

REPRINT

WILLS, PROBATE AND ADMINISTRATION ACT (CAP. 33)

As in force at: 1 March 1996

STATUS: HISTORICAL

This version is that published in the Revised Edition of the Laws in force in Solomon Islands on 1st March 1996 [LN 24/96]. It does not include amendments made since that date.

**AN ACT TO MAKE PROVISION RELATING TO WILLS, PROBATE AND
ADMINISTRATION OF ESTATES OF DECEASED PERSONS AND FOR OTHER
MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO**

WILLS, PROBATE AND ADMINISTRATION ACT (CAP. 33)

Table of provisions

PART I	PRELIMINARY.....	1
1	Short title	1
2	Application	1
3	Interpretation	1
PART II	WILLS.....	5
4	Power to dispose of property by will	5
5	Execution of wills	5
6	Certain requirements to be treated as formal	7
7	Alteration of wills	7
8	Publication of wills	8
9	Attesting witnesses	8
10	Revocation of wills	9
11	Revival of wills	9
12	Effect of subsequent conveyance or other act	10
13	Construction of wills	10
14	Effect of change of domicile	13
PART III	GRANT OF PROBATE OR ADMINISTRATION.....	13
DIVISION 1	GENERAL	13
15	Part III to be read subject to Part IV	13
16	Application for grants of probate or letters of administration	13
17	Limited grants	13
18	Minimum time for issue of grant	14
19	Oath in support of grant	14
20	General enquiry	14
21	Marking of wills	14
22	Engrossment of wills for purposes of record	15
23	Filing of original wills and issue of copies	15
24	Evidence as to due execution of will	15
25	Evidence as to terms conditions and date of execution of will	16

26	Evidence of foreign law	16
DIVISION 2	GRANTS OF PROBATE AND ADMINISTRATION	16
27	Order of priority where deceased leaves a will	16
28	Grants to attesting witnesses	16
29	Order of priority in case of intestacy	17
30	Right of assignee to a grant	17
31	Grants where two or more persons entitled in same degree	17
32	Joinder of administration	18
33	Power to grant representation to a trust corporation	18
34	Number of personal representatives	19
35	Saving of Court's discretion to make grant to Public Trustee under section 5 of Public Trustee Act	20
36	Grants to persons having spes successionis	20
37	Grants where deceased died domiciled outside Solomon Islands	20
38	Grants to attorneys	21
39	Grants on behalf of infants and persons under other disability	21
40	Grants where infant or person under disability is co-executor	21
41	Grants to trust corporation	22
42	Renunciation of probate and administration	22
43	Notice where Government may be beneficially interested	23
44	Administration pendente lite	23
DIVISION 3	BONDS, SPECIAL GRANTS, CAVEATS AND CITATIONS	23
45	Administration bonds	23
46	Enforcement or assignment of administration bonds	24
47	Resealing of Commonwealth grants	24
48	Amendment and revocation of grant	25
49	Caveats	25
50	Citations	25
51	Presumption of death	26
52	Grants in respect of nuncupative will and copies of wills	26
53	Grants of special administration where personal representative is abroad	26

PART IV GRANTS IN SMALL ESTATES.....27

54	Application of Part IV	27
55	Application for grants in small estates	27
56	Issue of grants in small estates	28
57	Copies of certificate of grant in small estates to be filed	28
58	Review of grants in small estates	28
59	Protection for persons acting on certificates of grant in small estates	29

PART V ADMINISTRATION OF ESTATES.....29

DIVISION 1 DEVOLUTION OF PROPERTY ETC. 29

60	Vesting of property prior to grant of probate or administration	29
61	Summons to executor to prove or renounce	30
62	Cesser of right of executor to prove	30
63	Withdrawal of renunciation	31
64	Executor of executor represents original testator	31
65	Right of executors to prove exercise of powers	32
66	Executor not to act while administration is in force	32
67	Continuance of legal proceedings after revocation of temporary administration	32
68	Rights and liabilities of administration	33

DIVISION 2 DUTIES, RIGHTS AND OBLIGATIONS 33

69	Duty of personal representative	33
70	Protection of person acting on probate or administration	33
71	Liability of person fraudulently obtaining or retaining estate of deceased	34
72	Liability of estate of personal representative	34
73	Provisions where administration is granted to Public Trustee	34
74	Assets of deceased for payment of debts	35
75	Statutory trusts	35
76	Administration of assets where estate is insolvent	36
77	Administration of assets where estate is solvent	36
78	Charges on property of deceased to be paid primarily out of the property charged	37
79	Validity of conveyance not affected by revocation of representation	37
80	Powers of management	38

81	Powers of personal representative as to appropriation	38
82	Power to appoint trustees of infants' property	41
83	Power to postpone distribution	42
PART VI	DISTRIBUTION OF INTESTATE'S RESIDUARY ESTATE.....	42
84	Succession to movable and immovable property on intestacy	42
85	Statutory trusts in favour of issue and other classes of relatives of intestate	45
86	Right of surviving spouse to have own life interest redeemed	46
87	Powers of personal representative in respect of interests of surviving spouse	46
88	Application to cases of partial intestacy	47
89	Contribution made by surviving spouse to be taken into account	48
PART VII	FAMILY PROVISION.....	49
90	Application and interpretation	49
91	Power of Court to order adequate provision for proper maintenance and support of testator's spouse or children where no adequate provision made by testator	49
92	Court to consider net estate and spouse's or children's means	49
93	Power of Court to refuse applications and make orders	50
94	Orders	50
95	Time within which application must be made	50
96	Effect and form of order	51
PART VIII	EFFECT OF ADOPTION.....	51
97	Meaning of adopted person	51
98	Effect of adoption on succession	52
PART IX	PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN.....	52
99	Right of illegitimate child to succeed on intestacy of parents, and of parents to succeed on intestacy of illegitimate child	52

100	Presumption that in dispositions of property references to children and other relatives include references to, and to persons related through, illegitimate children	54
101	Illegitimate children to count as dependants under Part VII	55
102	Customary usage in relation to illegitimate children	56
103	Protection of trustees and personal representatives	56

PART X MISCELLANEOUS..... 56

104	Proof of current customary usage where not otherwise specified	56
105	Devolution of certain perpetual estates on intestacy	57
106	Presumption of survivorship in regard to claims to property	57
107	Cases not provided for	57
108	Duty to produce will	58
109	Regulations	58

WILLS, PROBATE AND ADMINISTRATION ACT (Cap. 33)

As in force at: 1 March 1996

PART I PRELIMINARY

1 Short title

This Act may be cited as the *Wills, Probate and Administration Act*.

2 Application

- (1) This Act shall not apply to the will of a testator who died before the commencement of this Act but shall apply to the will of a testator who dies after the commencement notwithstanding that the will was executed before or after such commencement.
- (2) Except to the extent otherwise expressly provided, nothing contained in this Act shall apply to or in relation to the estate of any person who died before the date of commencement of this Act.
- (3) The provisions of this Act shall not apply to or in relation to customary land.
- (4) Except to the extent otherwise expressly provided, nothing contained in this Act shall apply to or in relation to any matter regulated by current customary usage.

3 Interpretation

- (1) In this Act, unless the context otherwise requires:

“administration bond” means a bond referred to in section 45;

“assets” means all those movable and immovable properties, actions and commodities which were of the deceased in right of action or possession as his own, and so continued to the time of his death;

“Court” means the High Court;

“current customary usage” has the meaning ascribed to it in section 2(1) of the *Land and Titles Act*;

“dwelling-house” for the purposes of Part VI, includes any garden or portion of ground attached to and usually occupied with the dwelling-house or otherwise required for the amenity or convenience of the dwelling-house;

“estate” in relation to the property of a deceased person, includes any goods, chattels, moneys, valuable security, choses in action or other property of what manner or kind whatsoever; and in relation to land belonging to the estate of a deceased person, has the meaning assigned to the expression “estate” in section 2 of the *Land and Titles Act* and includes any freehold or leasehold interest in land within the meaning of section 9 of the *Land and Titles Act*;

“gross value” in relation to any estate of a deceased person means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate or other duty;

“immovable property” means land;

“internal law” in relation to any territory or state means the law which would apply in a case where no question of the law in force in any other territory or state arose;

“interest”, where used in relation to land, shall have the meaning ascribed to it in relation to such use in section 2(1) of the *Land and Titles Act*;

“movable property” includes money, securities for money (not being immovable property), debts, choses in action, rights, credits, goods and all other property and interests whatsoever (not being immovable property) which devolves by law upon the executor or administrator and any share or interest in any such property or interest;

“local court” means a local court constituted under the provisions of the *Local Courts Act*;

“net estate” for the purposes of Part VII means all the property of which a deceased person had power to dispose by his will (otherwise

than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty, if any, payable out of his estate on his death;

“oath” means the oath required by section 19;

“personal representative” means the executor original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of estate duty or stamp or other duty payable by the estate of such deceased person, includes any person who takes possession of or intermeddles with the property of the deceased person without the authority of the personal representative or of the Court;

“purchaser” includes a lessee or 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;

“registered land” means land registered in the land register under the *Land and Titles Act*;

“residuary estate” in relation to an intestate means:

- (a) the residue of the net money arising from the sale and conversion of the movable and immovable estate, after the payment of costs but does not include any perpetual estate owned by a deceased Solomon Islander which is situated within the customary land boundary of his tribe, clan or line in his province of origin;
- (b) the residue of the ready money of the deceased (so far as it is not disposed of by will, if any); and
- (c) any investment for the time being representing that residue including (but without prejudice to the trust of sale) any part of the estate of the deceased which may be retained unsold and is not required for the purpose of administration after making the payments and setting aside the fund specified in section 75;

For the purpose of this Act **“province of origin”** means the home

province of a clan, line or tribe to which, in accordance to custom, a Solomon Islander belongs;

“signature” includes a thumb print or other mark; and to **“sign”** shall be construed accordingly;

“small estate” means any estate of a deceased person to which the provisions of Part IV apply;

“Solomon Islander” has the meaning ascribed to that expression by section 2 of the *Land and Titles Act*;

“son” and **“daughter”** for the purposes of Part VII respectively include a male or female child legally adopted by the deceased and also a son or daughter of the deceased *en ventre sa mere* at the date of the death of the deceased;

“state” means a territory or group of territories having its own law of nationality;

“statutory trusts” mean the trusts declared by section 75;

“trust corporation” means the Public Trustee or a corporation appointed by the Court in any particular case to be a trustee, or any corporation or class or description of corporation declared by the Minister by notice to be a trust corporation for the purposes of this Act and carrying on business in Solomon Islands by local agency or otherwise;

“will” includes a codicil and a nuncupative will and any testamentary document or copy or reconstruction thereof, and any testamentary act; and **“testator”** shall be construed accordingly.

- (2) Where for the purposes of Part II the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows:
 - (a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

- (b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of the execution of the will in any other case.
- (3) In determining for the purposes of Part II whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time, if the alteration enables the will to be treated as properly executed.

PART II WILLS

4 Power to dispose of property by will

- (1) Notwithstanding any current customary usage to the contrary, it shall be lawful for any person being of or above the age of eighteen years and of sound mind, to devise, bequeath or dispose of by his will, executed in any manner provided by section 5, all or any property, whether movable or immovable, to which he shall be entitled, either at law or in equity, at the time of his death.
- (2) This section shall apply to a married woman in like manner as if she were a *femme sole*.

5 Execution of wills

- (1) A will shall not be valid unless it is in writing and executed in the following manner:
 - (a)
 - (i) it is signed by the testator or some person in his presence and by his direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his will;
 - (ii) such signature is made or acknowledged by the testator

in the presence of at least two witnesses present at the same time; and

- (iii) the witnesses attest and subscribe the will in the presence of the testator, but no form of attestation is necessary;
 - (b) by any person domiciled or habitually resident in Solomon Islands at the time of the execution of the will, in any manner prescribed by any current customary usage relating to the making of wills which was applicable to and binding in custom upon such person at the time of the execution of the will; or
 - (c) in conformity with the internal law in force in any territory in which it was executed or in the territory wherein at the time of its execution or of the testator's death the testator was domiciled or had his habitual residence, or in any state of which, at either of those times the testator was a national.
- (2) Without prejudice to the generality of subsection (1) the following wills shall be treated as properly executed:
- (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
 - (b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;
 - (c) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;
 - (d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

- (3) Notwithstanding the provisions of section 4 and without prejudice for the generality of subsection (1), the following persons irrespective of age have capacity to make a will or to revoke a will without making a formal will:
- (a) any person serving in actual military, naval or air service during a war or other armed conflict; and
 - (b) any person who is a mariner or seaman serving at sea.
- (4) A will made by a person to whom the provisions of subsection (3) apply need not be executed in the manner required by subsection (1) and may be made without any formality, by any form of words, whether written or spoken, if it is clear that he thereby intended to dispose of his property after death.
- (5) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

6 Certain requirements to be treated as formal

Where (whether in pursuance of the provisions of this Act or not) a law in force outside Solomon Islands is to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as formal requirements only.

7 Alteration of wills

- (1) No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as is by this Act required for the execution of the will.
- (2) For the purposes of subsection (1), the will, with such alterations as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the

margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or at some other part of the will.

8 Publication of wills

For the purposes of section 5(1)(a), any will executed in the manner therein prescribed shall be valid without any other publication.

9 Attesting witnesses

Except as may otherwise be permitted by the provisions of paragraphs (b) or (c) of section 5(1):

- (a) no will shall be rendered invalid only by reason of the circumstance that any person who attests the execution thereof is at the time of such execution, or at any time thereafter, incompetent to be admitted as a witness to prove the execution of such will;
- (b) if any person to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any property, whether movable or immovable, (other than a charge or direction for the payment of debts) is given or made by a will, attests the execution of such will, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns the person so attesting the execution of the will or the wife or husband of that person or any person claiming under that person or that wife or husband, be null and void;

Provided that, notwithstanding the invalidity of such devise, legacy, estate, interest, gift or appointment as aforesaid, such person so attesting shall be admitted as a witness to prove the execution of the will, or to prove the validity or invalidity thereof or of any part thereof:

Provided further that the attestation by such person shall be disregarded if the will is duly executed without such attestation and without that of any other such person;

- (c) if by any will any property, whether movable or immovable, be charged with debt, and any creditor, or the wife or husband of

any creditor, whose debt is so charged, shall attest the execution of such will, such creditor or such wife or husband, notwithstanding such charge shall be admitted as a witness to prove the execution of such will, or to prove the validity or the invalidity thereof.

10 Revocation of wills

- (1) Subject to the provisions of this section, and to the operation of any local custom which may be applicable in the case of any particular will, no will or codicil, or any part thereof, shall be revoked except:
 - (a) by another will or codicil executed in accordance with the provisions contained in section 5; or
 - (b) by some writing declaring an intention to revoke the same and executed in accordance with the provisions of that section; or
 - (c) by burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same
- (2) Notwithstanding the provisions of subsection (1), and subject to the operation of any local custom which may be applicable in the case of any particular will, every will made by a man or woman shall be revoked by his or her marriage.
- (3) This section shall not apply to a will made in exercise of a power of appointment, when the property, whether movable or immovable, thereby appointed would not in default of such appointment pass to his heir, customary heir, executor or administrator or to the person entitled as his or her next of kin by operation of law.
- (4) A will made in contemplation of marriage is not revoked by reason only of the solemnisation of the marriage contemplated.
- (5) A will shall not be revoked by any presumption of an intention on the ground of an alteration in circumstances.

11 Revival of wills

- (1) A will or codicil, or any part thereof, which has in any manner been

revoked, is not revived otherwise than by the re-execution thereof or by a codicil executed in accordance with the provisions of section 5, showing an intention to revive the same.

- (2) When a will or codicil which has been partly revoked and afterwards wholly revoked is revived, the revival does not, unless the contrary intention appears by the will, extend to so much of the will or codicil as was revoked before it was wholly revoked.

12 Effect of subsequent conveyance or other act

A conveyance or other act (other than an act by which the will is revoked in accordance with this Part) made or done subsequently to the execution of a will of, or relating to, any property whether movable or immovable comprised in the conveyance or act does not prevent the operation of the will with respect to such property or interest in such movable or immovable property as the testator had power to dispose of by will at the time of his death.

13 Construction of wills

- (1) Every will shall be construed, with reference to the movable or immovable property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.
- (2) Unless a contrary intention shall appear by the will, such property, whether movable or immovable or any interest therein as shall be comprised or intended to be comprised in any devise contained in such will, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.
- (3) A devise of the land of the testator or the land of the testator in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include all of the immovable property of the testator to which such description shall extend unless a contrary intention shall appear in the will or, in the case of interests in customary land, current customary usage relating thereto precludes the devise thereof.

- (4) A general devise of the immovable property of the testator, or of the immovable property of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any immovable property, or any immovable property to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear in the will; and in like manner a bequest of the movable property of the testator, or any bequest of movable property described in a general manner, shall be construed to include movable property to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power unless a contrary intention shall appear in the will.
- (5) Where any immovable property shall be devised to any person without words of limitation, such devise shall be construed to pass the whole estate or interest in such property of which the testator had power to dispose of by will, unless a contrary intention shall appear by the will.
- (6) In any bequest or devise of movable or immovable property the words “die without issue” or “die without leaving issue” or “have no issue” or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will; and in the case of any such expression as aforesaid bearing a reference to “heirs” and not to “issue”, such expression shall be construed to mean a want or failure of heirs of any person in his lifetime or at the time of the death of such person and not an indefinite failure of his heirs, unless a contrary intention shall appear by the will:

Provided that this subsection shall not apply to cases where such words as aforesaid import if no issue or heirs, as the case may be, who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue or heirs.

- (7) Where any immovable property shall be devised to any trustee or executor, such devise shall be construed to pass the whole of the estate or interest which the testator had power to dispose of by will in such immovable property, unless a definite term of years, absolute or determinable, shall thereby be given to him expressly or by implication.
- (8) Where any immovable property shall be devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such immovable property, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purpose of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the whole legal estate which the testator had power to dispose of by will in such immovable property, and not an estate determinable when the purposes of the trust shall be satisfied.
- (9)
- (a) Where any person being a child or other issue of the testator to whom any movable or immovable property shall be bequeathed or devised for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such bequest or devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.
- (b) In relation to a testator who dies after the commencement of this Act, this subsection shall have effect as if:
- (i) the reference to a child or other issue of the testator (that is, the intended beneficiary) included a reference to any illegitimate child of the testator and to anyone who would rank as such issue if he, or some other person through whom he is descended from the testator, had been born legitimate; and
- (ii) the reference to the issue of the intended beneficiary included a reference to anyone who would rank as such

issue if he, or some other person through whom he is descended from the intended beneficiary, had been born legitimate.

- (c) In paragraph (b) ***“illegitimate child”*** includes an illegitimate child who has been legitimated in a manner recognised by law.

14 Effect of change of domicile

The construction of a will shall not be altered by reason only of any change in the testator’s domicile after the execution of the will.

PART III GRANT OF PROBATE OR ADMINISTRATION

DIVISION 1 GENERAL

15 Part III to be read subject to Part IV

The provisions of this Part shall be read subject to the provisions of Part IV which deals with grants of probate and administration in the case of small estates.

16 Application for grants of probate or letters of administration

An application for grant or revocation of probate or administration, or for any second or subsequent grant, shall be made to the Court by notice of motion in the manner prescribed by any rules for the time being in force governing the civil procedure of the Court.

17 Limited grants

Where, either by the terms of any will or where it appears otherwise to the Court to be appropriate, probate or administration in respect of any immovable property or any part thereof belonging to any deceased person may be granted:

- (a) either separately or together with probate or administration of his movable property or part thereof;
- (b) in respect of any immovable property only, where there is no movable property; or

- (c) in respect of trust property only and a grant of administration in respect of any immovable or movable property or both may be limited in any way the Court thinks fit:

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

18 Minimum time for issue of grant

Except with the leave of the Court, no grant of probate or of administration with the will annexed shall issue within seven days after the death of the deceased and no grant of administration shall issue within fourteen days thereafter:

Provided that the Court on application, being satisfied that the grant of probate or administration is a matter of urgency in the interests of the proper administration of the estate, may, in its discretion, grant probate or administration, as the case may be, within such periods respectively.

19 Oath in support of grant

Every application for a grant shall be supported by an oath applicable to the circumstances of the case, which shall be contained in an affidavit sworn or affirmed by the applicant and by such other documents as the Registrar of the Court may require to be produced.

20 General enquiry

Notwithstanding anything contained in section 19, the Court shall not make any grant of probate or administration until all enquiries which it may consider expedient to make have been answered to its satisfaction in such manner as it may require.

21 Marking of wills

- (1) Every will in respect of which an application for a grant is made shall be marked by the signature of the applicant for the grant and by the person before whom the oath is sworn and shall be exhibited to any affidavit which may be required under this Act, to the validity, terms, condition or date of execution of the will:

Provided that where the Court is satisfied that compliance with this section might result in the loss of the will, the Court may allow a photographic or certified copy thereof to be marked or exhibited in lieu of the original document.

- (2) Where application is made for a grant in respect of any will which, pursuant to any of the provisions of section 5, was made in oral form, the application shall be supported by an affidavit in such manner as the Court may require.

22 Engrossment of wills for purposes of record

Where the Court considers that in any particular case a photographic copy of the original will is not satisfactory for purposes of record, the Court may require an engrossment of record, the photographic reproduction to be filed in such manner as the Court may require.

23 Filing of original wills and issue of copies

- (1) Every original will of which probate or administration with the will annexed is granted shall be filed with the Registrar of the Court in such manner as to ensure the due preservation and the convenient inspection of the same.
- (2) After a will has been filed pursuant to the provisions of subsection (1), it may not be delivered out to the applicant for grant or to any other person unless in special circumstances the Court so directs.
- (3) Upon application to the Registrar of the Court and payment of the prescribed fee (if any), the Registrar may issue an office copy of the whole or any part of a will or an official certificate or any grant of administration.

24 Evidence as to due execution of will

- (1) No grant of probate or administration with the will annexed shall be granted unless the Court is satisfied by oral, affidavit or such other evidence as the Court may require that the will was duly executed in one of the manners provided by section 5 and has not been revoked.
- (2) If the Court after considering the evidence is not satisfied as to the due execution of the will it shall refuse probate and shall mark the

will accordingly.

25 Evidence as to terms conditions and date of execution of will

Where in any will purporting to have been executed in the manner provided by paragraph (a) of section 5(1) there appears any obliteration, interlineation, or other alteration which is not authenticated in the manner provided by that paragraph, or by the re-execution of the will or by the execution of a codicil the Court shall require evidence to show whether the alteration was present at the time the will was executed, and shall direct the form in which the will or other document may be proved.

26 Evidence of foreign law

Where evidence of the law of a country outside Solomon Islands is required on any application for a grant, the affidavit or oral evidence of any person who practises, or has practised, as a barrister, advocate or other legal practitioner of that country or a person who by virtue of his official capacity is conversant with its law may be accepted by the Court.

DIVISION 2 GRANTS OF PROBATE AND ADMINISTRATION

27 Order of priority where deceased leaves a will

- (1) Notwithstanding any internal law to the contrary, the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the order of priority that may for the purpose be prescribed by rules.
- (2) Notwithstanding the order of priority prescribed by rules made under subsection (1), where it appears to the Court, that by reason of any special circumstance or current customary usage, any estate ought to be administered by some person other than those specified in the order of priority, the Court may grant administration with the will annexed to such person.

28 Grants to attesting witnesses

Where a gift to any person fails by reason only of the provisions of section 9(b), such person shall not have any right to a grant as a

beneficiary named in the will, without prejudice to his rights to a grant in any other capacity.

29 Order of priority in case of intestacy

- (1) Where the deceased died wholly intestate, the persons having a beneficial interest in the estate shall be entitled to a grant of administration in the order of priority that may be prescribed for the purpose by rules.
- (2) Notwithstanding the order of priority prescribed by rules made under subsection (1), where it appears to the Court, that by reason of any special circumstance or current customary usage, any estate ought to be administered by some person other than those specified in the order of priority, the Court may grant administration to such person.

30 Right of assignee to a grant

In the absence of any current customary usage to the contrary, where the only person entitled to the estate of the deceased, whether under a will or on intestacy, has assigned his whole interest in an estate, the assignee shall replace the assignor in the order of priority for a grant.

31 Grants where two or more persons entitled in same degree

- (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.
- (2) A dispute between persons entitled to a grant in the same degree shall be determined by the Court upon summons.
- (3) Unless the Court otherwise determines for reasons to be recorded, administration shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.
- (4) The provisions of this section shall apply notwithstanding any current customary usage to the contrary.

32 Joinder of administration

- (1) An application to join a person entitled to a grant of administration with a person entitled in a lower degree, shall be made to the Court by notice of motion and shall be supported by oral or affidavit evidence of the particulars of:
 - (a) all persons known to the applicant to be entitled to a grant in a higher or the same priority as the person sought to be joined; and
 - (b) to what extent if any such persons have renounced their entitlement in favour of the person so sought to be joined.
- (2) If upon the evidence referred to in subsection (1), or such other additional evidence as the Court may require, the Court is satisfied that there are no adverse claims by any other person entitled in a higher or the like degree to the person sought to be joined, the Court may make an order joining such person to the grant of administration:

Provided that the Court may upon application join a trust corporation without the production of evidence relating to or notice being given to any other person entitled to a grant in any degree.

33 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.

34 Number of personal representatives

- (1) Probate or administration shall not be granted to more than five 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 may act upon such *prima facie* evidence, furnished by the applicant, or by any other person as to whether there is or is not a minority or a life interest, as the Court may think fit.

- (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, or of its own motion, appoint one or more personal representatives in addition to the original personal representative.
- (3) Where an application is made under this section or where the Court acts of its own motion to add an additional personal representative:
 - (a) a summons shall be served upon the existing personal representative if he is not himself the applicant to show cause, (if any) why an additional representative should not be added; and
 - (b) the consent in writing of the person proposed as such additional personal representative shall be filed with the Court.
- (4) Upon any application under this section, or where the Court acts of its own motion, the Court may cause the original grant to be endorsed with a note of the addition of a further personal representation or may revoke the original grant and make a fresh grant, or make such other order as the circumstances of the case may require.

35 Saving of Court's discretion to make grant to Public Trustee under section 5 of Public Trustee Act

The provisions of this Part relating to the priority of persons entitled to a grant of probate or administration shall be construed subject to and not in derogation of the provisions of section 5 of the *Public Trustee Act*.

36 Grants to persons having spes successionis

Where the beneficial interest in the whole of the estate of the deceased is vested absolutely in a person who has renounced his right to a grant, administration may, with the consent of that person, be granted to the person who would be entitled to his estate if he had himself died intestate:

Provided that:

- (a) administration shall not be granted under this section unless the persons so entitled are not under disability and do not exceed five in number and they apply jointly for the grant; and
- (b) a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

37 Grants where deceased died domiciled outside Solomon Islands

Where the deceased died domiciled outside Solomon Islands, an application may be made to the Court for a grant:

- (a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;
- (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;
- (c) if there is no such person as is mentioned in paragraphs (a) or (b), to the Public Trustee.

38 Grants to attorneys

Where a person entitled to a grant resides outside Solomon Islands, administration may be granted to his lawfully appointed attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Court may direct:

Provided:

- (a) that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, (if any), unless, for reasons to be recorded in the proceedings, the Court directs otherwise; and
- (b) the provisions of this section shall be construed subject to and not in derogation of the provisions of section 5 of the *Public Trustee Act*.

39 Grants on behalf of infants and persons under other disability

Where an infant or a person who is under a disability by reason of mental or physical incapacity is sole executor of a will, administration for his use and benefit until he attains the age of eighteen years, or during his incapacity, as the case may be, shall be granted with the will annexed:

- (a) to the testamentary guardian of the infant or person under disability, (if any) or to any guardian appointed by a court of competent jurisdiction either within or outside Solomon Islands; or
- (b) if there is no such guardian able and willing to act, to the Public Trustee.

40 Grants where infant or person under disability is co-executor

- (1) Where one of two or more executors is an infant or a person under disability by reason of mental or physical incapacity, probate may be granted to the other executor or executors not under disability, with power reserved of making the like grant to the infant upon his attaining the age of eighteen years or to the person under mental or physical incapacity upon the termination of such disability.

- (2) The right of an infant, or of a person under disability by reason of mental or physical incapacity, to a grant of probate upon his attaining the age of eighteen years or ceasing to be under disability, as the case may be, may not be renounced by any person on his behalf.

41 Grants to trust corporation

- (1) Where a trust corporation, not being the Public Trustee, applies for a grant through one of its officers, such officer shall file with the Court a certified copy of the resolution authorising him to make the application and shall depose in the oath that the corporation is a trust corporation within the meaning of section 2 and that it has power to accept a grant; and that no liability whatsoever shall attach to the Public Trustee or to the general revenue in respect of any act or omission of such body corporate when acting as an executor or administrator.
- (2) Where a trust corporation applies for a grant otherwise than as attorney for some person, there shall be filed with the Court together with the application the consents of all persons entitled to a grant and of all persons interested in the residuary estate of the deceased, unless the Court directs that such consents may in any particular case be dispensed with.
- (3) Where a corporation (not being a trust corporation) would, if an individual be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee.

42 Renunciation of probate and administration

- (1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in any other capacity unless he expressly renounces such right:

Provided that, except with leave of the Court, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

- (2) A renunciation of probate or administration may be retracted at any time with the leave of the Court:

Provided that only in exceptional circumstances, to be recorded in the proceedings of the Court, may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

43 Notice where Government may be beneficially interested

In any case in which it appears that the Government is or may be beneficially interested in the estate of a deceased person, notice of the application for the grant shall be given by the applicant to the Public Trustee for and on behalf of the Government, and the Court may refuse to make a grant until the expiration of such time after notice has been given as it may think fit:

Provided that nothing in this section shall apply in the case of the administration of a small estate.

44 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 may be the Public Trustee), 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.

DIVISION 3 BONDS, SPECIAL GRANTS, CAVEATS AND CITATIONS

45 Administration bonds

- (1) Subject to the provisions of subsection (2), every person to whom administration is granted shall, prior to the issue of such administration, execute in the form prescribed, a bond, with one or two sureties, conditioned for duly collecting, getting in, administering and distributing the estate of the deceased.

- (2) No such bond shall, unless specifically ordered by the Court, be required from the Public Trustee, a trust corporation or where the value of the property does not exceed the prescribed amount.

46 Enforcement or assignment of administration bonds

- (1) The Registrar of the Court shall have power to enforce any administration bond or to assign it in accordance with the provisions of this section to some other person.
- (2) Where it appears to the satisfaction of the Court or a Judge that any condition of an administration bond has been broken, the Court may, on application in that behalf, order that the bond be assigned to a person specified in the order.
- (3) The person to whom the bond is assigned under an order under subsection (2), may sue on the bond in his own name as if it had been originally given to him instead of to the Registrar of the Court, and may recover on the bond as trustee for all persons interested the amount recoverable in respect of any breach of a condition of the bond.

47 Resealing of Commonwealth grants

- (1) Where the original grant of any probate or administration granted by any court of competent jurisdiction in any country or territory of the Commonwealth, or a copy thereof certified correct by or under the authority of that court, is produced and a copy thereof deposited with the Court by any person being the executor or administrator, whether original or by representation, or by any person duly authorised by power of attorney in that behalf, such probate or administration may be sealed with the seal of the Court.
- (2) When so sealed, such probate or administration shall have the like force, effect and operation in Solomon Islands, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if such probate or administration had been originally granted by the Court.
- (3) The Court may require any such executor or administrator or attorney thereof, to give security for the due administration of the estate in respect of matters or claims in Solomon Islands.

48 Amendment and revocation of grant

If the Court is satisfied that a grant should be amended or revoked, the Court may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this section except on the application or with the consent of the person to whom the grant was made.

49 Caveats

- (1) Any person may lodge with the Registrar of the Court, a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration at any time prior to such probate or administration being granted or sealed.
- (2) Every such caveat shall set forth the name of the person lodging the same, and an address in Solomon Islands at which notices may be served on him subject to the provisions of subsections (4) and (5.)
- (3) In every case in which a caveat is lodged, the Court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be, remove the same.
- (4) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.
- (5) Such application may be heard and order made upon affidavit or oral evidence, or as the Court may direct.

50 Citations

- (1) A citation to take out probate of the will shall be issued by the Registrar of the Court at the instance of the person applying for the issue thereof and shall be verified by an affidavit or other declaration sworn by the citor stating the grounds upon which and the purpose for which the citation is required.
- (2) The citation may be served in such manner as the court may direct and require the person cited to enter an appearance by filing with the Registrar of the Court a declaration in writing of his desire to appear.

- (3) Such application may be heard and order made upon affidavit, oral evidence or as the Court may direct.

51 Presumption of death

Where there is no direct evidence of the death of a deceased person and the applicant for a grant cannot swear thereto in the oath, the Court may, upon being satisfied by such affidavit or other evidence as it may require of the probability of the death of the deceased, presume the death and give leave to the applicant to swear thereto.

52 Grants in respect of nuncupative will and copies of wills

- (1) Where the will is not available a nuncupative will contained in a copy, a complete draft or other document or a reconstruction thereof, may be admitted as proof, if the Court is satisfied upon affidavit or other evidence as it may require as to:

- (a) the due execution of the will;
- (b) the existence of the will after the death of the testator;
- (c) the accuracy of the copy or other evidence of the contents of the will; and
- (d) the consent to the application of any person not under disability who would be prejudiced by the grant:

Provided that where the will is not available by reason of its being retained in the custody of a court or official outside Solomon Islands, a duly authenticated copy of the will may be admitted to proof without other evidence.

- (2) Every application for a grant under this section shall be accompanied by consents in writing, (if any) to the application given by any person not under disability who would be prejudiced by the grant, unless the Court gives leave to dispense therewith in any particular case.

53 Grants 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 the jurisdiction of the Court, the Court may, on application by any creditor or person interested in the estate of the deceased, grant to him 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 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 such 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 may direct.

PART IV GRANTS IN SMALL ESTATES

54 Application of Part IV

Unless in any particular case the Court shall, either of its own motion, or upon the application of the Public Trustee or of any person having an interest in the estate, direct that the provisions of Part III shall apply to any estate of a deceased person, the estimated gross value of which at the time of the death does not exceed such value as may from time to time be declared by the Minister by notice, (in this Part referred to as a “small estate”), the provisions of this Part shall apply thereto in lieu of anything contained in Part III.

55 Application for grants in small estates

- (1) Every application for a grant of probate or administration, with or without the will annexed, in the case of a small estate shall be made either to the Court or the Magistrate’s Court of the area in which the deceased person was resident at the time of his death or to the Magistrate’s Court of the area in which the whole or the greater part of the estate is situated.
- (2) Every application under this section shall be made in writing

addressed to the Registrar of the Court or to the clerk of the Magistrate's Court, as the case may be, and if made in person shall be reduced to writing.

- (3) Every application under this section shall be supported by an affidavit sworn by the applicant or by a note of his oral evidence taken on oath before a person empowered to administer oaths, stating:
 - (a) the grounds of his application;
 - (b) particulars of the deceased person and of his death;
 - (c) particulars of the estate of the deceased so far as it is known to him, and an estimate of its gross value at the time of the death of the deceased.
- (4) If the deceased is known to have left a will, the application shall be accompanied by the deposit of the original will or, if the original will is not available, by evidence of the reason for it not being available and evidence as to the contents of the will, if any.

56 Issue of grants in small estates

If the Court or the appropriate Magistrate's Court, as the case may be, is satisfied that the estate may properly be administered as a small estate by the person applying for the grant, the Court or the Magistrate's Court may in its discretion issue a certificate in the prescribed form to the applicant.

57 Copies of certificate of grant in small estates to be filed

Upon the issue of any certificate of grant referred to in section 56, a copy of the certificate together with the application for grant and the will, or evidence as to the contents thereof, (if any) and the affidavit or note of evidence referred to in section 55(3) shall be filed with the Court or the appropriate Magistrate's Court.

58 Review of grants in small estates

If any person claiming an interest in any small estate adverse to that of the person to whom a grant under this Part has been made considers himself aggrieved by the issue of such grant, he may apply

to the Court within ninety days of the issue of the grant, or such longer period as the Court may in its discretion allow, for revocation of the grant and issue thereof to himself or some other person or the Public Trustee, and the Court may upon determination of the application revoke, confirm or vary the grant or make such other order as, having regard to all the circumstances, shall appear to it to be just.

59 Protection for persons acting on certificates of grant in small estates

Any person who *bona fide* and without negligence in reliance upon sight of any certificate purporting to have been issued under this Part granting to any person or persons the administration of any small estate, surrenders, transfers or registers any title to land or pays any money or delivers any chattel, security or other thing whatsoever to such person or persons named in the certificate of grant shall not be liable to any action, suit or other proceedings in respect of such surrender, transfer, registration, payment or delivery brought on behalf of the estate in respect of which the grant was made or by any person whomsoever claiming any share or interest therein.

PART V ADMINISTRATION OF ESTATES

DIVISION 1 DEVOLUTION OF PROPERTY ETC.

60 Vesting of property prior to grant of probate or administration

- (1) Where a person dies testate having appointed by his will an executor thereof, the whole interest of the executor in both the movable property of the deceased and in any immovable property to which the deceased was entitled for an interest not ceasing on his death shall vest in the executor from the time of the testator's death.
- (2) Subject to the provisions of subsection (4), where a person dies intestate or dies testate without the will appointing any executor thereof, all of his movable property and any immovable property to which he was entitled for an interest not ceasing on his death shall, until administration is granted, with or without the will annexed as the case may be, vest in the Public Trustee.
- (3) The personal representatives for the time being of a deceased person shall be deemed in law his heirs and assigns within the

meaning of all trusts and powers.

(4) For the purposes of this section:

- (a) a testator shall be deemed to have been entitled at his death to any interest in immovable property passing under any gift contained in his will which operates as an appointment under a general power to appoint by will;
- (b) the interest of a deceased person under joint ownership where another joint owner survives the deceased is an interest ceasing on his death;
- (c) on the death of a corporation sole his interest in the corporation's movable and immovable property shall be deemed to be an interest ceasing on his death and shall devolve to his successor; and this paragraph shall apply to a public officer or Provincial Premier, in respect of any public land vested in him for and on behalf of the government or the province, as the case may be, in like manner as if he were a corporation sole.

61 Summons to executor to prove or renounce

Notwithstanding the provisions of section 50, the Court shall have power of its own motion or on the application of the Public Trustee or of any person having an interest in the estate of any deceased person to summon any person named as an executor in the will of the deceased to prove or renounce probate of the will.

62 Cesser of right of executor to prove

Subject to the provisions of section 64, 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 movable and immovable property shall devolve and be committed in like manner as if that person had not been appointed executor.

63 Withdrawal of renunciation

- (1) Notwithstanding the provisions of section 61, an executor who has renounced probate may be permitted by the Court to withdraw his renunciation and prove the will, and where an executor who has renounced probate has been so permitted:
 - (a) the probate takes effect and shall 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 of administration; and
 - (b) a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.
- (2) This section applies whether the testator died before or after the commencement of this Act.

64 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:

Provided that 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 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 movable and immovable property of that testator as the original executor would have had if living; and

(b) is, to the extent to which the estate whether consisting of movable or immovable property of that testator has come to his hands, answerable as if he were the original executor.

65 Right of executors to prove exercise of 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 Act.

66 Executor not to act while administration is in force

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

67 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

proceedings 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 may direct.

68 Rights and liabilities of administration

Every person to whom the administration of any estate, whether consisting of movable or immovable property, of any 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.

DIVISION 2 DUTIES, RIGHTS AND OBLIGATIONS

69 Duty of personal representative

The personal representative of a deceased person shall be under a duty to:

- (a) collect and get in the movable and immovable property of the deceased and administer according to law;
- (b) when required to do so by the Court, exhibit on oath in the Court a full inventory of the estate and render an account of the administration of the estate to the Court;
- (c) when required to do so by the Court, deliver up the grant of probate or administration to the Court.

70 Protection of person acting on probate or administration

- (1) A person making a payment or disposition in good faith under a representation, or permitting any such payment or disposition to be made, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance affecting the validity of the representation.
- (2) Where a representation is revoked, a payment or disposition made in good faith to a personal representative under the representation before the revocation is a valid discharge to the person making it, and the personal representative who acted under the revoked

representation may retain and reimburse himself in respect of any payment or disposition made by him which the person to whom representation is afterwards granted might have properly made.

71 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 movable or immovable property comprising the 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 movable or immovable property received or coming into 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.

72 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 movable or immovable property comprising the estate of a deceased person, and dies, his personal representative shall, to the extent of the available assets of the defaulter, be liable and chargeable in respect of that waste or conversion in the same manner as the defaulter would have been if living.

73 Provisions where administration is granted to Public Trustee

Subject to the provisions of section 10 of the *Public Trustee Act*, where the administration of the estate, or any part thereof, of a deceased person is granted to the Public Trustee, any legal proceeding by or against the Public Trustee for the recovery of the movable or immovable property comprising the estate of such person, or any part or share thereof, shall be of the same character, and be instituted and carried on in the same manner, and be subject to the same rules of law and equity in all respects as if the

administration had been granted to the Public Trustee as one of the persons interested under this Act in the estate of the deceased.

74 Assets of deceased for payment of debts

- (1) The movable and immovable property comprising the estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and to movable and immovable property of which a deceased person in pursuance of any general power disposes by his will, are assets for payments of his debts and liabilities, and any disposition by will inconsistent with this Act is void as against the creditors, and the Court shall, if necessary, administer the property for the purpose of the payment of debts and liabilities:

Provided that this subsection shall take effect without prejudice to 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 issued 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.

75 Statutory trusts

- (1) On the death of a person intestate as to any movable or immovable property, such property shall be held by his personal representatives:
 - (a) as to the movable property, upon trust to call in, sell and convert into money such part thereof as may not consist of money; and
 - (b) as to the immovable property, upon trust to sell the same, with power to postpone the sale and conversion for such period as the personal representatives, without being liable to account, may think proper, and so that:
 - (c) any reversionary interest shall not be sold until it falls into possession, unless the personal representatives see special reason for sale; and

- (d) unless required for purposes of administration owing to want of other assets, personal chattels shall not be sold except for special reason.
- (2) Out of the net money to arise from the sale and conversion of the movable and immovable property comprising the estate of the deceased (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 representatives 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, and out of the residue of the money the personal representatives shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will, (if any), of the deceased.
- (3) Pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the money, or so much thereof as may not have been distributed, in any investment for the time being authorised by law 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.
- (4) Where the deceased leaves a will, this section shall have effect subject to the provisions contained in the will.

76 Administration of assets where estate is insolvent

Where the estate of a deceased person is insolvent, his movable and immovable property shall be administered in accordance with rules that may be prescribed for the purpose.

77 Administration of assets where estate is solvent

Where the estate of a deceased person is solvent, his movable and immovable property shall, subject to the provisions of section 78, 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 in accordance with the rules that may be prescribed for the purpose.

78 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 charge, 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 persons claiming through the deceased, be primarily liable for 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) A contrary or other intention shall not be deemed to be signified:
 - (a) by a general direction for the payment of debts or of all the debts of the testator out of the movable property, or the residual movable and immovable property, or the residual immovable property comprising his estate; or
 - (b) by a charge of debts upon any such property, 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 shall affect the right of a person entitled to the charge referred to in subsection (1) to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

79 Validity of conveyance not affected by revocation of representation

All conveyances of any interest in movable or immovable property made to a purchaser by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation of the probate or the administration.

- (2) This section takes effect without prejudice to any order of the Court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement.

80 Powers of management

- (1) In dealing with the movable or immovable estate of a deceased person, the personal representative shall, for the purpose of administration have:
 - (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 has for the time being under the law applicable and having effect as the law of Solomon Islands or had before the commencement of this Act with respect to personal estate vested in him;
 - (b) all the powers, discretions and duties conferred or imposed by the law for the time being in force in Solomon Islands on trustees holding land upon an effectual trust for sale;
 - (c) all powers conferred by the law for the time being in force in Solomon Islands on trustees for sale; and
 - (d) all those powers, discretions and duties conferred or imposed upon the personal representative of a deceased person in relation to any estate, or any part thereof,

and so that every contract entered into by the personal representative is binding on and 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) This section applies whether the testator or the intestate died before or after the commencement of this Act.

81 Powers of personal representative as to appropriation

- (1) Subject to the provisions of this section, the personal representative may appropriate any part of the movable or immovable property, (including choses in action) comprising the estate of the deceased, in its actual condition or state of investment at the time of the appropriation, in or towards satisfaction of any legacy bequeathed by the deceased or of any other interest or share in his property, as

to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased.

- (2) An appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest.
- (3) Subject to the following provisions, 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 be made under this section except:
 - (a) where made for the benefit of a person absolutely and beneficially entitled in possession with the consent of that person; or
 - (b) when made in respect of any 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.
- (4) If the person whose consent is required as aforesaid is an infant or a person of unsound mind or a defective person incapable of managing and administering his property and affairs, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, manager, committee or receiver, or if, in the case of an infant, there is no such parent or guardian, by the Court on application by his next friend or the Public Trustee, notwithstanding that the Public Trustee may also be the personal representative.
- (5) 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.
- (6) If no manager, committee or receiver for a person of unsound mind or defective person 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 will, no consent shall be required on behalf of the person of unsound mind or defective person.
- (7) If, independently of the personal representative, there is no trustee

of a 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 by law or by the will (if any) of the deceased.

- (8) For the purposes of such appropriation under this section, the personal representative:
 - (a) may ascertain and fix the value of the respective parts of the movable and immovable property comprising the estate and the liabilities of the deceased as he may think fit;
 - (b) shall for the purpose of paragraph (a) employ a qualified valuer where such employment may be necessary; and
 - (c) may make any conveyance which may be requisite for giving effect to the appropriation.
- (9) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained and dealt with accordingly.
- (10) 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.
- (11) 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 the appropriation, and of any other person whose consent is not required by this section.
- (12) This section does not prejudice any other power of appropriation conferred by law that prevailed before the commencement of this Act or by any customary usage applicable to appropriation 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 legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition and management, or of varying investments, which would have been applicable thereto or to

the legacy, share or interest in respect of which the appropriation is made, as if no such appropriation had been made.

- (13) If, after any immovable property 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.
- (14) In this section, **“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, and also an annuity; **“purchaser”** means a purchaser for money or money’s worth.
- (15) This section applies whether the deceased died testate or intestate, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorised the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

82 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 Act (in this section referred to as the “deceased”) to a devise or legacy, or to the residue of the estate of the deceased, or to 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 five (whether or not including the personal representatives or one or more of them), to be the trustee or trustees of such devise, 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 trustees so appointed.
- (2) On appointment of the trustee or trustees referred to in subsection (1), the personal representatives as such, shall be discharged from all further liability in respect of the 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.

83 Power to postpone distribution

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

PART VI DISTRIBUTION OF INTESTATE’S RESIDUARY ESTATE

84 Succession to movable and immovable property 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:

TABLE

If the intestate:

- | | |
|--|--|
| <ul style="list-style-type: none">(i) leaves:<ul style="list-style-type: none">(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.(ii) leaves issue (whether or not persons mentioned in sub-paragraph (b) above also survive). | <p>the residuary estate shall be held in trust for the surviving husband or wife absolutely.</p> <p>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 ten thousand dollars, free of duties and</p> |
|--|--|

costs, to the surviving husband or wife, and, subject to providing for that sum, the residuary estate (other than the personal chattels) shall be held:

(a) as to one-half, 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 half, on the statutory trusts for the issue of the intestate.

(iii) 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 leave 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 a net sum of fifteen thousand dollars, free of duties and costs, to the surviving husband or wife and, subject to providing for that sum, 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:

(i) 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;

(ii) where the intestate leaves no parent, on statutory trusts for the brothers and sisters of the whole blood of the intestate.

- (b) 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;
- (c) 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;
- (d) 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;
- (e) if the intestate leaves no husband or wife and no issue but 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 brother 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 brother 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 or 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 Government of Solomon Islands as *bona vacantia*:

Provided that the Minister may, in such manner as he thinks fit, make provision out of such residuary estate for the dependants and kindred of the deceased and other persons for whom the deceased might reasonably have been expected to provide.

- (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 and the intestate's husband or wife is by virtue of section 106 deemed to have survived the intestate, this section shall, nevertheless, have effect as respects the intestate as if the husband or wife had not survived the intestate.
- (4) For the purposes of this section where by virtue of any current customary usage an intestate leaves surviving him more than one wife or issue by more than one wife the provisions of this section relating to the interest in the estate of the intestate of the surviving wives and issue by them and the interest in question shall be divided in equal shares between those wives or the issue of the intestate by them, as the case may be.

85 Statutory trusts in favour of issue and other classes of relatives of intestate

Where under this Part the residuary estate of an intestate, or any

part thereof, is directed to be held on statutory trusts for the issue of the intestate, the same shall be held upon trusts, in accordance with the rules that may be prescribed for the purpose.

86 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 to the person entitled to the life interest, or the person deriving title under him, less 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 purposes 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) If the person entitled to the life interest dies after the exercise of the election under this section but before effect is given to that election, the date of redemption shall be taken for the purpose of the valuation of the life interest to be the date immediately before death of the person entitled to the life interest.
- (4) 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 the Court may extend the said period.

87 Powers of personal representative in respect of interests of surviving spouse

The personal representative may raise:

- (a) the net sum of fifteen thousand dollars, or as the case may be, ten thousand dollars or any part thereof 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 may not have been satisfied by an appropriation under the power available in that behalf by virtue of the provisions of section 81; and

- (b) 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.

88 Application to cases of partial intestacy

- (1) Where a person dies leaving a will effectively disposing of part of his property, this Part 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:
 - (a) 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 to the net sum of one thousand dollars or ten thousand dollars payable to a surviving husband or wife shall be taken as references to the said sum diminished by the value (at the date of the death) of the said beneficial interests and, accordingly, where the said value exceeds the said sum, this Part shall have effect as if references to the said sum were omitted;
 - (b) the rules made under section 85 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 the administration, be a trustee for the persons entitled under this Part in respect of the part of the

estate not expressly disposed of unless it appears by the will that the personal representative is 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 subsection (1)(a) the personal representative shall employ a duly qualified valuer, if any be reasonably available, in any case where such employment may be necessary.
- (4) The references in section 86(2) 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 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).

89 Contribution made by surviving spouse to be taken into account

- (1) Where the residuary estate of the intestate comprises an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death, the contribution made towards the purchase or the building of the dwelling-house by the surviving husband or wife shall be taken into account in the distribution of the estate.
- (2) Where the dwelling-house is built on customary land the surviving spouse shall be entitled to be compensated to the amount of the contribution made towards the building of the dwelling-house.
- (3) The provisions of subsection (1) shall apply notwithstanding any current customary usage to the contrary but shall not apply to nor affect the devolution of any interest in customary land.

PART VII FAMILY PROVISION

90 Application and interpretation

- (1) The provisions of this Part shall apply irrespective of any current customary usage to the contrary, but shall not apply to nor affect the devolution of any interest in customary land.
- (2) In this Part references to “the Court” shall in relation to the summary administration of small estates, be deemed to be references to the appropriate Magistrate’s Court.

91 Power of Court to order adequate provision for proper maintenance and support of testator’s spouse or children where no adequate provision made by testator

- (1) Where, after the commencement of this Act, a person dies leaving a will and without making therein adequate provision for the proper maintenance and support of his spouse or children the Court may, in its discretion, on application by or on behalf of the spouse or children, order that such provision as the Court thinks just be made out of the estate of the testator for the spouse or children.
- (2) An application under subsection (1) shall be made by summons and such summons shall be taken out by the applicant and served on the executor of the will of the testator or on the administrator with the will annexed of the estate of the testator.
- (3) At the hearing of an application, the Court shall inquire fully into the testator’s estate, and for the purpose may:
 - (a) summon and examine such witnesses as in its opinion are necessary; and
 - (b) require the executor or administrator to furnish full particulars of the testator’s estate.

92 Court to consider net estate and spouse’s or children’s means

In granting or refusing an application and in fixing the amount of the provision to be made under this Part for the spouse or children or any one of them, the Court shall have regard, among other things,

to:

- (a) the nature of the property representing the deceased's net estate; and
- (b) whether the spouse or children or any of them are entitled to any capital or income, whether secured by any provision made by the testator during his lifetime or derived from any other source.

93 Power of Court to refuse applications and make orders

- (1) The Court may refuse an application if the character or conduct of the applicant is such as in the opinion of the Court to disentitle him to the benefit of any provision under this Part.
- (2) In making an order under this Part the Court may impose such conditions, restrictions and limitations, whether to prevent, restrict or defeat any alienation or charge of or upon the benefit of any provision made under the order, or otherwise, as it thinks proper.
- (3) In making an order under this Part, the Court may order that the provision consist of a lump sum or a periodical or other payment.

94 Orders

An order under this Part making provision for a spouse or child shall specify, among other things:

- (a) the amount and nature of the provision;
- (b) the manner in which the provision shall be raised or paid out of the estate of the testator; and
- (c) any conditions, restrictions or limitations which in its opinion should be imposed.

95 Time within which application must be made

- (1) Except as provided by the provisions of this section or of section 96, an order under this Part shall not be made save on an application made with the permission of the Court within six months after the date of the grant of probate of the will or of letters of administration

with the will annexed (as the case may be).

- (2) The time for making an application for an order may be extended for a further period by the Court, after hearing such of the parties affected as the Court thinks necessary.

96 Effect and form of order

- (1) Where an order is made under this Part, then for all purposes, the will or the provisions of the Act relating to intestacy, or both the will and such provisions, as the case may be, shall have effect and shall be deemed to have had effect as from the deceased's death, subject to such variation as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.
- (2) A copy of every order made under this Part shall be filed with the Registrar of the Court and a memorandum of the order shall be annexed to the probate or letters of administration under which the estate is being administered, or, in the case of the summary administration of a small estate to the certificate authorising the summary administration thereof.

PART VIII EFFECT OF ADOPTION

97 Meaning of adopted person

In this Part "***adopted person***" means:

- (a) any person in respect of whom a lawful adoption order is subsisting having been made in accordance with the law of the United Kingdom, or of any British Possession to which the provisions of the *Colonial Probate Acts 1892 and 1927* of the United Kingdom apply, any Commonwealth country or any other state;
- (b) any Solomon Islander adopted in Solomon Islands pursuant to any current customary usage;
- (c) any person adopted outside Solomon Islands whose adoption is recognised by the law for the time being in force in England, any Commonwealth country or other state.

98 Effect of adoption on succession

- (1) Notwithstanding any current customary usage to the contrary, where, at any time after an adoption or the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any movable or immovable property, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.
- (2) Notwithstanding any current customary usage to the contrary, in any disposition of movable or immovable property made by will after an adoption:
 - (a) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;
 - (b) any reference (whether express or implied) to any child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, reference to the adopted person; and
 - (c) any reference (whether express or implied) to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

PART IX PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN

99 Right of illegitimate child to succeed on intestacy of parents, and of parents to succeed on intestacy of illegitimate child

- (1) Where either parent of an illegitimate child dies intestate as respects all or any of his or her movable or immovable property, the illegitimate child or, if he is dead his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had

been born legitimate.

- (2) Where an illegitimate child dies intestate in respect of all or any of his movable or immovable property, each of his parents, if surviving, shall be entitled to take any interest therein to which that parent would have been entitled if the child had been legitimate.
- (3) For the avoidance of doubt it is hereby declared that Part VI (distribution of residuary estate) shall have effect as if:
 - (a) any reference to the issue of the intestate included a reference to any illegitimate child of his and to the issue of any such child;
 - (b) any reference to the child or children of the intestate included a reference to any illegitimate child or child of his; and
 - (c) in relation to an intestate who is an illegitimate child, any reference to the parent, parents, father or mother of the intestate were a reference to his natural parent, parents, father or mother.
- (4) For the purposes of subsection (2) and of the provisions amended by subsection (3)(c), an illegitimate child shall be presumed not to have been survived by his father unless the contrary is shown.
- (5) References to any statutory table of distribution or to statutory next-of-kin in any instrument *inter vivos* made, or a will or codicil coming into operation, after the commencement of this Act, shall be construed, unless the context otherwise requires, as including reference to this section.
- (6) For the avoidance of doubt it is hereby declared that section 9 of the *Legitimacy Act 1926* of the United Kingdom (under which an illegitimate child and his issue are entitled to succeed on the intestacy of his mother if she leaves no legitimate issue, and the mother of an illegitimate child is entitled to succeed on his intestacy as if she was the only surviving parent) does not apply to Solomon Islands.
- (7) In this section **“illegitimate child”** does not include an illegitimate child who has been legitimated or who is an adopted person within the meaning of section 97.

100 Presumption that in dispositions of property references to children and other relatives include references to, and to persons related through, illegitimate children

- (1) In any disposition made by will after the commencement of this Act:
 - (a) any reference (whether express or implied) to the child or children of any person shall, unless the contrary intention appears, be construed as, or as including, a reference to any illegitimate child of that person; and
 - (b) any reference (whether express or implied) to a person or persons related in some other manner to any person shall, unless the contrary intention appears, be construed as, or as including, a reference to anyone who would be so related if he, or some other person through whom the relationship is deduced, had been born legitimate.
- (2) Subsection (1) applies only where the reference in question is to a person who is to benefit or to be capable of benefiting under the disposition or, for the purpose of designating such a person, to someone else to or through whom that person is related.
- (3) In relation to any disposition made by will after the commencement of this section, section 33 of the *Trustee Act 1925* of the United Kingdom (which specified the trusts implied by a direction that income is to be held on protective trusts for the benefit of any person) shall, in so far as it shall apply to Solomon Islands, have effect as if:
 - (a) the reference to the children or more remote issue of the principal beneficiary included a reference to any illegitimate child of the principal beneficiary and to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate; and
 - (b) the reference to the issue of the principal beneficiary included a reference to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate.
- (4) In this section references to an illegitimate child include references

to an illegitimate child who is or becomes a legitimated person within the meaning of the *Legitimacy Act 1926* of the United Kingdom or a person recognised by virtue of that Act or at common law as having been legitimated; and, in so far as that Act shall apply to Solomon Islands, in section 3 thereof:

- (a) subsection (1)(b) (which relates to the effect of dispositions where a person has been legitimated) shall not apply to a disposition made after the commencement of this Act except as respects any interest in relation to which disposition refers only to persons who are, or whose relationship is deduced through, legitimated persons; and
 - (b) subsection (2) (which provides that, where the right to any property depends on the relative seniority of the children of any person, legitimated persons shall rank as if born on the date of legitimation) shall not apply in relation to any right conferred by a disposition made after the commencement of this Act unless the terms of the disposition are such that the children whose relative seniority is in question cannot include any illegitimate children who are not either legitimated persons within the meaning of that Act or persons recognised by virtue of that Act as having been legitimated.
- (5) This section is without prejudice to Part VIII.
 - (6) There is hereby abolished, as respects dispositions made by will after the commencement of this Act, any rule of law that a disposition in favour of illegitimate children not in being when the disposition takes effect is void as contrary to public policy.
 - (7) A disposition made by will or codicil executed before the date of commencement of this Act shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

101 Illegitimate children to count as dependants under Part VII

For the purposes of Part VII (Family Provision), a person's illegitimate son or daughter shall be treated as his dependant in any case in which a legitimate son or daughter of that person would be so treated, and accordingly the definition of the expressions "son" and

“daughter” in section 3(1) shall be construed as if after the words “respectively include” there appeared the words “an illegitimate son or daughter of the deceased”.

102 Customary usage in relation to illegitimate children

Sections 13(9), 100 and 101 shall have effect notwithstanding any current customary usage to the contrary.

103 Protection of trustees and personal representatives

Notwithstanding the foregoing provisions of this Part trustees or personal representatives may convey or distribute any movable or immovable property to or among the persons entitled thereto without having ascertained that there is no person who is or may be entitled to any interest therein by virtue of:

- (a) section 99 so far as it confers any interests on illegitimate children or their issue or on the father of an illegitimate child; or
- (b) sections 13(9) or 100,

and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this section shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

PART X MISCELLANEOUS

104 Proof of current customary usage where not otherwise specified

Where for the purposes of any of the provisions of this Act or regulations made thereunder proof of any current customary usage is required, unless otherwise specifically provided, it shall be lawful for the Court:

- (a) to refer the matter in question by way of a case stated to the appropriate local court or Customary Land Appeal Court and to accept the certificate of such court (as the case may be) as evidence of the local custom applicable and the Court may in

its discretion accept such certificate as conclusive proof of such custom; or

- (b) to accept the oral or affidavit evidence of witnesses who, in the opinion of the Court, are competent to speak as to such local custom; or
- (c) to refer to text books, reports (whether published or not), or other works of reference, official records relating to local custom; or
- (d) to satisfy itself as to the application of local custom by all or any of the aforesaid means.

105 Devolution of certain perpetual estates on intestacy

Where a Solomon Islander dies intestate and any perpetual estate owned by him does not form part of the residuary estate, the devolution of such perpetual estate shall be in accordance with the current customary usage as certified by the local court having jurisdiction in the area where the land is situated.

106 Presumption of survivorship in regard to claims to property

In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the Court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

107 Cases not provided for

Any question connected with or incidental to any of the provisions or purposes of this Act arising before the Court which is not expressly or impliedly provided for in this Act or any other written law having effect in Solomon Islands shall be determined by the Court so far as may be possible and not in conflict with the general tenor of this Act, by reference to the provisions of the law which had effect or force in Solomon Islands immediately before the commencement of this Act.

108 Duty to produce will

Any person who, having in his possession or under his control any will or codicil of a deceased person or any paper or writing purporting to be such a will or codicil, fails or neglects to produce and deposit the same with the Court, or, where there is reason to believe that the deceased person's estate is a small estate, with a local magistrate within thirty days of learning of the death of the deceased person, shall be guilty of an offence and liable to a fine of one thousand dollars.

109 Regulations

- (1) The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and without prejudice to the generality of the foregoing power, such regulations may provide for:
 - (a) anything required by this Act to be prescribed;
 - (b) fees and charges, to be levied; and
 - (c) such adaptations and modifications in any other law made or having effect prior to the date of commencement of this Act as appear to him necessary or expedient on account of anything provided by or under this Act.
- (2) Any regulations adapting or modifying any Act under paragraph (c) of subsection (1) shall be subject to affirmative resolution and shall not come into operation until a draft of it has been laid before Parliament and approved by a resolution of Parliament.

ENDNOTES

1

KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 33 of the Revised Edition of the Laws of Solomon Islands.

2

LIST OF LEGISLATION

Wills, Probate and Administration Act (Cap. 33)

Constituent legislation: 2 of 1987 (Commenced 3 May 1991)
8 of 1990

3

LIST OF AMENDMENTS