heir;
- (c) for the purposes of this section the expression “property appropriated to an heir” means property of the deceased in which the beneficial ownership has been transferred to an heir as his share or part of his share in the estate and either the consent of the other heirs has been obtained to such transfer, or the property, if immovable, has been registered in the name of the heir;
- (d) in reckoning the share of an heir the administrator shall take into account any property of the deceased received, and any debt or liability of the deceased discharged, by an heir.

### **Circumstances in which heirs can give valid discharge and sue**

**29.—**(1) Any heir of a deceased person may apply to the probate registrar of the district where the deceased had his last or ordinary place of resident for a certificate under this section and such application shall be accompanied by a statement of the names of the heirs of the deceased and whether any of such heirs are under disability; a complete inventory of his property including a statement of the value of such property and a statement of debts due to the estate; and an affidavit by the applicant and by the mukhtar of the place where the deceased had his ordinary place of residence verifying that, to the best of their knowledge and belief, the statement concerning the heirs and the inventory (in this section referred to as “the inventory filed by the applicant”) is correct.

(2) Before issuing a certificate under this section, the probate registrar may require the applicant to furnish further information upon affidavit, or to publish such advertisements as the probate registrar may direct.

(3) Upon the application complying with the provisions of subsections (1) and (2), and if the probate registrar is satisfied that—

- (a) the gross value of the estate of the deceased (before the payment of debts and funeral expenses) does not exceed ~~five hundred pounds~~ *ten thousand pounds*(a) in value;

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(a) Amended by Ordinance 10/1990 – came into force on 18 June 1990

- (b) the estate is not vested in the President of the District Court under subsection (1) of section 26;
- (c) no grant has been made or application for a grant is outstanding in respect of such estate; and
- (d) fourteen days have elapsed since the deceased died,

the probate registrar may issue a certificate naming the person who are heirs of the deceased.

(4) Any person who pays or delivers to such heirs any debt due to the deceased or any property of the deceased and who obtains a receipt from such heirs shall have a valid discharge in respect of the debt or property so paid or delivered provided such debt or property is declared on the inventory filed by the applicant.

(5) The heirs mentioned in the certificate may sue for the recovery of any property set out in the inventory filed by the applicant in the same manner as a personal representative; and no action by heirs shall lie other than an action by heirs mentioned in a certificate given under this section.

(6) The Court of its own motion or upon the application of any interested person may revoke or amend a certificate issued under this section if it is satisfied that any of the matters stated in the documents filed by the applicant are incorrect, or that an application for a grant in respect of the estate the subject of the certificate should be allowed; and any certificate so revoked shall be delivered up to the Court and cancelled:

Provided that any discharge given under the certificate to any person acting in good faith who has paid a debt due to the estate or has delivered up property of the deceased shall not be invalidated by reason of such revocation.

(7) The probate registrar shall send to the principal probate registrar a copy of every certificate issued under this section, and no grant may be made in respect of the estate mentioned in the certificate unless the certificate is first revoked under the preceding subsection.

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

**30.** If any person to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any property 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 property received or coming to his hands, or the debt or liability released, after deducting—

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

Provided that the provisions of this section shall not apply to an heir who obtains, receives or holds any property of a deceased person in accordance with and subject to the provisions of section 27.

## **PART 6**

### **Administration**

#### **Generally**

### **Powers and duties of personal representative**

**31.—**(1) An executor shall have the powers and duties given and imposed upon him by the common law and the doctrines of equity save in so far as other provision has been made or shall be made by any law of the Colony.

(2) The powers conferred by this section shall not be deemed to limit and powers conferred upon an executor by the will of the deceased.

### **Personal representative's powers of sale, etc.**

**32.**—(1) For the purpose of paying the funeral and testamentary expenses and all just debts of the deceased person, the personal representative shall have power to sell such part of the immovable property of the deceased as may be necessary and may raise money thereon by way of mortgage or charge.

(2) The powers conferred by this section shall not be deemed to limit any powers conferred upon an executor by the will of the deceased.

### **Power of Court to order sale, etc.**

**33.**—(1) For the purpose of facilitating the distribution of the estate of a deceased person among the beneficiaries according to law the Court may in respect of any part of the estate order the sale, lease, mortgage, surrender or release, division or other disposition thereof, as is in the opinion of the Court expedient, where the same cannot be effected by the personal representative because of the absence of any power for that purpose vested in him:

Provided that the Court shall not order any division or partition of land which would contravene the provisions of section 27 of the Immovable Property (Tenure, Registration and Valuation) Law (a).

(2) An order made under this section may be made subject to such provisions and conditions, if any, as the Court may think fit, and the Court may direct in what manner any money arising out of the disposition of the property under this section shall be expended or distributed.

(3) The Court may from time to time rescind or vary any order made under this section or may make any new or further order.

(4) An application to the Court under this section may be made by a personal representative or any person or beneficiary interested in the estate of the deceased.

### **Effect of death on certain causes of action**

**34.**—(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.

*(1A) The right of a person to claim damages for bereavement under section 58 of the Civil Wrongs Ordinance, shall not survive for the benefit of his estate on his death. (b)*

(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;~~ (c)

(a) shall not include:—

(i) exemplary damages;

(ii) damages for loss of income in relation to any period after his death.

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

(c) 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 sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action under the Civil Wrongs Law (a) or in tort at common law under paragraph (c) of subsection (1) of section 33 of the Courts

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(a) Cap.224 as amended

(b) Subsection (1A) inserted by Ordinance 3/1986 – came into force on 07 April 1986

(c) Paragraph (a) repealed and replaced by Ordinance 3/1986 – came into force on 07 April 1986

of Justice Law**(b)**, 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 six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation; and if no such representation is taken out within two years of the death of the deceased, then no later than that date.

(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 has 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 person shall be in addition to and not in derogation of any rights conferred on the dependants of deceased person by the Civil Wrongs Law **(c)** or any other Law or an Act of Parliament in force in the Colony.

(6) In the event of the administration in bankruptcy of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the costs 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 un-liquidated damages arising otherwise than by a contract, promise or a breach of trust.

(7) Subject to the provisions of section 29, for the purposes of legal proceedings under this section, no person may represent the estate of a deceased person except the personal representative.

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

**35.** 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 property 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.

#### **Protection of personal representative acting *bona fide***

**36.—**(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.

#### **Rights of surviving executor**

**37.** Where there are two or more executors and one of them is removed by the Court or dies or becomes incapable to act, the remaining or surviving executor or executors shall carry on the administration of the estate as if he or they had been the only executor or executors appointed.

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(a) Cap.148 as amended  
(b) Cap.8 as amended  
(c) Cap.148 as amended

### **Administration of executor represents original testator**

**38.**—(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 of his testator who afterwards proves the will of the 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) the 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 estate of that testator as the original executor would have had if living; and
- (b) is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

### **Rights of proving executors**

**39.** Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the 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.

### **Inventory**

**40.**—(1) An executor who has obtained probate or an administrator who has obtained letters of administration whether with will annexed or otherwise, shall within such time as the Court shall direct, file in the Court an inventory of the estate.

(2) The inventory shall be accompanied by a declaration upon oath in the prescribed form.

### **Collection and payment of debts and distribution**

**41.**—(1) An executor, having obtained probate, or an administrator having obtained letters or administration with will annexed, shall in administering the estate, proceed as follows:—

- (a) collect and get in the estate with all reasonable speed;
- (b) pay the funeral and testamentary expenses and pay all the just debts of the deceased in the order of priority set out in section 42;
- (c) have the residue of the estate carefully valued, if it appears to be necessary to do so, and carry out the provisions of the will according to law, reducing the legacies proportionately, if it appears that the testator had disposed by will of more than the disposable portion;
- (d) subject to the provisions of section 46, distribute the statutory portion and the undisposed portion according to law.

(2) Where the deceased has died intestate, the administrator shall proceed to administer the estate in the same manner as is in this section prescribed for an executor, save with regard to the carrying out of the provisions of the will.

### **Order payment of debts**

42. After payment of the funeral expenses and the expenses incidental to the acceptance and discharge of the executorship or administratorship, and the remuneration of the executor or administrator, the just debts of the deceased shall be liquidated by the executor or administrator in the following order of priority, that is to say—

- (a) the expenses of the medical treatment of the deceased during his last illness and the wages due to the domestic servants of the deceased, not exceeding six months wages;
- (b) secured debts according to the order of their priority;
- (c) any other debt

### **Personal representative to have account with Bank**

43.—(1) Subject to the provisions of subsection (2) a personal representative shall open an account with a prescribed bank for the estate administered by him. All moneys received by a personal representative shall be paid into such account and no payments shall be made by him except by cheque.

(2) Where compliance with the provisions of this section would cause special inconvenience or hardship, the Chief Justice in respect of any particular class of estates or a President of a District Court in respect of any particular estate, may by direction exempt the personal representative of such estate or estates from compliance with the provisions of this section.

### **Specific legacies**

44.—(1) Specific legacies shall take rank and be liquidated after the payment of the just debts, and, unless the will shows a contrary intention, shall be liquidated before the general legacies.

(2) If it appears that the value of the specific legacies, taken together, exceeds that of the disposable portion, the reduction and abatement of such legacies shall be effected in the following manner, that is to say, all the objects of the specific legacies shall be sold and from the proceeds of sale the moneys equivalent in value to that of the disposable portion shall be set apart and distributed amongst the specific legatees in proportion to the value of their respective legacies.

### **Accounts to be filed**

~~45.—(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, within twelve months from the date of the grant or the order appointing him, file in Court the accounts of his administration, and shall thereafter file such further periodic accounts as the probate registrar may direct until the completion of the administration. (a)~~

*45.—(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, within two years from the date of the grant or the order appointing him, file in Court the accounts of his administration and, where the administration has not been completed and, following that, until the completion of such administration, file in Court six monthly accounts of the said administration together with the aforesaid declaration.*

(2) When an account is filed in court under this order the probate registrar shall scrutinise such account and if it appears to the probate registrar that by reason of improper unvouched or unjustifiable entries or otherwise such account is not a full and proper account the probate registrar may give written notice to the person filing the account to remedy such defects as there may be within such time as to the probate registrar may seem reasonable for the purpose and on failure to remedy such defects within such time as the person having filed such defective account shall be deemed to have failed to file an account within the meaning of subsection (1).

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(a) Subsection (1) repealed and replaced by Ordinance 10/1990 – came into force on 18 June 1990

(3) The Court of its own motion may appoint a competent person to examine any accounts filed under this section which are complicated or voluminous and the person so appointed may receive such reasonable remuneration (payable out of the estate) as the Court may direct. Such person shall submit his report on the accounts to the probate registrar within such time as the Court may direct, and the probate registrar may take any action thereon as if he had scrutinised the accounts himself.

(4) The Court may for good cause show abridge or extend the time for such filing of accounts as aforesaid.

(5) Any executor or administrator who has been granted an extension of time to file such accounts as aforesaid, and who fails within such extended time to file such accounts, shall be deemed to have failed to file an account within the meaning of subsection (1).

(6) Any executor or administrator who fails to file his accounts in accordance with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

(7) It will be the duty of the probate registrar to bring to the notice of the Court the fact that any executor or administrator has failed to file his accounts as required by this section.

(8) Such accounts shall be open free of charge to the inspection of all persons satisfying the probate registrar that they are interested in the administration.

(9) In this section the word “accounts” shall mean and include an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.

#### **Distribution of shares of heirs under disability**

**46.**—(1) Where a deceased person dies wholly intestate and leaving heirs under disability, the administrator before distributing the shares in the assets of the estate to which such heirs are entitled shall, where the deceased person was of Moslem faith, apply to the Turkish Family Court and in every other case to the Court for an order to dispose of such shares for the use of the heir under disability in such manner as the Turkish Family Court or the Court, as the case may be, may direct.

(2) Where a deceased person leaves a will and heirs under disability whether such heirs are legatees or are entitled to a share in the statutory portion or in the undisposed portion—

- (a) if a trustee or guardian has been appointed by the will for any such heir under disability, the person representative shall transfer the share of such heir to the trustee or guardian so appointed; and
- (b) if a trustee or guardian has not been so appointed, or is unable or unwilling to act, the personal representative shall apply to the Turkish Family Court or to the Court, as the case may be, in like manner as an administrator under subsection (1).

(3) Upon the hearing of an application made under this section, the Turkish Family Court (as the case may be) shall exercise the powers conferred upon it by the Guardianship of Infants and Prodigals Law<sup>(a)</sup> and the personal representative shall transfer the share of any heir under disability in accordance with such order.

#### **Protection of person representative by means of advertisement**

**47.**—(1) With a view to the transfer to or distribution among the persons entitled to any property of a deceased person, the personal representative may give notice by advertisement in the Gazette and, subject to such general directions as may be from time to time be given by the principal probate registrar, in such other newspaper or newspapers as the probate registrar may order.

(2) The notice shall make known the intention of the personal representative to make such transfer or distribution, and require any person interested to send to the personal representative within the time (not less than two months) fixed in the notice, or, where more than one notice is

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(a) Cap.277 as amended

given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(3) At the expiration of the time fixed by the notices, the personal representative may transfer or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the personal representative then has notice, and shall not, in respect of the property so transferred or distributed, be liable to any person of whose claim the personal representative has not had notice at the time of transfer or distribution.

(4) Nothing in this section shall—

(a) prejudice the right of any person to follow the property, or any property representing the same, into the hands of any person other than a purchaser, who may have received it; or

(b) free the personal representative from any obligation to make searches in the District Lands Office in respect of the registered immovable property of the deceased.

(5) This section shall apply notwithstanding anything in the will which the personal representative is administering.

#### Administration when Heirs under Disability

#### Duties of Mukhtar

**48.**—(1) Whenever any person ordinarily resident in Cyprus dies, either in Cyprus or abroad, the mukhtar of the village or quarter where the deceased had his ordinary residence shall forthwith make all reasonable inquiries to ascertain who are the heirs of the deceased person; and if it shall appear that any of such heirs are under disability, the mukhtar shall proceed to ascertain what property the deceased died possessed of, and shall forthwith to the probate registrar of the district within which the deceased resided, a report containing an announcement of the death of the deceased, the date of his death, the names of the heirs specifying which of them are under disability or absent from Cyprus, the names of some of the nearest relatives of the deceased, and a list of the property left by him, stating approximately the value of the property:

Provided that if it clearly appears to the mukhtar that the value of the property left by the deceased does not exceed the sum of ~~one hundred pounds~~ *six thousand pounds* (a) it shall not be necessary for him to make the report.

(2) The mukhtar shall make enquiries of the heirs or near relatives of the deceased as to whether any moneys are owing to the deceased, and shall include a statement of the moneys so owing, if any, in the list of property, specifying the amount of the moneys and the persons from whom then are owing.

(3) Where the mukhtar finds amongst the property of a deceased person who has died leaving heirs under disability, any money, securities for money, or jewellery, which or the value of which, together with the value of the other property of the deceased, shall exceed the sum of one hundred pounds, he shall take possession of the same, giving a receipt therefore to any of the heirs or any near relative of the deceased, and shall bring or forward the property of which he has so taken possession, securely fastened up and sealed, to the probate registrar, and the probate registrar shall give a receipt therefore to the mukhtar or other person bringing the property to him.

(4) Any mukhtar who shall wilfully and without just cause fail to perform the duties imposed upon him by this section, shall be liable to a fine not exceeding ten pounds.

(5) Every mukhtar bringing or forwarding any report to the probate registrar under this section shall be entitled to receive a fee of one pound which shall be paid by the probate registrar out of the estate.

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(a) Amended by Ordinance 2/1994 – came into force on 11 April 1994

### **Small estates**

**49.**—(1) Where the value of the property of a deceased person leaving heirs under disability does not exceed ~~three hundred pounds~~, *ten thousand pounds*, (a) the Court of its own motion or upon the application of any interested person may order that the estate be administered summarily, that is to say, the probate registrar of the Court or such other public officer as the Court may appoint shall have the powers and duties of an administrator for the purposes specified in paragraph (a) and (b) of section (1) of section 41 and for the distribution of the residue of the estate according to law and according to the order of the Turkish Family Court or of the Court, as the case may be, made under section 46.

(2) A probate registrar or other public officer appointed by the Court under this section may appoint one or more agents with authority to perform all or any of the duties specified in paragraphs (a) and (b) of subsection (1) of section 41 including the taking of legal proceedings to recover and get in the property of the estate; and such agents may receive such remuneration (payable out of the estate) as the Court may direct.

### **Maintenance of heirs under disability pending distribution**

**50.** Where property vests in a President of a District Court under section 26—

- (a) pending a grant or an order for administration under section 49 the probate registrar of the district may authorize such expenditure as is reasonably necessary to maintain the heirs under disability;
- (b) after a grant or order under section 49 has been made the officer appointed under section 49 or the administrator may with the approval of the probate registrar incur such expenditure until a guardian is appointed under section 46.

## **PART 7**

### **Miscellaneous**

#### **Renunciation of estate**

**51.**—(1) Where an estate vests in and devolves upon an heir, under the provisions of this Law, such heir may unconditionally renounce the estate at any time within three months from the time when he first became aware of the death of the deceased and of the fact of his being an heir to such deceased.

(2) Renunciation under this section may be effected by filing with the registry of the Court a declaration in such form as may be prescribed by Rules of Court.

(3) Any renunciation which is made by an heir with the object of defeating the rights of any of his creditors may be set aside by the Court on the application of any creditor and upon proof of such object.

(4) An heir who has renounced the estate shall incur no liability in respect of the debts of the deceased and shall receive no benefit from the estate of such deceased either by operation of law or under the will of the deceased.

(5) There shall be deemed to be a failure of heirs as provided in subsection (1) of section 47 of the Wills and Succession Law (i), when a deceased leaves no kin within the sixth degree of kindred living at his death except an heir who has renounced the estate.

(6) The Financial Secretary on behalf of the Government may renounce under this section any property which may devolve upon the Government under the provisions of subsection (2) of section 47 of the Wills and Succession Law.

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(a) Amended by Ordinance 10/1990 – came into force on 18 June 1990

### **Power to remove or replace personal representative**

**52.**—(1) The Court may of its own motion or on the application of any person interested in the estate—

- (a) remove any executor or administrator for wilful neglect or misconduct in the administration of the estate;
- (b) grant letters of administration to some person for the purpose of carrying out the due administration of the estate in the place of an executor or administrator who has been removed or has died or has become incapable to act.

(2) Where such letters of administration have been granted, all rights, duties and powers of an executor or administrator shall devolve upon the new administrator.

### **Determination of certain matters by originating summons**

**53.**—(1) Personal representatives or any of them, creditors, devisees, legatees or next-of-kin, or persons claiming through such creditors or beneficiaries by assignment or otherwise, may apply to the Court by originating summons for the determination, without an administration in Court of the estate, of any of the following questions or matters:—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin, or heir-at-law;
- (b) the ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators, and the vouching, when necessary, of such accounts;
- (d) the payment into Court of any money in the hands of the executors or administrators;
- (e) directing the executors or administrators to do or abstain from doing any particular act in their character as such executors or administrators;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate.

(2) The Rules of Court, in force for the time being, relating to originating summons shall apply to all proceedings under this section.

(3) Applications under this section may be heard and determined in Chambers.

### **Proceedings by action for administration by Court or for probate of will**

**54.**—(1) Any person mentioned in subsection (1) of section 53 may instead of proceedings by originating summons bring an action claiming that the estate of the deceased be administered in Court.

(2) Subject to the provisions of this Law and the Rules, any applicant for a grant or any caveator may institute proceedings for a grant of probate or of administration by way of action or of counterclaim.

(3) Upon the hearing of an action instituted under this section of the Rules of Court relating to proceedings in actions, in force for the time being, shall, as far as possible, apply to such action, and the Court may order the general administration of the estate by the Court or, in lieu thereof, may make any order which the Court can make upon an originating summons, or may grant or refuse any claim for a grant of probate or of administration.

(4) Administration by the Court shall, subject to the directions of the Court, be carried out by the probate registrar or other public officer who shall, for the purposes of such administration, have all the powers and duties of an administrator and the Court of its own motion or on the application of a personal representative or any person or beneficiary interested in the estate may exercise the powers conferred upon the Court by section 33 in respect of any estate administered by the Court.

### **Cost may be payable out of an estate**

**55.** In any proceedings concerning the estate of a deceased person, the Court may order that the costs or part thereof be paid out of the estate.

### **Remedy in case of default of performance of duties by mukhtar**

**56.—**(1) When a mukhtar is unable or unwilling or neglects or refuses to perform any of the duties or do any of the acts imposed upon mukhtars by this Law, the Commissioner may perform the said duties or do the said acts himself or may appoint a fit person to perform the said duties or to do the said act, and the duties and acts performed or done under this Law by the Commissioner or by the person so appointed shall be valid and effective as if performed or done by the mukhtar.

(2) The provisions of this section may be invoked in addition to, or in lieu of, any other action which may be taken, under this or any other Law in force for the time being in respect of any default in the performance of any duties under this Law.

### **Rules of Court**

**57.** The Governor may, with the advice and assistance of the Chief Justice, make Rules of Court—

- (a) for prescribing the procedure, forms fees of Court and advocate fees in matters relating to—
  - (i) the deposits of wills;
  - (ii) non-contentious or common form probate business and proceedings in Court concerning grants and the administration of estates;
  - (iii) the administration of estates and the supervision of such administration by probate registrars or other public officers;
- (b) for prescribing matters required or permitted by this Law to be prescribed; and
- (c) generally for carrying out the objects and provisions of this Law.

### **English practice and procedure applicable where no other provision**

**58.** In any matter of practice or procedure in any Court or probate registry for which no provision has been made under this Law or the Rules, the practice and procedure of the Probate Division of the High Court of Justice in England for the being shall apply.

### **Savings**

**59.—**(1) Subject to the provisions of subsection (2) the Infants' Estate Administration Law (a) shall remain in force and apply in respect of the estates of persons dying intestate before the date of the coming into operation of this Law leaving heirs under disability where no grant has been made.

(2) Any order made by the Court or Turkish Family Court under the Infants' Estates Administration Law relating to the guardian or to the share of an heir under disability shall be deemed to have been made under the Guardianship of Infants and Prodigals Law; and all further proceedings in the matter of such heir under the disability or such share shall be continued under the Guardianship of Infants and Prodigals Law and the Infants' Estates Administration Law shall cease to apply thereto.

(3) The provisions of Part VII of the Wills and Succession Law (b) shall remain in force and apply in respect of the administration of estates where a grant has been made before the date of the coming into operation of this Law and the estate has not be fully administered.

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(a) Cap.218 as amended  
(b) Cap.220 as amended

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**i** Cap 195 as amended