CHAPTER 116

INHERITANCE

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CHAPTER 116

INHERITANCE

An Act providing for succession to the property of deceased persons, and in particular the testamentary disposition and distribution on intestacy of such property; to make financial provisions for the dependants of deceased persons; and for connected purposes.

3 of 2002
9 of 2011

[Assent 31st January, 2002]
[Commencement 1st February, 2002]

PART I
PRELIMINARY

1. This Act may be cited as the Inheritance Act.

Short title.

2. (1) In this Act —

Interpretation.

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

"administrator" means a person to whom administration of an estate is granted;

"conveyance" includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of any interest therein by an instrument, except a will, and "convey" has a corresponding meaning;

"the court" means the Supreme Court;

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

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

"income" includes rents and profits;

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

"legal estate" means the estate, charge and interest in or over land subsisting or created at law which is by statute authorised to subsist or to be created at law;

"personal representative" means the executor (original or by representation) or administrator for the time being of a deceased person;

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

"probate" means the probate of a will;

"probate rules" means rules and orders made by the Rules Committee established under the Supreme Court Act for regulating the procedure and practice of the Supreme Court in regard to non-contentious or common form probate business;

Ch. 53.

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

"purchaser" means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser and "valuable consideration" includes marriage, but does not include a nominal consideration in money;

"real estate" save as provided in Part II means real estate, including chattels real, which by virtue of Part II devolves on the personal representative of a deceased person;

"Registrar" means the Registrar of the court;

"rent" includes a rent service or a rent charge, or other rent, toll, duty, or annual or periodical payment in money or money's worth, issuing out of or charged upon land but does not include a mortgage interest;

"representation" means the probate of a will and administration, and the expression "taking out representation" refers to the obtaining of the probate of a will or of the grant of administration;

"will" means a will made in accordance with the provisions of the Wills Act. Ch. 115.

(2) A reference to a child or issue living at the death of any person includes —

(a) a child or issue *en ventre sa mère* at the death;

(b) a child in respect of whom an adoption order has been made by any court of competent jurisdiction.

(3) A reference to the estate of a deceased person includes property over which the deceased exercises a general power of appointment including a statutory power to dispose of an entailed interest by the deceased's will.

PART II
DISTRIBUTION ON INTESTACY

Abolition of descent to heir, curtesy, dower.

3. With regard to the real and personal estate of every person dying after the commencement of this Act, there shall be abolished —

(a) all existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of personal estate;

(b) tenancy by the curtesy;

(c) dower.

Succession to real and personal estate on intestacy.

4. (1) The residuary estate of an intestate shall be distributed in the manner mentioned in this section, namely —

(a) if the intestate leaves a husband or wife and no children, the surviving husband or wife shall take the whole residuary estate;

(b) if the intestate —

(i) leaves a husband or wife and —

(A) one child, the surviving husband or wife shall take one half of the residuary estate and the remainder shall go to the child;

(B) children, the surviving husband or wife shall take one half of the residuary estate and the remainder shall be distributed equally among the children;

(ii) leaves children but no husband or wife, the residuary estate shall be distributed equally among the children and where there is only one child that child shall take the whole residuary estate;

(iii) leaves no husband or wife and no children the residuary estate shall be distributed equally among the grandchildren and where there is only one grandchild that grandchild shall take the whole residuary estate;

(iv) leaves no husband or wife, no children or no grandchildren, the residuary estate shall be distributed between his mother and father in equal shares if both survive the intestate, but, if only one survives the intestate, the survivor shall take the whole residuary estate;

(v) leaves no husband or wife or children, grandchildren, mother or father, then the residuary estate shall be distributed in the following manner —

firstly, to the brothers and sisters of the intestate in equal shares, and in the absence of any, then secondly, to the nephews and nieces of the intestate in equal shares, and in the absence of any, then thirdly, to the grandparents of the intestate and if more than one survive the intestate, in equal shares, but if there is no member of this class, then fourthly, to the uncles and aunts of the intestate (being brothers or sisters of a parent of the intestate) in equal shares, and if none, then fifthly, to the children of uncles and aunts of the intestate (being brothers or sisters of a parent of the intestate) in equal shares;

(c) in default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall be distributed to the next of kin and in this paragraph "next of kin" means the closest living relative of the intestate.

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

(3) Where the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain which of them survived the other and the intestate's husband or wife is by virtue of any other law deemed to have survived the intestate, this section shall nevertheless have effect as respects the intestate as if the husband or wife had not survived the intestate.

(4) In this Part, "residuary estate" means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate, after payment of all such funeral and administration expenses, debts and other liabilities that are properly paid thereout, which (otherwise than in right of a power of appointment) the intestate could, if of full age and capacity, have disposed of by his will.

(5) For the purposes of this Part, "brother" or "sister" in relation to an intestate shall include a child of the father or mother of the intestate.

Devolution of residuary estate to issue and other classes of relatives of intestate.

5. (1) Where under this Part the residuary estate of an intestate or any part thereof devolves upon or is directed to be distributed among the issue of the intestate such residuary estate or part thereof shall be distributed in equal shares, if more than one, among all or any of the issue of the intestate living at the death of the intestate and among all or any of the issue living at the death of the intestate of any issue of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking.

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

First Schedule.

(3) In subsection (2), "household chattels" has the meaning assigned to it in paragraph 7 of the First Schedule.

(4) Where under this Part the residuary estate of an intestate or any part thereof devolves upon or is directed to be distributed among any class of relatives of the intestate, other than issue of the intestate, the same shall be distributed in the manner corresponding to the distribution among the issue of the intestate (other than the provision for bringing any money or property into account) as if such distribution (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the issue of the intestate.

Right of surviving spouse as respects matrimonial home and household chattel.
First Schedule.

6. (1) The First Schedule shall have effect for enabling the surviving spouse of a person dying testate or intestate after the commencement of this Act to acquire the matrimonial home in which the spouse is residing and the household chattels.

(2) If the share of a surviving spouse is insufficient to enable an appropriation to be made under subsection (1), the right conferred by that subsection may also be exercised in relation to the share of any minor for whom the surviving spouse is a trustee under section 7 or otherwise.

(3) The personal representative shall notify the surviving spouse of the rights conferred by this section.

Application to the Court in respect of appropriation.

7. (1) In addition to the rights to require appropriation conferred by section 6, the surviving spouse may, so long as a right conferred by that section continues to be exercisable, apply to the court for appropriation on the spouse's own behalf and also on behalf of any minor for whom the spouse is a trustee or otherwise.

(2) On any such application referred to in subsection (1), the court may, if it is of the opinion that, in the special circumstances of the case, hardship would otherwise be caused to the surviving spouse or to the surviving spouse and such minor, order that appropriation to the spouse shall be made without the payment of money provided for under section 6, or subject to the payment of such amount as the court considers reasonable.

(3) The court may make such further order in relation to the administration of the deceased's estate as may appear to the court to be just and equitable having regard to this Act and to all the circumstances.

(4) Proceedings under this section and section 6 shall be made in the manner prescribed by rules of court.

Partial intestacy.

8. (1) Where any person dies leaving a will effectively disposing of a portion of his property, this Part shall have effect as respects the portion of his property not so disposed of subject to the provisions contained in the will and subject to the modification that the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part in respect of the portion of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take that portion beneficially.

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

Construction of documents.

9. (1) References to any Statutes of Distributions in an instrument *inter vivos* made or in a will coming into operation after the commencement of this Act, shall be construed as references to this Part and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part.

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

Savings.

10. (1) Nothing in this Part affects the rights of any person to take beneficially, by purchase, as heir either general or special.

(2) Nothing in this part shall affect existing rights of dower.

Interpretation of Part II.

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

PART III
PROVISIONS FOR DEPENDANTS

Application for financial provision from deceased's estate.

12. (1) Where after the commencement of this Act a person dies domiciled in The Bahamas and is survived by any of the following persons —

(a) the wife or husband of the deceased;

(b) a child of the deceased —

(i) under the age of eighteen;

(ii) a child of the deceased over the age of eighteen and under the age of twenty-three being in receipt at the time of the death of the deceased either of full-time instructions at an educational establishment or undergoing training for a trade, profession or vocation in such circumstances that he is required to devote the whole of his time to that training; or

(iii) a child of the deceased being incapacitated by reason of a physical or mental disability that renders him incapable of maintaining himself;

(c) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage and who if that person were a child of the deceased would fall within the provision of subsection (b),

that person may apply to the court for an order under section 13 on the ground that the disposition of the deceased's estate effected by his will is not such as to make reasonable financial provision for the applicant.

(2) In this Part, "reasonable financial provision" means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his or her maintenance:

Provided that in the case of a husband and wife who have been living apart for a period of twelve months or more the court may refuse to make an order for financial provision if it considers that in all the circumstances of the case it is just and reasonable to refuse such order.

Power of court to make orders.

13. (1) Subject to the provisions of this Part, where an application is made for an order under section 12, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders —

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of the net estate of a lump sum of such amount as may be so specified.

(2) An order under subsection (1)(a) providing for periodical payments to be made out of the net estate of the deceased may provide for —

(a) payments of such amount as may be specified in the order;

(b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified;

(c) payments equal to the whole of the income of such part of the net estate as the court may direct to be set aside as appropriate for the making out of the income thereof of payments under this section,

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) Where an order under subsection (1)(a) provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be set aside or appropriated for the making out of

the income thereof of those payments; but no larger part of the net estate shall be so set aside or appropriated than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(4) An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection —

(a) order any person who holds any property which forms part of the net estate of the deceased to make such payments as may be specified in the order;

(b) vary the disposition of the deceased's estate effected by the will in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

(c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the court to be necessary or expedient.

(5) In this section, residual personal estate means the remainder of the personal estate after all funeral, testamentary and administration expenses, debts and liabilities payable out of the estate, have been paid.

Matters to which court is to have regard in exercising powers under section 13.

14. (1) Where an application is made for an order under section 13, the court shall, in determining whether the disposition of the deceased estate effected by his will is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say —

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 13 has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 13 or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 13 or of any beneficiary of the estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

(2) Without prejudice to the generality of paragraph (g) of subsection (1), where an application for an order under section 13 is made by virtue of section 12(1)(a), the court shall in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection (1), have regard to the age of the applicant and the duration of the marriage; the court shall also, unless at the date of death a decree of judicial separation was in force or the husband and wife were living apart for a period of twelve months or more and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died, the marriage, instead of being terminated by death, had been terminated by a decree of divorce.

(3) Without prejudice to the generality of paragraph (g) of subsection (1), where an application for an order under section 13 is made by virtue of section 12(1)(b) or 12(1)(c), the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection (1), have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 12(1)(c), the court shall also have regard —

(a) to whether the deceased had assumed any responsibility for the applicant's maintenance and, if so, to the extent to which and the basis upon which the deceased assumed that responsibility and to the length of time for which the deceased discharged that responsibility;

(b) to whether in assuming and discharging that responsibility the deceased did so knowing that the applicant was not his own child;

(c) to the liability of any other person to maintain the applicant.

(4) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.

(5) In considering the financial resources of any person for the purposes of this section, the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.

Time limit for applications.

15. An application for an order under section 13 shall not, except with the permission of the court, be made after the end of the period of six months from the date of which representation with respect to the estate of the deceased is first taken out.

Interim orders.

16. (1) Where on an application for an order under section 13 it appears to the court —

(a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order if any, shall be made under that section; and

(b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant,

the court may , subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, order that there be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals as the court may order that, subject to the provisions of this Part, such payments are to be made until such date as the court may specify, not being later than the date on which the court either makes an order under the said section 13 or decides not to exercise its powers under that section.

(2) Subsections (2), (3) and (4) of section 13 shall apply in relation to an order under this section as they apply in relation to an order under that section.

(3) In determining what order, if any, should be made under this section, the court shall so far as the urgency of the case admits, have regard to the same matters as those to which the court is required to have regard under section 14.

(4) An order made under section 13 may provide that any sum paid to the applicant by virtue of this section shall be treated to such an extent and in such manner as may be provided by that order as having been paid on account of any payment provided for by that order.

(5) The provisions of this section shall apply *mutatis mutandis* to a beneficiary entitled under a will.

Variation, discharge, etc., of orders for periodical payments.

17. (1) Subject to the provisions of this Part, where the court has made an order under section 13(1)(a) (in this section referred to as "the original order") for the making of periodical payments to any person (in this section referred to as "the original recipient"), the court, on an application under this section, shall have power by order to vary or discharge the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) Without prejudice to the generality of subsection (1), an order made on an application for the variation of the original order may —

(a) provide for the making of such periodical payments and for such term as may be specified in the order to any person who has applied, (whether or not, in the case of any application, an order was made in favour of the applicant);

(b) provide for the payment of a lump sum of such amount as may be so specified to the original recipient or to any such person as is mentioned in paragraph (a).

(3) Where the original order provides that any periodical payments payable thereunder to the original recipient are to cease on the occurrence of an event specified in the order or on the expiration of a period so specified, then, if before the end of the period of six months from the date of the occurrence of that event or of the expiration of that period, an application is made for an order under this section, the court shall have power to make any order which it would have had power to make if the application had been made before that date (whether in

favour of the original recipient or any such person as is mentioned in subsection (2)(a) and whether having effect from that date or from such later date as the court may specify).

(4) Any reference in this section to the original order shall include a reference to an order made under this section and any reference in this section to the original recipient shall include a reference to any person to whom periodical payments are required to be made by virtue of an order under this section.

(5) An application under this section may be made by any of the following persons, that is to say —

(a) any person who by virtue of section 12(1) has applied;

(b) the personal representatives of the deceased;

(c) the trustees of any relevant property; and

(d) any beneficiary of the estate of the deceased.

(6) An order under this section may only affect —

(a) property the income of which is at the date of the order applicable wholly or in part for the making of periodical payments to any person who has applied for any order under this Part; or

(b) in the case of an application under subsection (3) in respect of payments which have ceased to be payable on the occurrence of an event or the expiration of a period, property the income of which was so applicable immediately before the occurrence of that event or the expiration of that period, as the case may be,

and any such property as is mentioned in paragraph (a) or (b) is in subsections (2) and (5) referred to as "relevant property".

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

(8) Where the court makes an order under this section, it may give such consequential directions as it thinks necessary or expedient having regard to the provisions of the order.

(9) For the avoidance of doubt it is hereby declared that, in relation to an order which provides for the making of periodical payments which are to cease on the occurrence of an event specified in the order or on the expiration of a period so specified, the power to vary an order includes power to provide for the making of periodical payments after the occurrence of that event or the expiration of that period.

Payment of lump sums by instalments.

18. (1) An order under section 13(1)(b) or 17(2)(b) for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(2) Where an order is made by virtue of subsection (1) the court shall have the power, on an application made by the person to whom the lump sum is payable, by the personal representatives of the deceased or by the trustees of the property out of which the lump sum is payable, to vary that order by varying the number of instalments payable, the amount of any instalment and the date on which any instalment becomes payable.

Property treated as a part of "net estate".

19. Where any sum of money or other property is received by any person as a *donatio mortis causa* made by a deceased person, that sum of money or that other property, to the extent of the value thereof at the date of the death of the deceased shall be treated for the purposes of this Part as part of the net estate of the deceased; but this section shall not render any person liable for having paid that sum or transferred that other property in order to give effect to that *donatio mortis causa*.

Property held on a joint tenancy.

20. Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, the deceased's share in the property shall upon his death pass automatically to the surviving joint tenant or tenants and shall not be treated for the purposes of this Part as part of the net estate of the deceased.

Effect, duration and form of orders.

21. (1) Where an order is made under section 13, then for all purposes, the will shall have effect and be deemed to have had effect as from the deceased's death subject to the provisions of the order.

(2) Any order made under section 13 or 16 in favour of an applicant who was the husband or wife of the deceased shall in so far as it provides for the making of

periodical payments, cease to have effect on the remarriage of the applicant, except in relation to any arrears due under the order on the date of the remarriage.

(3) Any order made under section 13 or 16 directing periodical payments to be made to or for the benefit of a person referred to in section 12(1)(b) or (c) shall cease to have effect not later than —

(a) subject to paragraphs (b) and (c), the date on which the person attains the age of eighteen years;

(b) in the case of a person receiving either full time instruction at an educational establishment or undergoing training for a trade, profession or vocation in such circumstances that he is required to devote the whole of his time to that training, the date on which he or she attains the age of twenty-three years or cessation of that instruction or training whichever is the earlier;

(c) in the case of a person being incapacitated by reason of a physical or mental disability that renders him incapable of maintaining himself, the date of the cessation of the disability,

and in any case upon the death of such person.

(4) A copy of every order made under this Part shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

Provisions as to personal representatives.

22. (1) The provisions of this Part shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased, after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that he ought to have taken into account the possibility —

(a) that the court might permit the making of an application for an order under section 13 after the end of that period; or

(b) that, where an order has been made under the said section 13, the court might exercise in relation thereto the powers conferred on it by section 17,

but this subsection shall not prejudice any power to recover by reason of the making of an order under this Part, any part of the estates so distributed.

(2) Where the personal representative of a deceased person pays any sum directed by an order under section 16 to be paid out of the deceased's net estate, he 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 has reasonable cause to believe that the estate is not sufficient.

(3) Where a deceased person entered into a contract by which he agreed to leave by his will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if the personal representative to the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Part, he may, notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under section 13, until the determination of the proceedings on that application.

Interpretation of Part III.

23. (1) In this Part —

"beneficiary" in relation to the estate of a deceased person, means —

(a) a person who under the will of the deceased or under section 4 is beneficially interested in the estate or would be so interested if an order had not been made under this Part; and

(b) a person who has received any sum of money which by virtue of section 19 is treated as part of the net estate of the deceased or would have received that sum if an order had not been made under this Part;

"net estate" in relation to a deceased person, means —

(a) all property of which the deceased had power to dispose of by his will (otherwise than by virtue of a special power of appointment);

(b) any sum of money which is treated for the purposes of this Part as part of the net estate of the deceased by virtue of section 19 less the amount of his funeral, testamentary and administration expenses, debts and liabilities payable out of his estate on his death.

(2) For the purposes of paragraph (a) of the definition of "net estate" in subsection (1), a person who is not of full age and capacity shall be treated as having power to dispose by will of all property of which he would have had power to dispose by will if he had been of full age and capacity.

(3) Any reference in this Part to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.

PART IV
SUPPLEMENTAL

Protection against eviction from matrimonial home of spouse.

9 of 2011.

24. (1) Notwithstanding anything to the contrary in any other law and subject to the provisions of this section a surviving spouse who is not entitled to occupy a matrimonial home by virtue of a beneficial estate or interest or by virtue of any other written law giving him or her the right to remain in occupation, shall have, as regards the matrimonial home on the death of the other spouse who was entitled, a right to continue to reside in the matrimonial home and not to be evicted or excluded from the house or any part thereof in which the surviving spouse was residing at the time of the said death by the personal representatives or heirs of the deceased spouse except in accordance with the occurrence of any of the events in subsection (2) or (3).

(2) The enjoyment of the right of occupation conferred by subsection (1) upon a surviving spouse (hereinafter referred to as "the holder") shall cease upon the death or remarriage of the holder or be modified to such extent as is necessary on the coming into force of an order under this Act or the Matrimonial Causes Act affecting the rights or occupation of the holder.

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(3) Where the right of occupation has become vested in the holder by virtue of the death of the spouse of the holder any person having an interest in the matrimonial

home if adversely affected may, by originating summons, apply to the court for an order regulating the exercise by the holder of the right of occupation.

(4) On an application for an order under this section, the court may make such order as it thinks just and reasonable having regard to the needs of the holder or any children of the deceased spouse and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision —

(a) may except part of the matrimonial home from the holder's rights of occupation (and in particular a part used wholly or mainly for or in connection with the trade, business or profession of the other spouse);

(b) may order the holder by virtue of this section to make periodical payments to the applicant in compensation for any damage or loss occasioned to the applicant by reason of the exercise by the holder of the right of occupation;

(c) shall impose on the holder the obligation to discharge any liabilities in respect of the matrimonial home having regard to the existing legal rights including any obligation under a mortgage of other persons in the home.

(5) Without prejudice to subsection (2), orders under subsection (9) may, in so far as they have a continuing effect, be limited so as to have effect for a period specified in the order or until further ordered.

(6) Notwithstanding anything to the contrary in any other law and subject to the provisions of subsection (9) the right of occupation of the holder shall be a charge on the beneficial estate or interest held by the spouse of the holder in the matrimonial home and having the like priority as if it were an equitable interest created at whichever is the latest of the following dates —

(a) the date when the spouse of the holder acquires the estate or interest;

(b) the date of the marriage; and

(c) the date of the coming into operation of this section.

(7) Where a spouse's right of occupation is a charge on an estate or interest in the matrimonial home, and that estate or interest is surrendered so as to merge in some

other estate or interest expectant thereon in such circumstances that, but for the merger, the person taking the estate or interest of the other spouse would be bound by the charge, then the surrender shall have effect subject to the charge and the persons thereafter entitled to the other estate or interest shall, for so long as the estate or interest surrendered would have endured if not so surrendered be treated for all purposes of this section as deriving title to the other estate or interest under the other spouse by virtue of the surrender.

(8) Save as otherwise provided in the foregoing subsection after the coming into operation of this section, no act by, or transaction of, the spouse or a holder of a right of occupation shall have the effect of prejudicing the charge arising from the right of occupation under subsection (6) unless upon a like application to the court under subsection (3) by an interested party it is shown to the satisfaction of the court that —

(a) the holder was a party to such act or transaction;

(b) the holder had prior to or contemporaneously with such act or transaction executed a document expressing consent to the act or transaction;

(c) the act or transaction had been *bona fide* entered into by the spouse or the holder prior to the charge for full and valuable consideration and the proceeds of the act or transaction were applied to the benefit of the matrimonial home or the members of the family living therein.

(9) The provisions of subsections (6), (7) and (8) shall be subject to the rights of a mortgagee in any estate or interest in a matrimonial home.

(10) Notwithstanding anything to the contrary in any other law, no proceedings shall be commenced in any court against a surviving spouse within three months of the death of the other spouse for the possession of any premises by reason of the non-payment of any sum which were, immediately prior to that death, jointly occupied as a dwelling by both spouses or where such proceedings were in existence at the time of the death no order shall be made or be executed which shall have the effect of dispossessing the surviving spouse within three months of the date of death.

(11) For the purposes of this section "matrimonial home" means the dwelling house and any yard, garden or garage appurtenant thereto for the time being occupied by the parties to the marriage, and in respect of which house one spouse is entitled to occupy by virtue of the ownership therein of the beneficial estate or interest.

Protection against eviction from matrimonial home of child.

25. (1) Notwithstanding anything to the contrary in section 24, in the event of the holder of a right of occupation predeceasing his or her spouse against whose beneficial estate or interest in the matrimonial home such right under subsection (1) of that section was existing at the time of death and such holder being survived by any child that right shall continue to be of full effect against the surviving spouse to and for the benefit of each or any such child.

(2) In this section, "child" means any person who would under section 12(1)(b) or 12(1)(c) be entitled to apply for reasonable financial provision under section 13.

Rules. Ch. 53.

26. (1) The Rules Committee constituted under section 75 of the Supreme Court Act, may make rules for any matter in relation to which rules are required to be made under or for the purpose of carrying this Act into effect and in particular —

(a) for enabling proceedings under section 6 to be commenced;

(b) for enabling proceedings under section 7 to be commenced.

(2) Until rules are made pursuant to subsection (1), proceedings under sections 6 and 7 shall commence by originating summons.

Application of Act.

27. Save as otherwise expressly provided, this Act shall not apply in any case where the death occurred before the commencement of this Act.

Rule of survivorship.

28. Subject to subsection (3) of section 4, where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the estate of each person shall be disposed of, distributed or divided as if each person had survived the other or others.

Repeals.

Second Schedule.

29. The Acts mentioned in the second column of the Second Schedule are hereby repealed to the extent specified in the third column of that Schedule in so far as they apply to deaths occurring after the commencement of this Act.

FIRST SCHEDULE (Sections 5 and 6)

RIGHTS OF SURVIVING SPOUSE AS RESPECTS THE MATRIMONIAL HOME

1. (1) Subject to the provisions of this Schedule, where the estate of a deceased person comprises a dwelling-house in which the surviving husband or wife was resident at the time of death, the surviving husband or wife may require the personal representative, in exercise of his powers under the Administration of Estates Act, 2001 to appropriate the interest in the dwelling-house in or towards satisfaction of any share of the surviving husband or wife in the estate of the deceased.

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(2) The surviving husband or wife may also require the personal representatives in writing to appropriate any household chattels in or towards satisfaction of any share of the surviving husband or wife in the estate.

(3) Notwithstanding any provision in any other law, nothing shall prevent the personal representative from giving effect to the rights conferred by this paragraph.

(4) The reference in this paragraph to a share in the estate of the deceased includes a reference to the capital value of a life interest which the surviving husband or wife has under this Act elected to have redeemed.

2. Where —

(a) the dwelling-house forms part of a building and an interest in the whole of the building is comprised in the estate of the deceased;

(b) the dwelling-house is held with agricultural land and an interest in the agricultural land is comprised in the estate;

(c) the whole or a part of the dwelling-house was at the time of the deceased's death used as a hotel or lodging house; or

(d) a part of the dwelling-house was at the time of the deceased's death used for purposes other than domestic purposes,

the right conferred by paragraph 1 shall not be exercisable unless the court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the estate (other than the said interest in the dwelling-house) or make them more difficult to dispose of, so orders.

3. (1) The right conferred by paragraph 1 —

(a) shall not be exercisable after the expiration of six months from the date of receipt by the surviving spouse of the notification mentioned in subsection (3) of section 6 or after twelve months from the first taking out of representation with respect to the deceased's estate whichever is the latter;

(b) shall not be exercisable after the death of the surviving husband or wife;

(c) shall not be exercisable in relation to a dwelling-house which is the subject of a specific devise to a child of the deceased;

(d) shall be exercisable, except where the surviving husband or wife is the sole personal representative, by notifying the personal representative (or, where there are two or more personal representatives of whom one is the surviving husband or wife, all of them except the surviving husband or wife) in writing.

(2) A notification in writing under subparagraph (1)(d) shall not be revocable except with the consent of the personal representative; but the surviving husband or wife may require the personal representative to have the said interest in the dwelling-house valued and to inform him or her of the result of the valuation before he or she decides whether to exercise the right.

4. (1) Subject to subparagraph (2), so long as the rights conferred by paragraph 1 continue to be exercisable the personal representative shall not without the written consent of the surviving husband or wife sell or otherwise dispose of the interest in the dwelling-house or household chattels except in the course of administration owing to want of other assets.

(2) An application to the court under paragraph 2 may be made by the personal representatives as well as by the surviving husband or wife, and if, on an application under the paragraph, the court does not order that the right conferred by paragraph 1 shall be exercisable by the surviving husband or wife, the court may authorise the personal representative to dispose of the said interest in the dwelling-house within the said period of twelve months.

(3) Where the court under subparagraph (3) of paragraph 3 grants an extension to a period of twelve months, the court may direct that this paragraph shall apply in relation to the extended period as it applied in relation to the original period of twelve months.

(4) This paragraph shall not apply where the surviving husband or wife is the sole personal representative or one of two or more personal representatives.

(5) Nothing in this paragraph shall confer any right on the surviving husband or wife as against a purchaser from the personal representative.

5. (1) Where the surviving husband or wife is one of the two or more personal representatives, the rule that a trustee may not be a purchaser of trust property shall not prevent the surviving husband or wife from purchasing out of the estate of the deceased the dwelling-house in which the surviving husband or wife was resident at the time of the deceased's death or any household chattels.

(2) The power of appropriation shall include power to appropriate an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the deceased's death partly in satisfaction of an interest of the personal estate of the deceased and partly in return for a payment of money by the surviving husband or wife to the personal representative.

6. (1) Where the surviving husband or wife is a person incapable, by reason of mental disorder within the meaning of the Mental Health Act to make a requirement or give a consent such requirement or consent under this Schedule may be made or given on his or her behalf by his testamentary or other guardian or committee or receiver, if any, or by the court.

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(2) A requirement or consent made or given under this Schedule by a surviving husband or wife who is a minor shall be as valid and binding as it would be if he or she were of age; and as respects an appropriation in pursuance of paragraph 1 the provisions of the Administration of Estates Act, 2001 as to obtaining consent of the minor shall not apply.

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7. For the purpose of this Schedule —

"dwelling-house" means an estate or interest in a building occupied as a separate dwelling or part so occupied, of any building, and includes any garden or portion of ground attached to and usually occupied by the dwelling or otherwise required for the amenity or convenience of the dwelling;

"household chattels" means furniture, linen, china, glass, books or other chattels of ordinary household use or ornaments and also consumable stores, garden effects, domestic animals and includes motor cars and accessories (not used for business purposes) but does not include any chattels used at the death of the deceased for business or professional purposes, or money or security for money.

SECOND SCHEDULE (Section 29)

REPEAL

Chapter No.	Short Title	Extent of Repeal
93[1]	Intestate Children's Estates	The whole Act
94[2]	Widows of Intestates	The whole Act
97[3]	Statute of Distributions	The whole Act
99[4]	Inheritance	The whole Act
135[5]	Dower	The whole Act
136[6]	Assignment of Dower	The whole Act
137[7]	Statute of Uses	Section 5
141[8]	Escheat	The whole Act
144[9]	Statute of Frauds	Section 24
160[10]	Law of Property	Sections 19 and 20[11]

[1] Rev. Ed., 1987
[2] Rev. Ed., 1987
[3] Rev. Ed., 1987
[4] Rev. Ed., 1987
[5] Rev. Ed., 1987
[6] Rev. Ed., 1987
[7] Rev. Ed., 1987
[8] Rev. Ed., 1987
[9] Chapter 154 in the Rev. Ed., 2000
[10] Chapter 170 in the Rev. Ed., 2000
[11] Sections 14 and 15 in the Rev. Ed., 2000