

Uganda: Laws of Uganda

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Succession Act 1906 (Ch 162)

CHAPTER 162

THE SUCCESSION ACT.

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CHAPTER 162

THE SUCCESSION ACT.

Commencement: 15 February, 1906.

An Act relating to succession.

Part I—Preliminary.

1. Act to constitute the law of Uganda in cases of succession.

Except as provided by this Act, or by any other law for the time being in force, the provisions in this Act shall constitute the law of Uganda applicable to all cases of intestate or testamentary succession.

2. Interpretation.

In this Act, unless the context otherwise requires—

1. “administrator” means a person appointed by a court to administer the estate of a deceased person when there is no executor;
2. “child”, “children”, “issue” and “lineal descendant” include legitimate, illegitimate and adopted children;
3. “codicil” means an instrument explaining, altering or adding to a will and which is considered as being part of the will;
4. “court” means the High Court or a magistrate’s court other than a magistrate’s court presided over by a magistrate grade II;
5. “customary heir” means the person recognised by the rites and customs of the tribe or community of a deceased person as being the customary heir of that person;

6. “daughter” includes a stepdaughter, an illegitimate daughter and a daughter adopted in any manner recognised as lawful by the law of Uganda;
7. “dependent relative” includes— (i) a wife, a husband, a son or daughter under eighteen years

of age or a son or daughter of or above eighteen years of age who is wholly or substantially dependent on the deceased; (ii) a parent, a brother or sister, a grandparent or grandchild who, on the date of the deceased’s death, was wholly or

substantially dependent on the deceased for the provision of the ordinary necessities of life suitable to a person of his or her station; (h) “executor” means a person appointed in the last will of a

deceased person to execute the terms of the will; (i) “grandchild” means a son or daughter of a son or daughter; (j) “grandparent” means a parent of a parent; (k) “husband” means a person who at the time of the intestate’s death was— (i) validly married to the deceased according to the laws of

Uganda; or (ii) married to the deceased in another country by a marriage recognised as valid by any foreign law under which the marriage was celebrated; (l) “illegitimate child” means an illegitimate child recognised or

accepted by the deceased as a child of his or her own; (m) “immovable property” includes land, incorporeal tenements and things attached to the earth or permanently fastened to things attached to the earth; (n) “legal heir” means the living relative nearest in degree to an intestate under the provisions set out in Part III to this Act together with and as varied by the following provisions— (i) between kindred of the same degree a lineal descendant shall be preferred to a lineal ancestor and a lineal ancestor shall be preferred to a collateral relative and a paternal ancestor shall be preferred to a maternal ancestor; (ii) where there is equality under subparagraph (i) of this

paragraph, a male shall be preferred to a female; (iii) where there is equality under subparagraph (ii) of this

paragraph, the elder shall be preferred to the younger; (iv) if no legal heir is existing and reasonably ascertainable under subparagraphs (i), (ii) and (iii) of this paragraph, the husband or the senior wife of the intestate, as the case may be, shall be the legal heir; (o) “minor” means any person who has not attained the age of twenty-one years, and “minority” means the status of such person; (p) “movable property” means property of every description except

“immovable property”; (q) “parent” includes a stepparent and an adoptive parent; (r) “personal representative” means the person appointed by law to

administer the estate or any part of the estate of a deceased person; (s) “probate” means the grant by a court of competent jurisdiction authorising the executor named in the testator’s last will to administer the testator’s estate; (t) “residential holding” has the meaning assigned to it by section 26; (u) “senior wife”, in the case of a polygamous marriage, means the wife who was married first in time to the deceased intestate; (v) “son” includes a stepson, an illegitimate son and a son adopted in a manner recognised as lawful by the law of Uganda; (w) “wife” means a person who at the time of the intestate’s death was—

- (i) validly married to the deceased according to the laws of Uganda; or
- (ii) married to the deceased in another country by a marriage recognised as valid by any foreign law under which the marriage was celebrated.

3. Interests and powers not acquired nor lost by marriage.

No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

Part II—Domicile.

4. Succession to a deceased person’s immovable and movable property.

1. Succession to the immovable property in Uganda of a person deceased is regulated by the law of Uganda, wherever that person may have had his or her domicile at the time of his or her death.
2. Succession to the movable property of a person deceased is regulated by the law of the country in which that person had his or her domicile at the time of his or her death.

(3) For the purposes of subsection (2), a person dying intestate shall be deemed to have had his or her domicile in Uganda if—

1. for a period of not less than two years preceding his or her death that person was ordinarily resident in Uganda; and
2. he or she was survived by a spouse or child who was, at the time of his or her death, ordinarily resident in Uganda.

5. Domicile in respect of succession to movables.

A person can have one domicile only for the purpose of succession to his or her movable property.

6. Domicile of origin of a person of legitimate birth.

The domicile of origin of every person of legitimate birth is in the country in which, at the time of his or her birth, his or her father is domiciled, or, if he or she is a posthumous child, in the country in which his or her father was domiciled at the time of the father's death.

7. Domicile of origin of an illegitimate child.

The domicile of origin of an illegitimate child is in the country in which, at the time of his or her birth, his or her mother was domiciled.

8. Continuance of domicile of origin.

The domicile of origin prevails until a new domicile has been acquired.

9. Acquisition of a new domicile.

A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin; except that a man is not to be considered as having taken up his fixed habitation in Uganda merely by reason of his residing there in the exercise of any profession or calling.

10. Special mode of acquiring domicile in Uganda.

Any person may acquire a domicile in Uganda by making and depositing in some office in Uganda to be appointed by the Minister a declaration in writing under his or her hand of his or her desire to acquire such domicile, provided that he or she has been resident in Uganda for one year immediately preceding the time he or she makes the declaration.

11. Domicile not acquired by residence as representative of a foreign

Government, etc.

A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of the appointment, nor does any other person acquire such domicile by reason only of residing with that person as part of his or her family or as a servant.

12. Continuance of a new domicile.

A new domicile continues until the former domicile has been resumed or another has been acquired.

13. Minor's domicile.

1. Subject to subsection (2), the domicile of a minor follows the domicile of the parent from whom the minor derived his or her domicile of origin.
2. The domicile of a minor does not change with that of the minor's parent if the minor is married, or holds any office or employment in the service of the Government, or has set up, with the consent of the parent, in any distinct business.

14. Domicile of a married woman.

By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

15. Wife's domicile during marriage.

1. Subject to subsection (2), the domicile of a wife during the marriage follows the domicile of her husband.
2. The domicile of a wife no longer follows that of her husband if they are separated by the sentence of a competent court.

16. Minor's acquisition of a new domicile.

Except as provided in section 13, a person cannot during minority acquire a new domicile.

17. Lunatic's acquisition of a new domicile.

An insane person cannot acquire a new domicile in any other way than by his or her domicile following the domicile of another person.

18. Succession to movable property in Uganda.

If a man dies leaving movable property in Uganda, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of Uganda.

Part III—Consanguinity.

19. Kindred or consanguinity.

Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

20. Lineal consanguinity.

1. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other as between a man and his father, grandfather, great-grandfather and so upwards in the direct ascending line, or between a man, his son, grandson, great-grandson and so downwards in the direct descending line.
2. Every generation constitutes a degree, either ascending or descending; a man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

21. Collateral consanguinity.

(1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased, to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

22. Persons held for the purpose of succession to be similarly related to the deceased.

For the purposes of succession, there is no distinction between those who are—

1. related to the deceased by the full blood and those who are related to the deceased by the half blood; or
2. born during the deceased's lifetime and those who are conceived in the womb at the date of death and subsequently born alive.

23. Mode of computing degrees of kindred.

1. In the table of kindred in the First Schedule to this Act, the degrees are computed as far as the sixth, and are marked by numeral figures.
2. The person whose relatives are to be reckoned and his cousin-german or first cousin are, as shown in the table, related in the fourth degree, there being one degree of ascent to the father, and another to the common ancestor, the grandfather, and from him one of descent to the uncle, and another to the cousin-german, making in all four degrees.
3. A grandson of the brother and a son of the uncle, that is, a great-nephew and cousin-german, are in equal degree, being each four degrees removed.
4. A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

Part IV—Intestacy.

24. Property of a deceased dying intestate.

A person dies intestate in respect of all property which has not been disposed of by a valid testamentary disposition.

25. Devolution of property of a deceased dying intestate.

All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act.

Part V—Distribution of an intestate's property.

26. Devolution of residential holdings.

1. The residential holding normally occupied by a person dying intestate prior to his or her death as his or her principal residence or owned by him or her as a principal residential holding, including the house chattels therein, shall be held by his or her personal representative upon trust for his or her legal heir subject to the rights of occupation and terms and conditions set out in the Second Schedule to this Act.
2. Any other residential holding possessed by the intestate at his or her death shall be held by his or her personal representative upon trust and, subject to the rights of occupation and terms and conditions set out in the Second Schedule to this Act, shall be dealt with in accordance with the remaining provisions of this Part.
3. Any dispute arising as to the exact area of any portion of land subject to this section or as to what person has the right to occupy the land or any part of it shall be settled by the personal representative.
4. Any person who is aggrieved by any decision of the personal representative under subsection (3) may appeal from the decision to a magistrate.

27. Distribution on the death of a male intestate.

(1) Subject to sections 29 and 30, the estate of a person dying intestate, excepting his principal residential holding, shall be divided among the following classes in the following manner—

- (a) where the intestate is survived by a customary heir, a wife, a lineal descendant and a dependent relative— (i) the customary heir shall receive 1 percent; (ii) the wives shall receive 15 percent;

(iii) the dependent relative shall receive 9 percent;

(iv) the lineal descendants shall receive 75 percent of the whole of the property of the intestate, but where the intestate leaves no person surviving him capable of taking a proportion of his property under paragraph (a)(ii) or (iii) of this paragraph, that proportion shall go to the lineal descendants;

2. where the intestate is survived by a customary heir, a wife and a dependent relative but no lineal descendant— (i) the customary heir shall receive 1 percent; (ii) the wife shall receive 50 percent; and (iii) the dependent relative shall receive 49 percent, of the whole of the property of the intestate;
3. where the intestate is survived by a customary heir, a wife or a dependent relative but no lineal descendant— (i) the customary heir shall receive 1 percent; and (ii) the wife or the dependent relative, as the case may be, shall

receive 99 percent, of the whole of the property of the intestate;

4. where the intestate leaves no person surviving him, other than a customary heir, capable of taking a proportion of his property under paragraph (a), (b) or (c) of this subsection, the estate shall be divided equally between those relatives in the nearest degree of kinship to the intestate;
5. if no person takes any proportion of the property of the intestate under paragraph (a), (b), (c) or (d) of this subsection, the whole of the property shall belong to the customary heir;
6. where there is no customary heir of an intestate, the customary heir's share shall belong to the legal heir.

2. Nothing in this section shall prevent the customary heir from taking a further share in the capacity of a lineal descendant if entitled to it in that capacity.
3. Nothing in this or any other section of this Act shall prevent the dependent relatives from making any other arrangement relating to the distribution or preservation of the property of the intestate provided that the arrangement is sanctioned by the court.

28. Distribution between members of the same class.

(1) All lineal descendants, wives and dependent relatives shall be

entitled to share their proportion of a deceased intestate's property in equal shares.

(2) Any child of a deceased lineal descendant, whose descent is not traced through any living lineal descendant and who survives the intestate, shall take the share which the deceased lineal descendant would have taken under subsection (1) had he or she survived the intestate.

29. Reservation of a principal residential holding from distribution.

1. No wife or child of an intestate occupying a residential holding under section 26 and the Second Schedule to this Act shall be required to bring that occupation into account in assessing any share in the property of an intestate to which the wife or child may be entitled under section 27.
2. No person entitled to any interest in a residential holding under section 26(1) shall be required to bring that interest into account in assessing any share in the property of an intestate to which that person may be entitled under section 27.

30. Separation of husband and wife.

1. No wife or husband of an intestate shall take any interest in the estate of an intestate if, at the death of the intestate, he or she was separated from the intestate as a member of the same household.
2. This section shall not apply where such wife or husband has been absent on an approved course of study in an educational institution.
3. Notwithstanding subsection (1), a court may, on application by or on behalf of such husband or wife, whether during the life or within six months after the death of the other party to the marriage, declare that subsection (1) shall not apply to the applicant.
4. Section 38(5) shall apply *mutatis mutandis* to an application made under subsection (3) in determining whether a declaration under this section should be made.
5. A declaration made under subsection (3) shall authorise the applicant to take no more than a proportion of the intestate's property entitled to him or her under section 27.

31. Notice to be given by a customary heir.

1. Upon the appointment of a customary heir of an intestate, the heir shall give or cause to be given notice of the appointment in the form set out in the Third Schedule to this Act to the personal representative and to the Administrator General.
2. All signatures on the notice shall be attested by any one of the following—

1. any agent appointed by the Minister under the Administrator General's Act;
2. a justice of the peace;
3. an advocate;
4. a notary public;
5. a bank manager;
6. a minister of religion authorised to celebrate marriages within Uganda;

(g) a medical practitioner;

(h) any other person authorised in that behalf by the Minister by

statutory order.

(3) If no notice has been received by the personal representative or by the Administrator General within one year from the date of death of the intestate, the personal representative shall proceed to distribute the estate of the intestate on the basis that there is no customary heir.

32. Interest of the State on default.

1. If, under sections 26 to 31, there is no person existing or reasonably ascertainable entitled to take any part of the property of an intestate, that part or the whole, as the case may be, shall belong to the State.
2. If, at any time after such property or part of the property has been made over to the State, a person entitled to take it as his or her share pursuant to section 27 is ascertained, the Minister may return that property or the proceeds of the property to that person in such manner as the Minister may think fit.

33. Children's advancement.

Where a share in the property of an intestate is due to a child or any lineal descendant of a child of the intestate, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child to whom or to whose descendant the share is due shall be taken into account in estimating the share.

Part VI—Effect of marriage and marriage settlements on
property.

34. Effect of marriage between persons only one of whom is domiciled in Uganda.

If a person whose domicile is not in Uganda marries in Uganda a person whose domicile is in Uganda, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire by the marriage if both were domiciled in Uganda at the time of the marriage.

35. Settlement of minor's property in contemplation of marriage.

The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or if he is dead or absent from Uganda, with the approbation of the High Court.

Part VII—Wills and codicils.

36. Persons capable of making wills.

1. Every person of sound mind and not a minor may by will dispose of his or her property.
2. A married woman may by will dispose of any property which she could alienate by her own act during her life.
3. A person who is deaf or dumb or blind is not thereby incapacitated for making a will if he or she is able to know what he or she does by it.

4. A person who is ordinarily insane may make a will during an interval in which he or she is of sound mind.
5. No person can make a will while he or she is in such a state of mind, whether arising from drunkenness or from illness or from any other cause, that the person does not know what he or she is doing.

37. Provision for the maintenance of dependents to be made in every will.

Notwithstanding section 36, where a person, by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her dependent relatives, section 38 shall apply.

38. Power of the court to order payment out of the estate of the deceased for maintenance of dependents.

1. Where a person dies domiciled in Uganda leaving a dependent relative, then, if the court, on application by or on behalf of the dependent relative of the deceased, is of opinion that the disposition of the deceased's estate effected by his or her will is not such as to make reasonable provision for the maintenance of that dependent relative, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's estate for the maintenance of that dependent relative.
2. The provision for maintenance to be made by an order under subsection (1) shall—
 - (a) subject to subsection (3), be, where the deceased's estate produces an income, by way of periodical payments; and the order shall provide for their termination not later than— (i) in the case of a wife or husband, her or his remarriage; (ii) in the case of a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself, her marriage or the cessation of her disability, whichever is the later; (iii) in the case of an infant son or a son who is, by reason of some mental or physical disability, incapable of maintaining himself, his attaining the age of twenty-one or the cessation of his disability, whichever is the later; (iv) in the case of other dependent relative, his or her attaining

the age of twenty-one, or in any case, his or her death; or (b) where the deceased's estate does not produce any income or sufficient income, authorise the applicant to receive such share as the applicant would be entitled to in the distribution of the estate of an intestate under section 27.

3. The court may, if it sees fit, make an order providing for maintenance, in whole or in part, by way of a lump sum payment.
4. In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's estate and shall not order any provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the deceased's dependents and of the persons who, apart from the order, would be entitled to that property.
5. The court shall, on any application made under this section—

(a) have regard—

(i) to any past, present or future capital or income from any

source of the dependent of the deceased to whom the

application relates; (ii) to the conduct of that dependent in relation to the deceased

and otherwise; and (iii) to any other matter or thing which in the circumstances of

the case the court may consider relevant or material in

relation to that dependent, to persons interested in the estate

of the deceased, or otherwise;

(b) have regard to the deceased's reasons, so far as ascertainable—

(i) for making the dispositions made by his or her will, if any;

(ii) for refraining from disposing by will of his or her estate; or

(iii) for not making any provision, or any further provision, as

the case may be, for a dependent, and the court may accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances

from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

39. Time within which application must be made.

1. Except as provided by section 42, an application under section 38 shall not, without the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out; except that where letters of administration are revoked and probate is granted, time begins to run from the date of the grant of probate.
2. Sections 38 and 42 shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application under this Act after the end of that period, but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Act.

40. Effect and form of an order for maintenance.

1. Where an order is made under section 38, then, for all purposes, the will shall have effect, and shall be deemed to have had effect, as from the deceased's death, subject to such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance made in the order.
2. Any order under section 38 providing for maintenance by way of periodical payments may provide for payments of a specified amount, or for payments equal to the whole or part of the income of the net estate or of the income of any part to be set aside or appropriated under this Act of the net estate, or may provide for the amount of the payments or any of them to be determined in any other way the court thinks fit.
3. The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by its income the provision for maintenance made by the order than such a part as, at the date of the order, is sufficient to produce by its income the amount of the provision.

41. Variation of orders.

(1) On an application made at a date after the expiration of the period specified in section 39(1), the court may make an order as provided in this subsection, but only as respects property the income of which is at the date applicable for the maintenance of a dependent of the deceased, that is to say—

1. an order for varying the previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependent or of a person beneficially interested in the property under the will; or
2. an order for making provision for the maintenance of another dependent of the deceased.

(2) An application to the court for an order under subsection (1)(a) may be made by or on behalf of a dependent of the deceased or by the trustees of the property or by or on behalf of a person beneficially interested in the property under the will.

42. Interim orders.

(1) Where, on application for maintenance under this Act, it appears to the court—

1. that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application for the provision of maintenance for the applicant; and
2. that property forming part of the estate of the deceased is or can be made available to meet the need of the applicant,

the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to or for the benefit of the applicant out of the deceased's estate such sum or sums and (if more than one) at such intervals as the court thinks reasonable.

(2) In determining what order should be made under this section, the court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in determining what order should be made on the application for the provision of maintenance for the applicant; and any subsequent order for the provision of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of this section shall

be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.

3. Subject to subsection (2), section 40 shall apply in relation to an order under this section as it applies in relation to an order providing for maintenance.
4. Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he or she shall not be under any liability by reason of that estate not being sufficient to make the payment, unless, at the time of making the payment, he or she has reasonable cause to believe that the estate is not sufficient.

43. Testamentary guardian.

A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

44. Statutory guardians.

(1) On the death of a father of an infant where no guardian has been appointed by the will of the father of the infant or if the guardian appointed by the will of the father is dead or refuses to act, the following persons shall, in the following order of priority, be the guardian or guardians of the infant child of the deceased—

1. the father or mother of the deceased;
2. if the father and mother of the deceased are dead, the brothers and sisters of the deceased;
3. if the brothers and sisters of the deceased are dead, the brothers and sisters of the deceased's father;
4. if the brothers and sisters of the deceased's father are dead, the mother's brothers; or
5. if there are no mother's brothers, the mother's father.

(2) If there is no person willing or entitled to be a guardian under subsection (1)(a) to (e), the court may, on the application of any person interested in the welfare of the infant, appoint a guardian.

45. Power of the court to remove a guardian.

Any court, other than a court presided over by a magistrate grade III, may, if it is satisfied that it is for the welfare of the infant—

1. remove from his or her office any testamentary guardian or any guardian appointed or acting by virtue of section 44;
2. appoint another guardian in place of the guardian so removed;
3. vary the order of priority specified under section 44.

46. Powers of guardians.

1. Every guardian acting by virtue of section 44 or appointed under section 45 shall, subject to the provisions of the law relating to trusts, have all such powers over the estate and the person of an infant as a testamentary guardian has under the law for the time being in force in Uganda.
2. Any guardian acting by virtue of section 44 or appointed under section 45 shall act jointly with the mother of the infant, unless the court otherwise directs.

47. Will obtained by fraud, coercion or importunity.

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

48. Will may be revoked or altered.

A will is liable to be revoked or altered by its maker at any time when he or she is competent to dispose of his or her property by will.

49. Form of will.

A testator may, at his or her discretion, adopt for use the form of the will set out in the Fourth Schedule to this Act.

Part VIII—Execution of unprivileged wills.

50. Execution of unprivileged wills.

Except as provided by this Act or other law for the time being in force, every testator not being a member of the armed forces employed in an expedition

or engaged in actual warfare, or a mariner at sea, must execute his or her will according to the following provisions—

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

51. Incorporation of papers by reference.

If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his or her intentions, that document shall be considered as forming a part of the will or codicil in which it is referred to.

Part IX—Privileged wills.

52. Privileged wills.

Any member of the armed forces being employed in an expedition or engaged in actual warfare, or any mariner being at sea, may, if he or she has completed the age of eighteen years, dispose of his or her property by a will made as is provided in section 53 (hereafter referred to as a “privileged will”).

53. Mode of making privileged wills.

- (1) Privileged wills may be in writing or may be made by word of mouth.
- (2) The execution of a privileged will shall be governed by the

following provisions—

1. the will may be written wholly by the testator with his or her own hand, and in that case it need not be signed nor attested;
2. the will may be written wholly or in part by another person, and signed by the testator, and in that case it need not be attested;
3. if the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his or her will if it is shown that it was written by the testator's directions, or that he or she recognised it as his or her will; but if it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, if his or her nonexecution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument;
4. if the testator has written instructions for the preparation of his or her will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his or her will;
5. if the testator has, in the presence of two witnesses, given verbal instructions for the preparation of his or her will, and they have been reduced into writing in his or her lifetime, but he or she has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his or her will, although they may not have been reduced into writing in his or her presence, nor read over to him or her;
6. a testator may make a will by word of mouth by declaring his or her intentions before two witnesses present at the same time;
7. a will made by word of mouth shall be null at the expiration of one month after the testator has ceased to be entitled to make a privileged will.

Part X—Attestation, revocation, alteration and revival of

wills.

54. Effect of gift to attesting witnesses.

(1) A will shall not be considered as insufficiently attested by reason of any benefit given by the will, either by way of bequest or by way of appointment, to any person

attesting it, or to his wife or her husband, but the bequest or appointment shall be void so far as concerns the person so

attesting, or the wife or husband of that person, or any person claiming under either of them.

(2) A legatee under a will shall not lose his or her legacy by attesting a codicil which confirms the will.

55. Witness not disqualified by interest or by being executor.

No person, by reason of interest in, or of his or her being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity of the will.

56. Revocation of will by testator's marriage.

1. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of the appointment, pass to his or her executor or administrator or to the person entitled in case of intestacy.
2. Where a person is invested with power to determine the disposition of property of which he or she is not the owner, he or she is said to have power to appoint that property.

57. Revocation of unprivileged will or codicil.

No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil or by some writing declaring an intention to revoke the unprivileged will or codicil, and executed in the manner in which an unprivileged will is in this Act required to be executed, or by the burning, tearing or otherwise destroying of the will or codicil by the testator, or by some person in his or her presence and by his or her direction, with the intention of revoking it.

58. Effect of alteration in unprivileged will.

No obliteration, interlineation or other alteration made in any unprivileged will after the execution of the will shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible, unless the alteration is executed in like manner as is in this Act required for the execution of the will; except that the will, as so altered, shall

be deemed to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of, or opposite to, a memorandum referring to the alteration, and written at the end or some other part of the will.

59. Revocation of privileged will or codicil.

1. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying of the privileged will or codicil by the testator, or by some person in his or her presence, and by his or her direction, with the intention of revoking it.
2. In order to effect the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him or her to make a privileged will.

60. Revival of unprivileged will.

1. No unprivileged will or codicil, nor any part thereof, which has been in any manner revoked, shall be revived otherwise than by the reexecution of the unprivileged will or codicil, or by a codicil executed in the manner hereinbefore required, and showing an intention to revive it.
2. When any will or codicil which has been partly revoked, and afterwards wholly revoked, is revived, the revival shall not extend to so much of it as was revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Part XI—Construction of wills.

61. Wording of will.

It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known from the wording.

62. Inquiries to determine questions as to object or subject of will.

For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a court shall inquire into every material fact relating to the persons who claim to be interested under the will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his or her family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

63. Misnomer or misdescription of object.

1. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.
2. A mistake in the name of a legatee may be corrected by a description of him or her, and a mistake in the description of a legatee may be corrected by the name.

64. When words may be supplied.

Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

65. Rejection of erroneous particulars in description of subject.

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

66. When part of description may not be rejected as erroneous.

(1) If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his or her in respect of which all those circumstances exist, the bequest shall be considered as limited to that property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

(2) In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

67. Extrinsic evidence admissible in case of latent ambiguity.

Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

68. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.

Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

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

The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other, and for this purpose a codicil is to be considered as part of the will.

70. When words may be understood in restricted sense, and when in sense wider than usual.

General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in the wider sense.

71. Which of two possible constructions preferred.

Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

72. No part rejected if reasonable construction possible.

No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. Interpretation of words repeated in different parts of will.

If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

74. Testator's intention to be effected as far as possible.

The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

75. Last of two inconsistent clauses prevails.

Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

76. Will or bequest void for uncertainty.

A will or bequest not expressive of any definite intention is void for uncertainty.

77. Words describing subject refer to property answering description at testator's death.

The description contained in a will of property the subject of gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

78. Power of appointment executed by general bequest.

Unless a contrary intention appears by the will, a bequest of the estate of the testator shall be construed to include any property which he or she may have power to appoint by will to any object he or she may think proper, and shall operate as an execution of that power; and a bequest of property described in a general manner shall be construed to include any property to which the description may extend, which he or she may have power to appoint by will

to any object he or she may think proper, and shall operate as an execution of that power.

79. Implied gift to objects of power in default of appointment.

Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made, if the power given by the will is not exercised the property belongs to all the objects of the power in equal shares.

80. Bequest to “heirs”, etc. of particular person without qualifying terms.

Where a bequest is made to the “heirs” or “right heirs” or “relations” or “nearest relations” or “family” or “kindred” or “nearest of kin” or “next of kin” of a particular person, without any qualifying terms and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he or she had died intestate in respect of it, leaving assets for the payment of his or her debts independently of that property.

81. Bequest to “representatives”, etc. of particular person.

Where a bequest is made to the “representatives” or “legal representatives” or “personal representatives” or “executors or administrators” of a particular person and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he or she had died intestate in respect of it.

82. Bequest without words of limitation.

Where property is bequeathed to any person, he or she is entitled to the whole interest of the testator in the property, unless it appears from the will that only a restricted interest was intended for him or her.

83. Bequest in alternative.

Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not

appear by the will, the legatee first named shall be entitled to the legacy, if he or she is alive at the time when it takes effect; but, if he or she is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

84. Effect of words describing a class added to bequest to a person.

Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such a person is entitled to the whole interest of the testator in the property, unless a contrary intention appears by the will.

85. Bequest to class of persons under general description only.

Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

86. Construction of terms.

(1) In a will—

1. “children” applies only to lineal descendants in the first degree;
2. “cousins”, “first cousins” or “cousins-german” apply only to children of brothers or of sisters of the father or mother of the person whose cousins, first cousins or cousins-german are spoken of;
3. “first cousins once removed” apply only to children of cousins- german or to cousins-german of a parent of the person whose first cousins once removed are spoken of;
4. “grandchildren” applies only to lineal descendants in the second degree of the person whose children or grandchildren are spoken of;
5. “issue” and “descendants” apply to all lineal descendants of the person whose issue or descendants are spoken of;
6. “nephews” and “nieces” apply only to children of brothers or sisters;
7. “second cousins” apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose second cousins are spoken of.

(2) Words in a will expressive of collateral relationship apply alike

to relatives of full and of half-blood; and all words in a will expressive of relationship apply to a child in the womb who is afterwards born alive.

87. Implied inclusion of illegitimate and adopted children.

In the absence of any intimation to the contrary in the will, “child”, “son” or “daughter” or any word which expresses those relationships is to be understood as including an illegitimate child and an adopted child.

88. Construction where will purports to make two bequests to same person.

(1) Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of, or in addition to, the first, if there is nothing in the will to show what he or she intended, the following provisions shall prevail in determining the construction to be put upon the will—

1. if the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he or she is entitled to receive that specific thing only;
2. where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he or she shall be entitled to one such legacy only;
3. where two legacies of unequal amount are given to the same person in the same will or in the same codicil, the legatee is entitled to both such legacies;
4. where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will, and the other by a codicil, or each by a different codicil, the legatee is entitled to both such legacies.

(2) In paragraphs (a), (b), (c) and (d) of subsection (1), “will” does not include a codicil.

89. Constitution of residuary legatee.

A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his or her property.

90. Property to which residuary legatee entitled.

Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his or her death of which he or she has not made any other testamentary disposition which is capable of taking effect.

91. Time of vesting of legacy in general terms.

If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he or she dies without having received it, it shall pass to his or her representatives.

92. In what case legacy lapses.

1. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the will that the testator intended that it should go to some other person.
2. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he or she survived the testator.

93. One of two joint legatees dying before testator.

If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.

94. Words showing testator's intention to give distinct shares.

Where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him or her shall fall into the residue of the testator's property.

95. Lapsed share.

Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

96. When bequest to testator's child or lineal descendant does not

lapse on his or her death in testator's lifetime.

Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his or hers survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the will.

97. Bequest to legatee for benefit of another does not lapse by legatee's death.

Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

98. Survivorship in case of bequest to described class.

Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such of them as are alive at the testator's death; except that if property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

Part XII—Void bequests.

99. Bequest to person who is not in existence at testator's death.

Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void; except that if property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his or her possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, and if a person answering to the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he or she is dead, to his or her representatives.

100. Bequest to a person not in existence at testator's death, subject to

prior bequest.

Where a bequest is made to a person not in existence at the time of the testator's death subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

101. Rule against perpetuity.

No bequest is valid by which the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who is in existence at the expiration of that period, and to whom, if he or she attains full age, the thing bequeathed is to belong.

102. Bequest to a class, some of whom may come under section 100 or 101.

If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of section 100 and 101 or either of them, the bequest shall be wholly void.

103. Bequest to take effect on failure of bequest void under section 100, 101 or 102.

Where a bequest is void by reason of any of the provisions of section 100, 101 or 102, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.

104. Effect of direction for accumulation.

A direction to accumulate the income arising from any property shall be void, and the property shall be disposed of as if no accumulation had been directed; except that where the property is immovable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death, and at the end of the year the property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

105. Bequest to religious or charitable causes.

No person having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses except by a will executed not less than twelve months before his or her death and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Part XIII—Vesting of legacies.

106. Vesting of legacy when payment or possession postponed.

1. Where, by the terms of a bequest, the legatee is not entitled to immediate possession of the thing bequeathed, right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he or she dies before that time and without having received the legacy; and in such cases the legacy is, from the testator's death, said to be vested in interest.
2. An intention that a legacy to any person shall not become vested in interest in him or her is not to be inferred merely from a provision by which the payment or possession of the thing bequeathed is postponed, or by which a prior interest in the legacy is bequeathed to some other person, or by which the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

107. Vesting when legacy contingent upon specified uncertain event.

1. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.
2. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.
3. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.
4. Notwithstanding subsections (1) and (2), where a fund is bequeathed to any person upon his or her attaining a particular age, and the

will also gives to him or her absolutely the income to arise from the fund before he or she reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his or her benefit, the bequest of the fund is not contingent.

108. Vesting of bequest to members of a class attaining particular age.

Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Part XIV—Onerous bequests.

109. Onerous bequest.

Where a bequest imposes an obligation on the legatee, he or she can take nothing by it unless he or she accepts it fully.

110. One of two separate and independent bequests to same person may be accepted.

Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial and the latter onerous.

Part XV—Contingent bequests.

111. Bequest contingent upon specified uncertain event.

Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless the event happens before the period when the fund bequeathed is payable or distributable.

112. Bequest to persons surviving at some period not specified.

Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appears by the will.

Part XVI—Conditional bequests.

113. Bequest upon impossible condition.

A bequest upon an impossible condition is void.

114. Bequest upon illegal, etc. condition.

A bequest upon a condition the fulfillment of which would be contrary to law or to morality is void.

115. Fulfillment of condition precedent to vesting of legacy.

Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

116. Bequest to one person and, on failure of prior bequest, to another.

Where there is a bequest to one person, and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.

117. When second bequest not to take effect on failure of first.

Where a will shows an intention that a second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

118. Bequest over, conditional upon happening of specified uncertain event.

1. A bequest may be made to any person with the condition superadded that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.
2. In each case the ulterior bequest is subject to sections 107, 108, 109, 110, 111, 112, 113, 114, 116 and 117.

119. Condition must be strictly fulfilled.

An ulterior bequest of the kind contemplated by section 118 cannot take effect unless the condition is strictly fulfilled.

120. Original bequest not affected by invalidity of second.

If the ulterior bequest is not valid, the original bequest is not affected by it.

121. Bequest conditioned that it shall cease to have effect in certain cases.

A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen or in case a specified uncertain event shall not happen.

122. Condition must not be invalid under section 107.

In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates is one which could legally constitute the condition of a bequest as contemplated by section 107.

123. Result of legatee rendering impossible or indefinitely postponing act for which no time specified.

Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing the act.

124. Performance of condition, precedent or subsequent.

Where a will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the nonfulfillment of which the subject matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified unless the

performance of it is prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by the fraud.

Part XVII—Bequests with directions as to application or

enjoyment.

125. Direction that fund be employed in particular manner.

Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

126. Direction that mode of enjoyment of absolute bequest is to be restricted.

Where a testator absolutely bequeaths a fund, so as to sever it from his or her own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to the legatee as if the will had contained no such direction.

127. Bequest of fund for certain purposes, some of which cannot be fulfilled.

Where a testator does not absolutely bequeath a fund so as to sever it from his or her own estate but gives it for certain purposes and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Part XVIII—Bequests to an executor.

128. Legacy to executor.

If a legacy is bequeathed to a person who is named an executor of the will, he or she shall not take the legacy unless he or she proves the will, or otherwise manifests an intention to act as executor.

Part XIX—Specific legacies.

129. Specific legacy defined.

Where a testator bequeaths to any person a specified part of his or her property which is distinguished from all other parts of his or her property, the legacy is said to be specific.

130. Bequest of sum certain where stocks, etc. in which invested are described.

Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

131. Bequest of stock where testator had equal or greater amount of stock of same kind.

Where a bequest is made, in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his or her will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

132. Bequest of money where payment postponed in certain way.

A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

133. When enumerated articles not deemed specifically bequeathed.

Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

134. Retention of specific bequest to several persons in succession.

Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

135. Sale and investment of proceeds of property bequeathed to two or

more persons in succession.

Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct; and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

136. Nonabatement of specific legacies.

If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Part XX—Demonstrative legacies.

137. Demonstrative legacies.

1. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute that fund or stock the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.
2. The distinction between a specific legacy and a demonstrative legacy is that—
 1. where specified property is given to the legatee, the legacy is specific; and
 2. where the legacy is directed to be paid out of a specified property, it is demonstrative.

138. Order of payment when legacy directed to be paid out of a fund specifically bequeathed.

Where a portion of a fund is specifically bequeathed, and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and so far as the residue shall be deficient, out of the general assets of the testator.

Part XXI—Ademption of legacies.

139. Ademption defined.

If anything which has been specifically bequeathed does not belong to the testator at the time of his or her death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject matter having been withdrawn from the operation of the will.

140. Nonademption of demonstrative legacy.

A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

141. Ademption of specific bequest of right to receive something from third party.

Where the thing specifically bequeathed is the right to receive something of value from a third party and the testator himself or herself receives it, the bequest is adeemed.

142. Ademption pro tanto by testator's receipt of part of entire thing specifically bequeathed.

The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

143. Ademption pro tanto by testator's receipt of portion of entire fund or stock of which portion has been specifically bequeathed.

If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

144. Order of payment where portion of fund specifically bequeathed

to one legatee, and legacy charged on same fund to another, and

remainder insufficient to pay both legacies.

Where a portion of the fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue, if any, of the fund shall be applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

145. Ademption where stock specifically bequeathed does not exist.

Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

146. Ademption pro tanto where stock, specifically bequeathed, exists in part only.

Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

147. Nonademption of bequest of goods described as connected with certain place.

A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from that place from any temporary cause, or by fraud, or without knowledge or sanction of the testator.

148. When removal of thing bequeathed does not constitute ademption.

The removal of a thing bequeathed from the place in which it is stated in the will to be situate does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

149. When thing bequeathed is a valuable to be received by testator

from third person and testator or his or her representative receives

it.

Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or herself or by his or her representatives, the receipt of the sum of money or other commodity by the testator shall not constitute an ademption; but, if he or she mixes it with the general mass of his or her property, the legacy is adeemed.

150. Change by operation of law of subject of specific bequest between date of will and testator's death.

Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of that change.

151. Change without testator's knowledge.

Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

152. Stock specifically bequeathed lent to third party.

Where stock, which has been specifically bequeathed, is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

153. Stock specifically bequeathed sold but replaced.

Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased, and belongs to the testator at his or her death, the legacy is not adeemed.

Part XXII—Payment of liabilities in respect of the subject of a

bequest.

154. Nonliability of executor to exonerate specific legatees.

1. Where property specifically bequeathed is subject, at the death of the testator, to any pledge, lien or encumbrance, created by the testator himself or herself, or by any person under whom he or she claims, then, unless a contrary intention appears by the will, the legatee, if he or she accepts the bequest, shall accept it subject to such pledge or encumbrance, and shall, as between himself or herself and the testator's estate, be liable to make good the amount of the pledge or encumbrance.
2. A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.
3. A periodical payment in the nature of land revenue or in the nature of rent is not such an encumbrance as is contemplated by this section.

155. Completion of testator's title.

Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

156. Immovable property for which rent payable periodically.

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

157. Stock in joint stock company.

In the absence of any direction in the will where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his or her death in respect of the stock, the call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment shall, after the testator's death, become due in respect of the stock, the call or payment shall, as between the testator's estate and the legatee, be borne by the legatee if he or she accepts

the bequest.

Part XXIII—Bequest of things described in general terms.

158. Bequest of things in general terms.

If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Part XXIV—Bequests of the interest or produce of a fund.

159. Bequest of interest or produce of a fund.

Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Part XXV—Bequests of annuities.

160. Annuity created by will payable for life only.

Where an annuity is created by will, the legatee is entitled to receive it for his or her life only, unless a contrary intention appears by the will; and this provision shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally or that a sum of money is bequeathed to be invested in the purchase of it.

161. Period of vesting where will directs that annuity be provided out of proceeds of property, etc.

Where a will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he or she is entitled, at his or her option, to have an annuity purchased for him or her, or to receive the money appropriated for that purpose by the will.

162. Abatement of annuity.

Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

163. Gift of annuity and residuary gift.

Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Part XXVI—Legacies to creditors and portioners.

164. Legacy to creditor.

Where a debtor bequeaths a legacy to his or her creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

165. Child prima facie entitled to legacy as well as portion.

Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his or her will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

166. No ademption by subsequent provision for legatee.

No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Part XXVII—Election.

167. Circumstances in which election takes place.

Where a person, by his or her will, professes to dispose of something of which he or she has no right to dispose, the person to whom the thing belongs shall elect either to confirm the disposition or to dissent from it, and, in the

latter case, he or she shall relinquish any benefits which may have been provided for him or her by the will.

168. Devolution of interest relinquished by owner.

An interest relinquished under section 167 shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the legatee the amount or value of the gift attempted to be given to him or her by the will.

169. Testator's belief as to his or her ownership immaterial.

Sections 167 and 168 shall apply whether the testator does or does not believe that which he or she professes to dispose of by his or her will to be his or her own.

170. Bequest for person's benefit.

A bequest for the benefit of a person is, for the purpose of election, the same thing as a bequest made to him or her.

171. Benefit derived indirectly.

A person taking no benefit directly under a will, but deriving a benefit under it indirectly, is not put to his or her election.

172. Person taking in individual capacity under will may, in other character, elect to take in opposition.

A person who, in his or her individual capacity, takes a benefit under the will may, in another character, elect to take in opposition to the will.

173. Exception to preceding sections.

Notwithstanding sections 167 to 172, where a particular gift is expressed in a will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he or she must relinquish the particular gift, but he or she is not bound to relinquish any other benefit given to him or her by the will.

174. When acceptance of benefit given by will constitutes election to

take under will.

Acceptance of a benefit given by a will constitutes an election by the legatee to take under the will, if he or she has knowledge of his or her right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he or she waives inquiry into the circumstances.

175. Presumption arising from enjoyment by legatee for two years.

For the purposes of section 174, knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him or her by the will without doing any act to express dissent.

176. Confirmation of bequest by act of legatee.

For the purposes of section 174, knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject matter of the bequest in the same condition as if the act had not been done.

177. When legatee may be called upon to elect.

If a legatee does not, within one year after the death of the testator, signify to the testator's representatives his or her intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him or her to make his or her election; and if he or she does not comply with the requisition within a reasonable time after he or she has received it, he or she shall be deemed to have elected to confirm the will.

178. Postponement of election in case of disability.

In case of disability, an election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Part XXVIII—Gifts in contemplation of death.

179. Property transferable by gift made in contemplation of death.

1. A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will.
2. A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.
3. A gift made in contemplation of death may be resumed by the donor.
4. A gift made in contemplation of death does not take effect if the donor recovers from the illness during which it was made nor if he survives the person to whom it was made.

Part XXIX—Grant of probate and letters of administration.

180. Character and property of executor or administrator.

The executor or administrator, as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such.

181. Administration with copy annexed of authenticated copy of will proved abroad.

When a will has been proved and deposited in a court of competent jurisdiction, situate beyond the limits of Uganda, whether in the Commonwealth or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

182. Probate only to appointed executor.

Probate can be granted only to an executor appointed by the will.

183. Appointment of executor.

The appointment of an executor may be express or by necessary implication.

184. Persons to whom probate cannot be granted.

Probate shall not be granted to any person who is a minor or is of unsound mind.

185. Grant of probate to several executors.

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

186. Probate of codicil discovered after grant of probate.

If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way revokes the appointment of executors made by the will; but if different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

187. Surviving executor.

When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

188. Right as executor or legatee, when established.

No right as executor or legatee shall be established in any court of justice, unless a court of competent jurisdiction within Uganda has granted probate of the will under which the right is claimed, or has granted letters of administration under section 181.

189. Effect of probate.

Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor, as such.

190. To whom administration may not be granted.

Letters of administration shall not be granted to any person who is a minor or is of unsound mind.

191. Right to intestate's property, when established.

Except as hereafter provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

192. Effect of letters of administration.

Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.

193. Acts not validated by administration.

Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

194. Grant of administration where executor has not renounced.

1. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his or her executorship.
2. When one or more of several executors have proved a will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

195. Form and effect of renunciation.

A renunciation may be made orally in the presence of a magistrate, commissioner for oaths or justice of the peace or by writing signed by the person renouncing, and, when made, shall preclude him or her from ever thereafter applying for probate of the will appointing him or her executor.

196. Procedure where executor renounces or fails to accept within time

limited.

If an executor renounces, or fails to accept, the executorship within the time limited for the acceptance or refusal of the executorship, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

197. Grant of administration to universal or residuary legatee.

Subject to section 4 of the Administrator General's Act, when the deceased has made a will—

1. but has not appointed an executor;
2. when he or she has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he or she has proved the will; or
3. when the executor dies after having proved the will, but before he or she has administered all the estate of the deceased,

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

198. Administration by representative of deceased residuary legatee.

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

199. Grant of administration where no executor nor residuary legatee, nor representative of such legatee.

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

200. Citation before grant of administration to legatee other than

universal or residuary.

Letters of administration with the will annexed shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereafter provided, calling on the next of kin to accept or refuse letters of administration.

201. Order in which connections entitled to administer.

When the deceased has died intestate, those who are connected with the deceased either by marriage or by consanguinity are entitled to obtain letters of administration of his or her estate and effects in the order and according to the provisions hereafter contained.

202. Entitlement to administration.

Subject to section 4 of the Administrator General's Act, administration shall be granted to the person entitled to the greatest proportion of the estate under section 27.

203. Citation of persons entitled in priority to administer.

Administration shall not be granted to any relative if there is some other relative or an appointed customary heir entitled to a greater proportion of the estate until a citation has been issued and published in the manner hereafter provided calling on that other relative or heir to accept or refuse letters of administration.

204. Entitlement between members of the same class.

If there are two or more persons who are entitled to the same proportion of the estate, those persons are equally entitled to administration, and a grant may be made to any one or some of them without any citation of the others.

205. Title of kindred to administration.

Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

206. Grant of administration to creditor.

When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, administration may be granted to a creditor.

207. Administration where property left in Uganda.

Where the deceased has left property in Uganda, letters of administration shall be granted according to the foregoing provisions, although he or she may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of Uganda.

Part XXX—Limited grants.

Grants limited in duration.

208. Probate of copy of lost will.

When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of the copy or draft, limited until the original or a properly authenticated copy of it is produced.

209. Probate of contents of lost or destroyed will.

When a will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

210. Probate of copy where original exists.

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

211. Administration until will produced.

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

Grants for the use and benefit of others having right.

212. Administration with will annexed to attorney of absent executor.

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

213. Administration with will annexed to attorney of absent person.

When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from Uganda, letters of administration with the will annexed may be granted to his or her attorney limited as mentioned in section 212.

214. Administration to attorney of absent person.

When a person entitled to administration in case of intestacy is absent from Uganda, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as mentioned in section 212.

215. Administration during minority of sole executor or residuary legatee.

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

216. Administration during minority.

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

217. Administration for use and benefit of lunatic *jus habens*.

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

218. Administration pendente lite.

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

Grants for special purposes.

219. Probate limited to purpose specified in will.

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

220. Administration with will annexed limited to particular purpose.

If an executor appointed generally gives an authority to an attorney to prove a will on his or her behalf, and the authority is limited to a particular purpose,

the letters of administration with the will annexed shall be limited accordingly.

221. Administration limited to property in which person has beneficial interest.

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

222. Administration limited to suit.

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

223. Administration limited to purpose of becoming party to suit against administrator.

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

224. Appointment of person other than one normally entitled to administration.

When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor, at the time of the death of the person, is resident out of Uganda, and it appears to the court

to be necessary or convenient to appoint some person to administer the estate or any part of it, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, the judge may, in his or her discretion, having regard to consanguinity, the amount of interest, the safety of the estate, and the probability that it will be properly administered, appoint such person as he or she shall think fit to be administrator; and in every such case letters of administration may be limited or not as the judge shall think fit.

Grants with exception.

225. Probate, etc. subject to exception.

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

226. Administration with exception.

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

227. Exception for land subject to consents.

1. Where any part of an estate in respect of which a person applied for a grant of probate or letters of administration consists of land which could not have been transferred to the person by the deceased during his or her lifetime without first obtaining the consent of some person or body under any written law for the time being in force, the person may only be granted probate or letters of administration subject to the exception of that land from the grant.
2. Letters of administration limited to land excepted under subsection (1) shall, on the application of the Administrator General or any person beneficially interested, or his or her guardian, be granted to the Administrator General, and no consent under any written law shall be required to that grant.

Grants of the rest.

228. Probate or administration of rest.

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

Grants of effects unadministered.

229. Grants of effects unadministered.

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

230. Provisions as to grants of effects unadministered.

In granting letters of administration of an estate not fully administered, the court shall be guided by the same provisions as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

231. Administration when limited grant expired.

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

Alteration in grants.

232. Errors may be rectified by court.

Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

233. Procedure where codicil discovered after grant.

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

Revocation of grants.

234. Revocation or annulment for just cause.

1. The grant of probate or letters of administration may be revoked or annulled for just cause.
2. In this section, “just cause” means—
 1. that the proceedings to obtain the grant were defective in substance;
 2. that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;
 3. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;
 4. that the grant has become useless and inoperative through circumstances; or
 5. that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

Part XXXI —Practice in granting and revoking probates and letters of administration.

235. Jurisdiction to grant probate and letters of administration.

(1) Jurisdiction to grant probate and letters of administration under this Act shall be exercised by the High Court and a magistrate’s court in accordance with the Administration of Estates (Small Estates) (Special Provisions) Act.

(2) Any reference in this or any other Part of this Act to “a district

delegate” shall be construed as a reference to a magistrate’s court.

236. General powers of district delegate.

A district delegate shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected with the granting of probate and letters of administration, as are by law vested in him or her in relation to any civil suit or proceeding pending in his or her court.

237. District delegate may order person to produce testamentary papers.

A district delegate may order any person to produce and bring into court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person and—

1. if it is not shown that any such paper or writing is in the possession or under the control of that person, but there is reason to believe that he or she has the knowledge of any such paper or writing, the court may direct that person to attend for the purpose of being examined respecting the paper or writing;
2. that person shall be bound to answer such questions as may be put to him or her by the court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under section 107 of the Penal Code Act, in case of default in not answering the questions, or not bringing in the paper or writing, as he or she would have been subject to in case he or she had been a party to a suit and had made such default; and
3. the costs of the proceeding shall be in the discretion of the court.

238. Proceedings in relation to probate and administration.

The proceedings of the court of the district delegate in relation to the granting of probate and letters of administration shall, except as hereafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the law relating to civil procedure.

239. When and how district delegate to interfere for protection of

property.

Until probate is granted of the will of a deceased person, or an administrator of his or her estate is constituted, the district delegate, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of that property at the instance of any person claiming to be interested in it, and in all other cases where the delegate considers that the property incurs any risk of loss or damage; and for that purpose, if he or she sees fit, to appoint an officer to take and keep possession of the property.

240. When probate or administration may be granted by district delegate.

Probate of the will or letters of administration to the estate of a deceased person may be granted by the district delegate under the seal of his or her court, if it appears by a petition, verified as hereafter provided, of the person applying for the probate or letters of administration, that the testator or intestate, as the case may be, at the time of his or her decease, had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the delegate.

241. Disposal of application made to district delegate of place where deceased had no fixed abode.

When an application is made to a district delegate in a district or area in which the deceased had no fixed abode at the time of his or her death, it shall be in the discretion of the delegate to refuse the application, if, in his or her judgment, it could be disposed of more justly or conveniently in another district or area, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his or her own jurisdiction.

242. Conclusiveness of probate or letters of administration.

(1) Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout Uganda, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him or her.

(2) Probate or letters of administration shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom the probate or letters of administration shall have been granted.

243. Conclusiveness of application for probate or administration.

An application for probate or letters of administration, if made and verified in the manner hereafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district or area at the time of his or her death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.

244. Petition for probate.

An application for probate shall be made by a petition distinctly written in the English language with the will annexed, and stating—

1. the time of the testator's death;
2. that the writing annexed is the testator's last will and testament and that it was duly executed;
3. the amount of assets which are likely to come to the petitioner's hands; and

(d) that the petitioner is the executor named in the will, and in addition to such particulars, when the application is to a district delegate, the petition shall further state that the deceased, at the time of his or her death, had his or her fixed place of abode, or had some property, movable or immovable, situate within the jurisdiction of the delegate.

245. Translation of will to be annexed to petition.

In cases where the will is written in any language other than English, there shall be a translation of it annexed to the petition by a translator of the court, if the language is one for which a translator is appointed, or, if the will is in any other language, then by any person competent to translate it, in which case the translation shall be verified by that person in the following manner—

“I, , do declare that I read and perfectly

understand the language and character of the original, and that the above is a true and accurate translation of it.”.

246. Petition for letters of administration.

An application for letters of administration shall be made by petition distinctly written in the English language, and stating—

1. the time and place of the deceased's death;
2. the family or other relatives of the deceased, and their respective residences;
3. the right in which the petitioner claims;
4. that the deceased left some property within the jurisdiction of the High Court or district delegate to whom the application is made; and
5. the amount of assets which are likely to come to the petitioner's hands,

and, when the application is to a district delegate, the petition shall further state whether the deceased, at the time of his or her death, resided within the jurisdiction of the delegate.

247. Petition to be signed and verified.

A petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his or her advocate, if any, and shall be verified by the petitioner in the following manner or to the like effect—

“I, , the petitioner in the above petition,

declare that what is stated in it is true to the best of my information and belief.”.

248. Verification of petition for probate by one witness to will.

Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will, when procurable, in the following manner or to the following effect—

“I, , one of the witnesses to the last will and

testament of the testator mentioned in the above petition, declare that I was present, and saw the testator affix his (*or her*) signature (*or mark*) to it (*or that the testator acknowledged the writing annexed to the above petition to be his (*or her*) last will and testament in my presence*).”.

249. Punishment for false averment in petition or declaration.

If any petition or declaration which is required to be verified contains any averment which the person making the verification knows or believes to be false, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of the offence of giving or fabricating false evidence.

250. High Court or district delegate may examine petitioner in person and require further evidence, etc.

(1) In all cases a judge or district delegate may, if he or she thinks proper—

1. examine the petitioner in person, upon oath or solemn affirmation;
2. require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be; and
3. issue citations calling upon all persons claiming to have any interest in the estate of the deceased to appear before the court or the district delegate before the grant of probate or letters of administration.

(2) A citation issued under subsection (1) shall be fixed up in some conspicuous part of the courthouse, and also in the office of the district commissioner, and otherwise published or made known in such manner as the judge or district delegate issuing it may direct.

251. Administrator General not precluded from grant.

Nothing in this Part of this Act shall be deemed to preclude—

1. the Administrator General from applying to the court for letters of administration;
2. the court from granting letters of administration to the Administrator General,

in any case where the court is empowered under this or any other Part of this Act to grant letters of administration to any person other than an executor appointed under the will of the testator.

252. No probate or letters of administration to be granted except on

production of certificate from assistant estate duty commissioner.

Except in the case of an application by the Administrator General, no probate or letters of administration or resealing of probate or letters of administration shall be granted by the High Court or a district delegate unless the certificate of an assistant estate duty commissioner is produced to the High Court or a district delegate, as the case may be, to the effect that he or she is satisfied that the requirements of any written law relating to estate duty in regard to the payment of duty have been or will be complied with.

253. Caveats against grant of probate or administration.

Caveats against the grant of probate or administration may be lodged with the High Court or a district delegate; and immediately on any caveat being lodged with any district delegate, he or she shall send a copy of it to the High Court.

254. Form of caveat.

A caveat under section 253 shall be to the following effect—

“Let nothing be done in the matter of the estate of

, late of , deceased,

who died on the day of , 20 _____, at

, without notice to , of

.”

255. After entry of caveat, no proceeding taken on petition until after notice to caveator.

No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant of the petition has been entered with the judge or officer to whom the application has been made, or notice has been given of its entry with some other delegate, until after such notice to the person by whom the caveat has been entered as the court shall think reasonable.

256. Power to transmit statement to High Court in doubtful cases where no contention.

In every case in which there is no contention, but it appears to the district

delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the district delegate may, if he or she thinks proper, transmit a statement of the matter in question to the High Court which may direct the district delegate to proceed in the matter of the application, according to such instructions as to the High Court may seem necessary, or may forbid any further proceeding by the district delegate in relation to the matter of the application, leaving the party applying for the grant in question to make application to the High Court.

257. Procedure where there is contention, or district delegate thinks probate, etc. should be refused in his or her court.

In every case in which there is contention, or the district delegate is of opinion that the probate or letters of administration should be refused in his or her court, the petition, and any documents that may have been filed with it, shall be returned to the person by whom the application was made in order that they may be presented to the High Court, unless the district delegate thinks it necessary, for the purposes of justice, to impound them, which he or she is authorised to do; and in that case he or she shall send them to the High Court.

258. Grant of probate to be under seal of court.

Where it appears to a judge of the High Court or a district delegate that probate of a will should be granted, he or she shall grant probate under the seal of his or her court in the following manner—

“I, , judge of the High Court (or

district delegate) appointed for granting probate or letters of

administration in , (*here insert*

the limits of the delegate’s jurisdiction) make known that on the

day of , in the year , the last

will of , late of

, a copy of which is annexed, was

proved and registered before me, and that administration of the property and credits of the deceased, and in any way concerning

his or her will, was granted to , the executor

named in the will, he (*or* she) having undertaken to administer the will, and to make a full and true inventory of the property and credits, and exhibit it in this court within six months from the

date of this grant, or within such further time as the court may from time to time appoint, and also to render to this court a true account of the property and credits within one year from the same date, or within such further time as the court may from time to time appoint.”.

259. Grant of letters of administration to be under seal of court.

Where it appears to a judge of the High Court or a district delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he or she shall grant the letters of administration under the seal of his or her court in the following manner—

“I, judge of the High Court (*or*

district delegate) appointed for granting probate or letters of

administration in, (*here insert the limits*

of the delegate’s jurisdiction) make known that on the

day of, letters of administration (*with or*

without the will annexed, as the case may be) of the property and

credits of, late of

, deceased, were granted to

, the father (*or as the case may be*) of the

deceased, he (*or she*) having undertaken to administer the property and
credits, and to make a full and true inventory of them, and to exhibit it in this
court within six months from the date of this grant, or within such further time
as the court may from time to time appoint, and also to render to this court a
true account of the property and credits within one year from the same date,
or within such further time as the court may from time to time appoint.”.

260. Administration bond.

The court may before committing a grant of letters of administration to any person require that person to give a bond to a judge of the High Court or district delegate to enure for the benefit of the judge or delegate for the time being, with one or more surety or sureties, engaging for the due collection, getting in and administering the estate of

the deceased, which bond shall be in such form as the High Court shall, from time to time, by any general or special order, direct.

261. Assignment of administration bond.

The court may, on application made by petition, and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security or providing that the money received be paid into court, or otherwise as the court may think fit, assign the bond to some person, his or her executors, or administrators, who shall thereupon be entitled to sue on the bond in his or her own name as if the bond had been originally given to him or her instead of to a judge of the High Court or a district delegate, and shall be entitled to recover on it, as trustee for all persons interested, the full amount recoverable in respect of any breach of the bond.

262. Time for grant of probate and administration.

No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator's or intestate's death.

263. Filing of original wills of which probate or administration with will annexed granted.

A judge of the High Court or district delegate shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him or her among the records of his or her court, until some public registry for wills is established; and the Minister shall make regulations for the preservation and inspection of the wills so filed.

264. Grantee of probate or administration alone to sue, etc. until grant revoked.

After any grant of probate or letters of administration, no person other than the person to whom the same has been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until the probate or letters of administration has or have been recalled or revoked.

265. Procedure in contentious cases.

In any case before the High Court in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the law relating to civil procedure, in which

the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared to oppose the grant shall be the defendant.

266. Payment to executor or administrator before probate or administration revoked.

Where any probate or letters of administration are revoked, all payments bona fide made to any executor or administrator under the probate or administration before its revocation shall, notwithstanding the revocation, be a legal discharge to the person making the payments; and an executor or administrator who has acted under any revoked probate or administration may retain and reimburse himself or herself in respect of any payments he or she made, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

267. Appeals from orders of district delegate.

Every order made by a district delegate by virtue of the powers hereby conferred upon him or her shall be subject to appeal to the High Court under the civil procedure rules applicable to appeals.

Part XXXII—Executors of their own wrong.

268. Intermeddling, etc.

A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor of his or her own wrong; except that—

1. intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or her funeral, or for the immediate necessities of his or her own family or property; or
2. dealing in the ordinary course of business with goods of the deceased received from another,

does not make an executor of his or her own wrong.

269. Liability of executor of his or her own wrong.

When a person has so acted as to become an executor of his or her own wrong, he or she is answerable to the rightful executor or administrator, or

to any creditor or legatee of the deceased, to the extent of the assets which may have come to his or her hands, after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.

Part XXXIII—Powers of an executor or administrator.

270. Disposal of property.

An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he or she may think fit, subject to section 26 and the Second Schedule.

271. Purchase of deceased's property.

If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

272. Powers of several executors, etc. exercisable by one.

When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

273. Survival of executors or administrators.

Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

274. Administrator of effects unadministered.

The administrator of effects unadministered has, with respect to those effects, the same powers as the original executor or administrator.

275. Administrator during minority.

An administrator during minority has all the powers of an ordinary administrator.

276. Married executrix or administratrix.

When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Part XXXIV—Duties of an executor or administrator.

277. Deceased's funeral.

It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his or her condition, if the deceased has left property sufficient for the purpose.

278. Inventory and account.

1. An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of.
2. On the completion of the administration of an estate, other than an estate administered under the Administration of Estates (Small Estates) (Special Provisions) Act, an executor or an administrator shall file in court the final accounts relating to the estate verified by an affidavit two copies of which shall be transmitted by the court to the Administrator General.
3. The Chief Justice may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.
4. If an executor or administrator, on being required by the court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he or she shall be deemed to have committed an offence under section 116 of the Penal Code Act.
5. The exhibition by an executor or administrator of an intentionally

false inventory or account under this section shall be deemed to be an offence under section 94 of the Penal Code Act.

279. Property of deceased.

An executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him or her at the time of his or her death.

280. Expenses to be paid in priority.

Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and deathbed charges, including fees for medical attendance, and board and lodging for one month previous to his or her death, are to be paid before all debts.

281. Expenses to be paid next after such expenses.

The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and deathbed charges.

282. Wages and other debts.

Wages due for services rendered to the deceased within three months preceding his or her death by any labourer, artisan or domestic servant are next to be paid, and then the other debts of the deceased.

283. All other debts to be paid equally and rateably.

Except as provided in sections 280, 281 and 282, no creditor is to have a right of priority over another by reason that his or her debt is secured by an instrument under seal, or on any other account; but the executor or administrator shall pay all such debts as he or she knows of, including his or her own, equally and rateably, as far as the assets of the deceased will extend.

284. Payment of debts where domicile not in Uganda.

If the domicile of the deceased was not in Uganda, the application of his or her movable property to the payment of his or her debts is to be regulated by

the law of Uganda.

285. Creditor paid in part to bring payment into account.

No creditor who has received payment of a part of his or her debt by virtue of section 284 shall be entitled to share in the proceeds of the immovable estate of the deceased unless he or she brings that payment into account for the benefit of the other creditors.

286. Debts to be paid before legacies.

Debts of every description shall be paid before any legacy.

287. Executor, etc. not bound to pay legacies without indemnity.

If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

288. Abatement of general legacies.

If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions; and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or herself or to any person for whom he or she is a trustee.

289. Nonabatement of specific legacy.

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

290. Demonstrative legacy when assets sufficient to pay debts and necessary expenses.

Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, and the legatee has a preferential claim for payment of his or her legacy out of the fund from which the legacy is directed to be paid until the fund is exhausted, and, if, after the fund is

exhausted, part of the legacy still remains unpaid, he or she is entitled to rank for the remainder against the general assets as for a legacy of the amount of the unpaid remainder.

291. Abatement of specific legacies.

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

292. Legacies treated as general for purpose of abatement.

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

Part XXXV—Executor's assent to a legacy.

293. Assent necessary to complete legatee's title.

The assent of the executor is necessary to complete a legatee's title to his or her legacy.

294. Effect of executor's assent to specific legacy.

1. The assent of the executor to a specific bequest shall be sufficient to divest his or her interest as executor in it, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.
2. The assent of the executor may be verbal, and it may be either express or implied from the conduct of the executor.

295. Conditional assent.

The assent of an executor to a legacy may be conditional, and if the condition is one which he or she has a right to enforce and it is not performed, there is no assent.

296. Assent of executor to his or her own legacy.

1. When the executor is a legatee, the executor's assent to his or her own legacy is necessary to complete his or her title to it, in the same way as it is required when the bequest is to another person, and that assent may in like manner be express or implied.
2. Assent shall be implied, if, in his or her manner of administering the property, the executor he does any act which is referable to his or her character of legatee, and is not referable to his or her character of executor.

297. Effect of executor's assent.

The assent of the executor to a legacy gives effect to it from the death of the testator.

298. Payment of legacy, etc.

An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

299. Partition.

1. Any person beneficially interested in any immovable property vested in a personal representative may apply by petition to the court for a partition of it; and the court, if satisfied that the partition would be beneficial to all persons interested and would not be economically undesirable, may appoint one or more arbitrators to effect the partition.
2. The report and final award of the arbitrators, setting forth the particulars of the immovable property allotted to each of the parties interested, shall, subject to any law or laws for the time being in force, when signed by them and confirmed by order of the court, be effectual to vest in each allottee the immovable property so allotted; and, if the allotment is made subject to the charge of any money payable to any other party interested for equalising the partition, the charge shall take effect according to the terms and conditions in regard to time and mode of payment and otherwise which shall be expressed in the award.

Part XXXVI—Payment and apportionment of annuities.

300. Commencement of annuity when no time fixed by will.

Where an annuity is given by a will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of one year after that event.

301. When annuity to be paid periodically first falls due.

Where there is a direction that an annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor thinks fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

302. Successive payments when first payment directed to be made within given time.

Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made; and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his or her representative.

Part XXXVII—Investment of funds to provide for legacies.

303. Investment of sum bequeathed where legacy given for life.

Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as are authorised by law, and the proceeds of the investment shall be paid to the legatee as the proceeds shall accrue due.

304. Investment of general legacy to be paid at future time.

(1) Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in section 303.

(2) The intermediate interest shall form part of the residue of the testator's estate.

305. Procedure when no fund charged with annuity.

Where an annuity is given, and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased; or if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as are authorised by law.

306. Transfer to residuary legatee of contingent bequest.

Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his or her giving sufficient security for the payment of the legacy if it shall become due.

307. Investment of residue bequeathed for life.

Where the testator has bequeathed the residue of his or her estate to a person for life without any direction to invest it in any particular securities, so much of it as is not at the time of the testator's decease invested in such securities as are authorised by law shall be converted into money, and invested in those securities.

308. Investment in specified securities of residue bequeathed for life.

Where the testator has bequeathed the residue of his or her estate to a person for life, with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his or her death invested in securities of the specified kind shall be converted into money and invested in those securities.

309. Conversion and investment.

The conversion and investment contemplated by sections 307 and 308 shall be made at such times and in such manner as the executor in his or her discretion thinks fit; and, until the conversion and investment are completed, the person who would be for the time being entitled to the income of the fund

when so invested shall receive interest at the rate of 4 percent per year upon the market value, to be computed as at the date of the testator's death, of such part of the fund as has not yet been so invested.

310. Procedure when minor entitled to immediate payment or possession of bequest.

1. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed but is a minor, and there is no direction in the will to pay it to any person on his or her behalf, the executor or administrator shall pay or deliver it into the High Court or to the district delegate, by whom the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, and that payment shall be a sufficient discharge for the money so paid.
2. Such money, when paid in, may be invested as the judge or the district delegate shall direct.

311. Procedure in respect of share of minor in intestacy.

1. Where any person entitled to a share in the distribution of the estate of an intestate is a minor, the personal representative shall pay or deliver the share into the court by which probate or letters of administration were granted to the account of that minor, and the share may be invested in such securities as are authorised by law.
2. Notwithstanding subsection (1), the court may, on its own motion or on the application of the personal representative or any other person, appoint the parent or guardian of the minor or the personal representative or the public trustee or some other suitable person to receive the share of the minor on his or her behalf, and in such case payment to the person so appointed shall be a sufficient discharge of the personal representative.
3. The provisions of this section shall not apply to the Administrator General.

Part XXXVIII—Produce and interest of legacies.

312. Legatee's title to produce of specific legacy.

1. Subject to subsection (2), the legatee of a specific legacy is entitled to the clear produce of it, if any, from the testator's death.
2. A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy, and that produce forms part of the residue of the testator's estate.

313. Residuary legatee's title to produce of residuary fund.

1. Subject to subsection (2), the legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.
2. A general residuary bequest, contingent in its terms, does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy, and that income goes as undisposed of.

314. Interest.

Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death; except that where—

1. that legacy is bequeathed in satisfaction of a debt;
2. the testator was a parent or a more remote ancestor of the legatee of such legacy, or has put himself or herself in the place of a parent of such legatee; or
3. a sum is bequeathed to a minor with a direction to pay for his or her maintenance out of it,

interest is payable from the death of the testator.

315. Interest when time fixed for payment.

Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed, and the interest up to that time forms part of the residue of the testator's estate; except that where the testator was a parent or a more remote ancestor of the legatee, or has put himself or

herself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

316. Rate of interest.

The rate of interest shall be 4 percent per year.

317. No interest on arrears of annuity within first year.

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

318. Interest on sum invested to produce annuity.

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

Part XXXIX—Refunding of legacies.

319. Refund of legacy paid under judge's orders.

Where an executor has paid a legacy under the order of a judge, he or she is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

320. No refund if paid voluntarily.

Where an executor has voluntarily paid a legacy, he or she cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

321. Refund when legacy has become due on performance of condition.

When the time prescribed by a will for the performance of a condition has elapsed without the condition having been performed and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has been allowed under section 124 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed

from the executor, but those to whom he or she has paid it are liable to refund the amount.

322. When each legatee compellable to refund in proportion.

When the executor has paid away the assets in legacies, and he or she is afterwards obliged to discharge a debt of which he or she had no previous notice, he or she is entitled to call upon each legatee to refund in proportion.

323. Distribution of assets.

Where an executor or administrator has given such notices as would have been given by the High Court in an administration suit for creditors and others to send into him or her their claims against the estate of the deceased, he or she shall, at the expiration of the time named in the notices for sending in claims, be at liberty to distribute the assets, or any part of them, in discharge of such lawful claims as he or she knows of, and shall not be liable for the assets so distributed to any person of whose claim he or she shall not have had notice at the time of the distribution; but nothing in this section shall prejudice the right of any creditor or claimant to follow the assets, or any part of them, in the hands of the persons who may have received them.

324. Creditor may call upon legatee to refund.

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

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

If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his or her legacy, or who has been compelled to refund under section 324, cannot oblige one who has received payment in full to refund, whether the legacy was paid to him or her with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

326. When unsatisfied legatee must first proceed against executor, if

solvent.

If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his or her legacy must, before he or she can call on a satisfied legatee to refund, first proceed against the executor, if he or she is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

327. Limit of refunding of one legatee to another.

The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

328. Refunding without interest.

The refunding shall, in all cases, be without interest.

329. Residue to be paid to residuary legatee.

The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

330. Transfer of assets from Uganda to executor or administrator in country of domicile for distribution.

Where a person not having his or her domicile in Uganda has died leaving assets both in Uganda and in the country in which he or she had his or her domicile at the time of his or her death, and there has been a grant of probate or letters of administration in Uganda with respect to the assets there, and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in Uganda, after having given such notices as are mentioned in section 323, and after having discharged, at the expiration of the time named in the notices, such lawful claims as he or she knows of, may, instead of himself or herself distributing any surplus or residue of the deceased's property to persons residing out of Uganda who are entitled to it, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the

surplus or residue to that executor or administrator for distribution to those persons.

331. Procedure where deceased has left property in Tanzania or Kenya.

1. Any person applying to the High Court for a grant of probate or letters of administration shall, if at that time or at any time after he or she has reason to believe that the deceased has left property in Tanzania or Kenya, notify the court to that effect.
2. The court may at the time of granting probate or letters of administration, or at any time after that, on being notified of the existence of property belonging to the deceased in either Tanzania or Kenya, order that no claims other than claims entitled to priority be paid until the expiration of a period not exceeding eighteen months from the making of the order.
3. A statement duly certified by the Supreme Court of Kenya or a High Court in Tanzania, and filed in the High Court of Uganda within the period ordered under subsection (2), showing the assets and liabilities of the estate of a deceased person within the respective jurisdictions of those courts, may be taken into account by an executor or administrator in Uganda, and the court may order that the assets be distributed in such manner as to secure the payment of all claims, other than those entitled to priority, rateably with those certified by the courts of Tanzania or Kenya as under this subsection.
4. The court may order that any balance remaining in the hands of an executor or administrator after payment of claims in Uganda, whether in full or rateably under the provisions of this section, may be transmitted in whole or in part to an executor or administrator of the estate in Tanzania or Kenya.
5. An executor or administrator acting in good faith under an order of the court as aforesaid shall not be liable to be sued in respect of that action.

Part XL—Liability of an executor or administrator for

devastation.

332. Liability of executor or administrator for devastation.

When an executor or administrator misapplies the estate of the deceased, or

subjects it to loss or damage, he or she is liable to make good the loss or damage so occasioned.

333. Liability of executor or administrator for neglect.

When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he or she is liable to make good the amount.

Part XLI—Miscellaneous.

334. Power of Minister to exempt any class of persons from operation of Act.

1. The Minister shall have power from time to time, by statutory order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act, any class or classes of persons, in Uganda, or any part or parts of any such class or classes to whom he or she may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.
2. The Minister shall also have power from time to time by statutory order to revoke any order made under subsection (1), but not so that the revocation shall have any retrospective effect.

335. Surrender of revoked probate or letters of administration.

1. When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.
2. If that person wilfully and without reasonable cause omits so to deliver up the probate or letters, he or she shall be punished with a fine which may extend to two thousand shillings or with imprisonment for a period not exceeding three months or with both.

336. Application to the armed forces.

Nothing in this Act shall in any way affect any provisions as to distribution or intestacy contained in regulations made under the Armed Forces Act as from time to time amended.

337. Places appointed for custody of wills of living persons.

1. The offices of the chief registrar and deputy registrar of the High Court are appointed places for the safe custody of the wills of living persons.
2. The Minister may, by statutory instrument, appoint any other place or places for the same purpose.

338. Power to make rules prescribing fees and other matters.

The Chief Justice shall have power with the approval of the Minister to make rules concerning the following matters—

1. prescribing the fees to be paid on the deposit or withdrawal of a will;
2. the formalities to be observed on deposit or withdrawal of a will;
3. generally for better carrying into effect the provisions of this Act.

339. Application of sections 37 to 40.

Sections 37 to 40 shall apply to every will made on or after the 26th day of January, 1971.

SCHEDULES

First Schedule.

Table of consanguinity.

s. 23.

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Second Schedule.

s. 26.

Rules relating to the occupation of residential holdings.

1. Persons entitled to occupation.

1. In the case of a residential holding occupied by the intestate prior to his or her death as his or her principal residence, any wife or husband, as the case may be, and any children, under eighteen years of age if male, or under twenty-one years of age and unmarried if female, who were normally resident in the residential holding shall be entitled to occupy it.
2. In the case of a residential holding owned by the intestate as a principal residential holding but not occupied by him or her because he or she was living in premises owned by another person, any wife or husband, as the case may be, and any children, under eighteen years of age if male, or under twenty-one years of age and unmarried if female, who were normally resident with the intestate prior to his or her death, shall be entitled to occupy it.
3. In the case of any other residential holding owned by the intestate, any wife, or children, under eighteen years of age if male, or under twenty-one years of age and unmarried if female, who were normally resident in the residential holding shall be entitled to occupy it.
4. Any other premises owned by the intestate and not falling under subparagraph (1), (2) or (3) of this paragraph, shall form part of the estate of the intestate and shall be distributed in accordance with section 27 of this Act.

2. Rights of cultivation, etc.

Any wife, husband or child who normally cultivated, farmed or tilled any land adjoining a residential holding owned by an intestate prior to his or her death shall have the right to cultivate, farm and till the land as long as he or she continues to be resident.

3. Procedure where minor entitled.

Where a child or children are entitled to occupation under paragraph 1 of this

Schedule and in fact occupy a residential holding, the person legally entitled to the custody of the child or of the majority of the children shall either himself or herself occupy or appoint some other suitable adult person or persons to occupy the residential holding for so long as any such child or any of such children continue to do so and the person so occupying shall be subject to the duties and liabilities of an occupier hereunder; except that in default of occupation by the person entitled to custody or his or her appointee, a magistrate may, on application of the personal representative or any person interested or on his or her own motion, appoint a person or persons to occupy as aforesaid.

4. Certificate of occupancy.

Upon being satisfied by affidavit or otherwise that the person, if any, properly entitled to occupation hereunder has taken occupation of the residential holding with a bona fide intention to continue the occupation or that there is no person entitled to occupation, the court shall issue a certificate in Form B of the Third Schedule to this Act to the personal representative and a duplicate of the certificate to the occupant, if any.

5. Assent.

The personal representative may assent in writing to the vesting of the residential holding or part of it in such person or persons as may be entitled to it under this Act subject if appropriate to occupancy of the residential holding in accordance with these Rules, but any writing purporting to effect the assent shall be void unless the certificate issued under paragraph 4 of this Schedule is recited in the writing and the certificate or a certified copy of it is annexed to the writing; except that a purchaser for value from the personal representative without notice shall not be concerned to see whether the certificate has been issued or not.

6. Registration.

1. Occupancy of a residential holding hereunder shall be deemed to be an interest in land capable of protection by a caveat under the Registration of Titles Act, and the interest of any other person in the residential holding shall be subject to that interest and shall be incapable of alteration subject to that interest; but the occupancy shall not be a tenancy.
2. The occupancy referred to in subparagraph (1) shall not prevail

against a mortgagee under a mortgage created before the death of the intestate.

7. Residential holding subject to covenants, etc.

The occupant of a residential holding shall be bound by all covenants, conditions and encumbrances to which the residential holding or any part of it was subject at the death of the intestate and, in addition, shall perform and observe the following stipulations and conditions—

1. the occupant shall pay and discharge all existing and future rates, taxes, charges, duties, assessments and outgoings rated, charged, imposed or assessed upon the residential holding or upon its owner or occupier and shall pay the rent and other payments reserved by the lease, if any, under which the residential holding is held;
2. the occupant shall keep all buildings at any time situated on the residential holding and all sewers and drains and the hedges, fences and walls of the residential holding in good and tenantable repair and condition and decoration, fair wear and tear only excepted; except that the occupant shall be under no obligation to put the buildings in a better condition they were in at the death of the intestate;
3. the occupant shall not assign, let, charge or part with or share possession of the residential holding or any part of it;
4. the occupant shall permit the person entitled to the legal estate in the residential holding subject to the occupancy or his or her duly authorised agent with or without workers and others at reasonable times to enter upon and examine the condition of the residential holding, and thereupon such person may serve upon the occupant notice in writing specifying any repairs necessary to be done and require the occupant forthwith to execute the repairs; and if the occupant shall not within two months after service of the notice proceed diligently with the execution of the repairs, then the occupant shall permit such person to enter upon the residential holding and execute the repairs and the cost of the repairs shall, if the occupant continues to occupy the residential holding, be a debt due from the occupant to such person and be forthwith recoverable by action;
5. the occupant shall farm any land on the residential holding which is usually so farmed in a good and husbandlike manner and so as not to impoverish or deteriorate the land and shall keep and leave

the land in good heart and condition;

6. the occupant shall not cut or fell any timber on the residential holding without the consent of the person entitled to the legal estate subject to the occupancy except such as may be reasonably required for domestic purposes by the occupant;
 7. the occupant shall not build or permit or suffer to be built or erected any building on the residential holding nor make any additions or alterations to any buildings on the residential holding without the consent of the person entitled thereto subject to the occupancy;
- (h) upon the receipt of any notice, order, direction or other thing from any competent authority affecting or likely to affect the residential holding or any part of it, whether the same shall be served directly on the occupant or the original or a copy of it be received from any other person, the occupant will so far as the notice, order, direction or other thing or the Act, regulations or other instrument under or by virtue of which it is issued or the provisions of this paragraph require him or her so to do, comply therewith at his or her own expense and will forthwith deliver to the person entitled to the legal estate subject to the occupancy a copy of the notice, order, direction or other thing;
- (i) the occupant shall not do or permit or suffer to be done anything in or upon the residential holding or any part of it which may be or become a nuisance or annoyance or cause damage or inconvenience to the person entitled to the legal estate subject to the occupancy or to the neighbourhood or by which any insurance for the time being effected on the residential holding may be rendered void or voidable or by which the rate of premium on it may be increased;
- (j) the occupant shall not without consent of the person entitled to the legal estate subject to the occupancy use the residential holding or any part of it for any other purposes than the purpose for which the it was used immediately prior to the death of the intestate;
- (k) upon the termination of the occupancy the occupant shall yield up the residential holding and all additions to it and all fittings and fixtures on it in good and tenantable repair in accordance with the stipulation in that behalf set out in this section.

8. Termination by events.

(1) The occupancy of a residential holding hereunder shall be terminated automatically on the happening of any of the following events—

1. upon the remarriage of the occupant where the occupant is a wife;
2. upon the death of the occupant or all the occupants;
3. upon the occupant, being a child, or all the occupants, being children, attaining the age of eighteen in the case of males and attaining the age of twenty-one or marrying in the case of females;
4. upon the occupant or occupants ceasing to occupy the residential holding for a continuous period of six months;
5. upon surrender in writing signed by the occupant if adult or endorsed by the court if the occupancy is by a minor or minors; except that where any child or children of the description contained in paragraph 1 of this Schedule was or were resident with and dependent upon the occupant at the residential holding immediately before such event, the occupancy shall not terminate but the child or children shall succeed to it.

9. Termination by court order.

(1) Any court having jurisdiction over the residential holding, having regard to its value upon application by the registered proprietor for the time being of the holding or any part of it, may order the termination of the occupancy of the residential holding or any part of it upon proof of existence of any one or more of the following grounds—

1. that the occupant has persistently failed to comply with one or more of the provisions of paragraph 7 of this Schedule;
2. that suitable alternative accommodation is available for the occupant and any persons resident with and dependent on the occupant who would suffer no hardship by occupying the alternative accommodation instead of the residential holding;
3. that no hardship would be occasioned to the occupant or any person resident with and dependent upon the occupant if the occupant is paid a sum of money to be assessed by the court instead of being permitted to occupy the residential holding or part of it as the case may be and the applicant will immediately pay that sum to the occupant.

2. The court shall not be bound to order the termination even where someone or more grounds as above exist.
3. Where such application is made within one year from the death of the intestate and where there is any other person or persons who would have been entitled to occupancy but for the existence of the occupant, such person or persons shall be made party to the suit and the court may, after hearing such evidence in the matter as may be presented, order that the occupancy shall pass from the occupant to such person or one or more of such persons.
4. Any person entitled to occupancy under this paragraph who is aggrieved by the decision of the court may within thirty days appeal against the court's order.

10. Offences.

It shall be an offence punishable with imprisonment not exceeding six months or a fine not exceeding one thousand shillings or both for any person to evict or attempt to evict from a residential holding prior to the issue of a certificate under paragraph 4 of this Schedule any wife or child of an intestate who normally resided there at the date of death of the intestate or to do any act calculated to persuade or force any the wife or child to quit such holding prior to the issue of the certificate.

Third Schedule.

s. 31.

Forms.

Republic of Uganda

Form A.

Form of Notification of Appointment of Customary Heir.

The Succession Act.

To: Personal representative of and

To: The Administrator General,

Estate of , deceased.

Probate and Administration Cause No. of 20 ____ .

We (appointing authority

under customary law) of and I,

(customary heir) of

, give you notice

pursuant to section 31 of the Succession Act that on the day of

, 20 ____, at in the district/area

of that

(*heir*) was duly appointed to be the heir and successor of
, the deceased, in accordance with the customary
law of the clan/tribe of which ,
the deceased, was a member, and I ,
(*heir*) claim the interest in the property of ,
the deceased, due to me as the customary heir.

Signature

Signature

Witness to signatures

(*State office*)

Form B. Certificate of Occupancy.

In the High Court of Uganda at

Probate and Administration Cause No. .

Be it known that of

in the district/area of is certified/there is no

person entitled to be the lawful occupant(s) under section 26 of, and the Second Schedule to, the Succession Act of the land known as

and registered at the Registry of

Titles under Title No. delineated in the plan annexed

hereto and edged red.

(Court seal)

Fourth Schedule.

s. 49.

Statutory will form.

The Succession Act.

1. Name of person making will	Name	
	Address	
2. Names of executors		
3. Appointment of heir		
4. Name of guardian or guardian of young children		
5. Names of persons who are given specific gifts in this will (which can be money, land or other property)	Names	Property given

6. Names of persons who are given a share in the will maker's property or if gifts have been given in paragraph 5 the property left after the gifts have been given	Names	Share given
7. Signature or mark of will maker		
8. Signatures or marks of two witnesses and their names, addresses and occupations	Witness 1	
	Signature or mark	
	Name	
	Address	
	Occupation	
	Witness 2	

	Signature or mark	
	Name	
	Address	
	Occupation	

History: Cap. 139; S.I. 135/1968; Decree 22/1972.

Cross References

Administration of Estates (Small Estates) (Special Provisions) Act, Cap. 156. Administrator General's Act, Cap. 157. Armed Forces Act, 1964 Revision, Cap. 295. Penal Code Act, Cap. 120. Registration of Titles Act, Cap. 230.
