

LAWS OF BRUNEI

CHAPTER 11

PROBATE AND ADMINISTRATION

18 of 1955
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7 of 1979

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CHAPTER 11
PROBATE AND ADMINISTRATION

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Short title.
2. Interpretation.
3. Deputy Probate Officer and Assistant Probate Officer.

PART II

POWERS OF PROBATE OFFICER, ETC.

4. Probate Officer to be a corporation sole.
5. Jurisdiction of Probate Officer.
6. General Powers of Probate Officer.
7. Power of altering probate, etc., already granted.
8. Sealing of documents.
9. Powers as to requiring attendance of and examining parties and witnesses.

10. General powers of enforcing process.
11. Power of ordering production of testamentary writings.
12. Administration of oaths, etc.
13. Dealing with assets prior to official representation.
14. Power of Probate Officer to take possession of property of deceased person until grant.
15. Punishment of person unlawfully removing out of Brunei Darussalam property of deceased person.
16. Lien on property of deceased person for expenses incurred under s. 14.
17. Person having or finding will to produce it.
18. Vesting of estate of deceased person in Probate Officer.
19. Summary administration of intestates' estates not exceeding \$25,000.
20. Cases in which Probate Officer is entitled to administration.
21. Saving as to estates of certain persons.
22. Commission on moneys received.
23. Keeping of books of account.
24. Copies of documents and accounts.
25. Half-yearly returns.
26. Redress against action of Probate Officer.
27. Will to be deposited.
28. Persons entitled to probate and letters of administration.

PART III

**GRANTING AND REVOCATIONS
OF PROBATES, ETC.**

- 29.** Practice as to caveat against grant.
- 30.** Effect of executor renouncing probate.
- 31.** Effect of executor not taking probate.
- 32.** Appointment of administrator of intestate's estate.
- 33.** Absentee representative.
- 34.** Grant of special administration where executor or administrator is out of jurisdiction.
- 35.** Payment of costs relating to special administration.
- 36.** Case of infant being sole executor.
- 37.** Power to issue grant to any other person when person entitled unfit to act.
- 38.** Lunatics.
- 39.** Letters of administration of trust property.
- 40.** Letters of administration to collect and preserve property.
- 41.** Grant of effects unadministered.
- 42.** Appointment of administrator *pendente lite*.
- 43.** Bond to be given by administrator.
- 44.** Amount of bond.
- 45.** Annexures.
- 46.** Effect of grant of probate, etc.
- 47.** Revocation of grant.
- 48.** Validation of payments made under probate or administration subsequently revoked.

- 49.** Validation of payments made under defective probate or administration.
- 50.** Continuance of proceedings begun under temporary administration subsequently revoked.
- 51.** Practice in matters not provided for.
- 52.** Sittings in office.
- 53.** Powers of Probate Officer sitting in office.
- 54.** Powers of the Probate Officer with regard to costs.
- 55.** Examination of parties and witnesses.
- 56.** Use of affidavit sworn out of Brunei Darussalam.
- 57.** Rules of evidence.

PART IV

RULES FOR ADMINISTRATION OF PROPERTY

- 58.** Duties of executors and administrators.
- 59.** Sale of assets for administration purposes.
- 60.** Abatement of legacies.
- 61.** Retention of estate pending ultimate distribution.
- 62.** Specialty and simple contract debts to stand in equal degree.
- 63.** Power of the Probate Officer to make an order limiting time for creditors to send in claims against estate.
- 64.** *Devastavit* of executors, etc.
- 65.** To account for all profit made.
- 66.** Administrators to keep accounts.
- 67.** Leases, mortgages, etc., by administrators.

- 68.** Debts incurred by administrators not be charged on the estate.
- 69.** Executors' assent necessary to complete devisee's title
- 70.** Allowance of remuneration to executor, administrator or attorney.
- 71.** Proof of Muslim law.
- 72.** Proof of Chinese law as to administration of property of deceased person.

PART V

SPECIAL PROVISIONS

- 73.** Power of Permanent Secretary where sum not exceeding \$2,500 is payable to deceased person.
- 74.** Validity of payment made under s. 73.
- 75.** Summary administration of estates of subordinate police and prison officers.
- 76.** Administration of estate of passenger dying on voyage to Brunei Darussalam.

PART VI

SEALING OF GRANTS MADE BY BRITISH COURTS OUTSIDE BRUNEI DARUSSALAM

- 77.** Interpretation.
- 78.** Sealing of probates and letters of administration.
- 79.** Conditions to be fulfilled before sealing.
- 80.** Security or payment of debts.
- 81.** Duplicate or copy of grant admissible.
- 82.** Rules as to practice under Part VI.

- 83.** Reference to the court.
- 84.** Appeals.
- 85.** Protection of Probate Officer and Deputy and Assistant Probate Officers.
- 86.** Rules.
- 87.** Application of rules and orders of Probate Division of High Court in England.
- 88.** Copy of will, etc.
- 89.** Application of English law.
- 90.** Jurisdiction of the High Court and Probate Officer.

SCHEDULE

PROBATE AND ADMINISTRATION ACT

An Act to provide for the due and proper administration of the estates of deceased persons

Commencement : 1st February 1956

PART I

PRELIMINARY

1. This Act may be cited as the Probate and Administration Act. Short title.

2. In this Act — Interpretation.

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

“estate” or “property” of a deceased person means the personal estate and effects of whatever kind of such person, and includes property passing on the death of such person;

“estate duty” means estate duty under the Stamp Act; Cap. 34.

“infant” means a person who has not attained the age of 18 years;

“matters and causes testamentary”comprehend all matters and causes relating to the granting and revocation of probate of wills and of administration;

“next of kin” includes persons entitled in their own right to property passing on the death of any person;

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

“Permanent Secretary” means the Permanent Secretary, Ministry of Finance of Brunei Darussalam and, where the estate of a deceased person who was a Muslim domiciled in Brunei Darussalam is concerned, means the Permanent Secretary acting with the advice of the Religious Council;

Cap. 77.

“Religious Council” means the Religious Council established by Religious Council and Kadis Courts Act.

Deputy
Probate
Officer and
Assistant
Probate
Officer.

3. (1) His Majesty the Sultan and Yang Di-Pertuan may by notification in the *Gazette* appoint fit and proper persons to be Deputy Probate Officers and Assistant Probate Officers.

(2) Every Deputy Probate Officer and Assistant Probate Officer shall be subject to the directions of the Probate Officer and shall exercise such of the powers and duties conferred on and imposed upon the Probate Officer as may be specified in the said notification or in any other notification amending the same.

(3) Any person aggrieved by the decision of a Deputy Probate Officer or of an Assistant Probate Officer may require that such decision be confirmed by the Probate Officer who may confirm or rescind the same or substitute therefor any decision which could lawfully be given in accordance with the provisions of this Act.

PART II

POWERS OF PROBATE OFFICER, ETC.

4. The Probate Officer shall be a corporation sole and shall have perpetual succession and a public seal and shall have, subject to the provisions of this Act, the right to hold and transfer and otherwise deal with every description of land and property and shall have the power to institute proceedings in his corporate name in any court.

Probate
Officer to be a
corporation
sole.

5. The Probate Officer shall have, subject to the provisions of this Act or any other written law relating to the probate and administration of the estates of deceased persons, the same powers and his grants and orders the same effect in Brunei Darussalam, and in relation to the estates in Brunei Darussalam of deceased persons, as the High Court in England in its probate jurisdiction:

Jurisdiction of
Probate
Officer.

Provided that the Probate Officer shall have no jurisdiction to entertain any probate matter which would not be classified as non-contentious or common from probate business, except such matters as may be prescribed by the Chief Justice in an order published in the *Gazette*.

6. The Probate Officer may in accordance with the provisions of this Act —

General
powers of
Probate
Officer.

(a) issue grants of probate or letters of administration in respect of the estates of deceased persons having assets within Brunei Darussalam;

(b) without personally taking out administration of the estate of a deceased person, make such orders and give such relief in connection therewith as the nature of the case may require, in respect of any of the following questions or matters —

(i) any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next-of-kin or *cestui que trust*;

- (ii) the ascertainment of any class of creditors, legatees, devisees, next-of-kin or other interested persons;
- (iii) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (where necessary) of such accounts;
- (iv) the payment to the Probate Officer of any money in the hands of executors or administrators or trustees;
- (v) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (vi) the approval of any sale, purchase, compromise or other transaction; and
- (vii) any question arising in the administration of the estate or trust.

Power of
altering
probate, etc.,
already
granted.

7. The Probate Officer shall have and may exercise full power of altering and amending any grant of probate or of administration, whether made before or after the commencement of this Act.

Sealing of
documents.

8. All probates, administrations, orders and other instruments, and all exemplifications and copies thereof, shall respectively be sealed with the seal of the Probate Officer; and any such document purporting to be so sealed shall be received in evidence, in any cause or proceeding of whatever kind, without further proof thereof.

Powers as to
requiring
attendance of
and examining
parties and
witness.

9. (1) The Probate Officer may require the attendance of any party in person, or of any person whom he may think fit to examine or cause to be examined, in any action or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath parties and witnesses by word of mouth, and may, either before or after or

with or without such examination, cause them or any of them to be examined upon interrogatories or receive their, or any of their, affidavits.

(2) The Probate Officer may by writ require the attendance of any such party or witness, and order to be produced before himself or otherwise any deeds, evidences, or writings, in the same form, as nearly as may be, as that in which a writ of *subpoena ad testificandum* or of *subpoena duces tecum* is now issued by the High Court in its original jurisdiction.

10. The Probate Officer shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by him as aforesaid, and for punishing persons failing, neglecting or refusing to produce deeds, evidences or writings, or refusing to appear, or to be sworn, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees and judgments made or given by him under this Act and otherwise in relation to the matters to be inquired into and done by or under the orders of the Probate Officer under this Act as are for the time being vested by law in the High Court for such purposes in relation to any action or matter depending in the said court in its original jurisdiction.

General powers of enforcing process.

11. (1) The Probate Officer may, on motion or petition or otherwise, in a summary way, whether any action or other proceeding is or is not pending before the Probate Officer with respect to any probate or administration, order any person to produce and bring before him, or otherwise as he may direct, any paper or writing being or purporting to be testamentary which may be shown to be in the possession or under the control of such person.

Power of ordering production of testamentary writings.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Probate Officer may direct such person to attend for the purpose of being examined by him or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such

paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bring in such paper or writing, as he would have been subject to in case he had been a party to an action before the Probate Officer and had made such default.

Administration of oaths, etc.

12. The Probate Officer and every Deputy and Assistant Probate Officer, and any other person whom the Minister may appoint for that purpose shall, respectively, have full power to administer oaths and to perform such other duties in reference to matters and causes testamentary as may be assigned to them by any rules and orders made under this Act.

Dealing with assets prior to official representation.

13. (1) No person other than the Probate Officer shall assume possession of, dispose of or deal with the assets of a deceased person unless he has obtained a grant of probate or letters of administration from the Probate Officer or unless he has a probate or letters of administration (within the meaning assigned to those expressions in Part VI) sealed by the Probate Officer in accordance with the provisions of that Part:

Provided that a relative or friend of a deceased person may take possession of any asset for the purpose of safe keeping pending the issue of probate or letters of administration by the Probate Officer or the sealing by the Probate Officer of probate or letters of administration as provided in Part VI.

(2) Any person other than the Probate Officer having in his possession custody or control any property or asset of a deceased person shall forthwith report the fact to the Probate Officer.

(3) Any person contravening the provisions of subsection (1) or subsection (2) shall be guilty of an offence : Penalty, a fine of \$2,000 and imprisonment for one year, and, in addition, shall be liable in damages to the estate of the deceased.

14. It shall be lawful for the Probate Officer whenever he thinks it expedient to do so, and upon such evidence of death as he deems sufficient, to receive or take possession of the private papers, moneys, goods, chattels and other movable property whatsoever of any deceased person which may be found within Brunei, and to provide for the safe custody thereof, until probate of the will of such deceased person or administration of his estate has been granted by him.

Power of
Probate
Officer to take
possession of
property of
deceased
person until
grant.

15. Any person who, without lawful authority or excuse in that behalf —

(a) removes or attempts to remove out of Brunei Darussalam any such property as is mentioned in section 14; or

Punishment of
person
unlawfully
removing out
of Brunei
Darussalam
property of
deceased
person.

(b) destroys, conceals, or refuses to yield up any such property on demand to the Probate Officer,

shall be guilty of an offence: Penalty, a fine of \$2,000 and imprisonment for 6 months.

16. The Probate Officer shall have a lien upon all property mentioned in section 14 for the reasonable expenses incurred by him in respect thereof in carrying out the provisions of the said section, and such expenses shall also constitute a primary charge on the estate of the deceased person.

Lien on
property of
deceased
person for
expenses
incurred
under s.14.

17. (1) When any person dies leaving a will within Brunei Darussalam, the person in whose keeping such will has been deposited, or who finds such will after the testator's death, shall produce and, if required, shall deliver the same to the Probate Officer within 30 days after the death of the testator, or from the time when he has had notice thereof, or from the time of the finding of a will, as the case may be.

Person having
or finding will
to produce it.

(2) Any person who refuses or neglects to comply with the requirements of this section shall be guilty of an offence: Penalty, a fine of \$2,000.

Vesting of
estate of
deceased
person in
Probate
Officer.

Summary
administration
of intestates'
estates not
exceeding
\$25,000.

Cases in
which Probate
Officer is
entitled to
administra-
tion.

18. Where any person dies, whether in Brunei Darussalam or elsewhere, leaving estate in Brunei Darussalam in respect of which he dies intestate, such estate shall vest in the Probate Officer who may, if he thinks fit, receive and take possession of the same until administration is granted in respect thereof.

19. Where the whole of such estate does not, in the opinion of the Probate Officer, exceed in value the sum of \$25,000, it shall be lawful for him, if he thinks fit, without any legal formality, to get in and administer the same in a summary manner, for the benefit of the persons he may deem interested therein, without a grant or other legal formality.

20. (1) The Probate Officer may himself take out administration in any of the following cases —

(a) where a person dying intestate, whether in Brunei Darussalam or elsewhere, has left property situate in Brunei Darussalam and no next of kin of such person are resident in Brunei Darussalam;

(b) where a person dying intestate, whether in Brunei Darussalam or elsewhere, has left property situate in Brunei Darussalam and the next of kin of such person who are resident in Brunei Darussalam file with the Probate Officer a request for, or consent to, the making of such grant in writing signed by them;

(c) where a person dying intestate, whether in Brunei Darussalam or elsewhere, has left property situate in Brunei Darussalam and no person has, within 12 months after the death of such person, obtained administration of his estate; and

(d) where a person dying intestate, whether in Brunei Darussalam or elsewhere, has left property situate in Brunei Darussalam and the next of kin of such person who are resident in Brunei Darussalam are infants.

(2) The provisions of this section shall apply, with the necessary modifications, in the case of a person who dies testate,

whether in Brunei Darussalam or elsewhere, but without appointing an executor, or whose executor, if appointed, refuses, neglects or is unable to act.

(3) The Probate Officer may in his discretion take out administration in any other case not provided for in this section if he considers it desirable so to do.

21. Nothing in this Act shall be construed to enable or require the Probate Officer to obtain administration of the estate of any person dying in the naval, military or air services of His Majesty and subject to the Articles of War, or of any deceased seaman or apprentice for the administration of whose estate provision is made by any Act of Parliament, or of any person for the administration of whose estate special provision is otherwise made in Part V.

Saving as to estates of certain persons.

22. A commission at the rate of five *per cent* on the first one thousand dollars, two and one half *per cent* on the next four thousand dollars and one *per cent* on the balance, or such lower rate or rates as the Probate Officer may approve in the case of any particular estate, shall be chargeable on the gross value of all property of whatsoever nature received or taken possession of, or realised or otherwise dealt with, by the Probate Officer under this Act.

Commission on moneys received.

23. (1) Probate Officer shall keep a general register of all estates under his administration, a cash book and a ledger or account current book, and such other books as he may find necessary or may be prescribed.

Keeping of books of account.

(2) He shall enter in books, to be kept by him for that purpose, separate and distinct accounts of each estate and of all property of every description which may come to his hands, and also of all payments made by him on account of each estate, specifying the dates of such receipts and payments respectively.

(3) Each book shall be kept in the office of the Probate Officer and shall be open during office hours for the inspection of any person who has occasion to inspect the same, on payment of the prescribed fee.

Copies of documents and accounts.

24. (1) The Probate Officer shall give to any person who applies for the same copies of all documents and accounts in his possession relating to any estate under his administration or to any property which he receives or of which he takes possession under this Act, on payment of the prescribed fees.

(2) If any such copy is refused, the applicant may petition the High Court in a summary way for an order on the Probate Officer to give such copy; and the costs of any such petition and order shall be paid by the Probate Officer, if the Court so directs.

Half-yearly returns.

25. The Probate Officer shall, on the expiration of each half-year, make out and furnish to the Minister a return, according to the form in the Schedule, of all estates vested in or administered by him during the half-year then expired, and he shall pay into the hands of the Permanent Secretary the balance remaining in respect of each such estate immediately after the same has been closed.

Redress against Probate Officer in his capacity as administrator.

26. Any person who feels aggrieved by anything done by the Probate Officer in the exercise of his office as administrator under any grant of letters of administration taken out by him under this Act, may apply for redress to the High Court by summary petition certified upon oath, and the Court may thereupon take such evidence as it thinks fit and make any order in relation to the matter which the justice of the case requires.

Will to be deposited.

27. A grant of probate shall not be issued unless —

(a) the original will or, if the will has already been proved in a foreign country, a true copy thereof, certified by the foreign authority, has been deposited with the Probate Officer;

(b) the Probate Officer is satisfied either —

(i) that the will was signed at its foot or end by the testator, or by some other person for him in his presence and at his direction, that the testator's signature was made or acknowledged in the presence of

at least 2 witnesses, both being present at the same time, and that such 2 witnesses afterwards attested and subscribed the will in the testator's presence; or

(ii) that the will was signed by the testator or by some other person for him in his presence and at his direction, in the presence of a magistrate, who subscribed his signature thereto as a witness thereof; and

(c) where the deceased was a Muslim domiciled in Brunei Darussalam that the Probate Officer is satisfied that the provisions thereof do not conflict with Muslim law as practised in Brunei Darussalam.

28. (1) The persons entitled to probate are the executors appointed, expressly or impliedly, by the deceased's last will.

(2) Any executor may in writing or orally expressly, or by action impliedly, renounce his right to probate.

Persons
entitled to
probate and
letters of
administra-
tion.

(3) If no executor has been appointed expressly or impliedly by the deceased's last will, or is competent and willing to act as such, then the undermentioned persons, if of full age and sound mind and suffering from no legal disability, shall be entitled in the following order to letters of administration with the will annexed of such will —

(a) the residuary legatees or devisees;

(b) if the whole of the estate of the deceased is not disposed of by his will, the persons who would have been entitled to letters of administration if the deceased had died intestate;

(c) legatees, devisees or creditors; and

(d) if the whole of the estate of the deceased person is disposed of by his will, the person who would

have been entitled to letters of administration if the deceased had died intestate.

(4) The following persons, if of full age and sound mind, are entitled, in the following order, to letters of administration of a deceased person's estate —

- (a) the surviving husband or wife;
- (b) children or other issue;
- (c) the father or mother;
- (d) the brothers and sisters of the whole blood;
- (e) the brothers and sisters of the half blood;
- (f) the grandparents;
- (g) uncles and aunts of the whole blood;
- (h) uncles and aunts of the half blood;
- (i) creditors.

(5) The provisions of this section shall not apply where the deceased person was a Muslim domiciled in Brunei Darussalam, and in such case probate or administration shall be granted to the person entitled according to Muslim law as practised in Brunei Darussalam.

PART III

GRANTING AND REVOCATION OF PROBATES, ETC.

Caveat

Practice as to
caveat against
grant.

29. (1) A *caveat* against the grant of any probate or administration may be lodged with the Probate Officer.

(2) Subject to any rules or orders made under this Act the practice and procedure of the court in respect of any such caveat shall, as nearly as may be, correspond with the practice and procedure in force in England.

Executorship

30. Where any person renounces probate of the will of which he is appointed executor or one of the executors, the right of such person in respect of the executorship shall wholly cease, and the representation of the testator and the administration of his estate shall, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor.

Effect of
executor
renouncing
probate.

31. Whenever an executor appointed in a will survives the testator but dies without having taken probate, or, having been cited to take probate, does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation of the testator and the administration of his estate shall go, devolve and be committed in like manner as if such person had not been appointed executor.

Effect of
executor not
taking probate.

Administration

32. Where a person dies wholly intestate as to his personal estate but without having appointed an executor thereof willing and competent to take probate, or where the executor is, at the time of the death of such person, resident out of Brunei Darussalam, or where it appears to the Probate Officer to be necessary or convenient to appoint some person to be the administrator of the personal estate of the deceased person or of any part of such estate, other than the person who, if this Act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall be lawful for the Probate Officer to appoint such person as the Probate Officer thinks fit to be such administrator, on his giving such security, if any, as may be required under this Part or as the Probate Officer may direct, and every such administration may be limited in such manner as the Probate Officer thinks fit.

Appointment
of
administrator
of intestate's
estate.

33. (1) Probate of letters of administration shall not be granted to any person outside Brunei Darussalam.

(2) If —

(a) the person entitled to probate or letters of administration, as the case may be, is absent from Brunei Darussalam; and

(b) there is no other person present in Brunei Darussalam who is equally entitled to such probate or letters of administration and who is willing and competent to act,

then probate or letters of administration, as the case may be, may be granted to the lawfully appointed attorney of the person mentioned in paragraph (a).

(3) An attorney holding probate or letters of administration shall be subject to the same liabilities in all respects as an executor or administrator in his own right.

Grant of
special
administration
where
executor or
administrator
is out of
jurisdiction.

34. (1) At the expiration of 12 months from the death of any deceased person, if the person or persons to whom probate of the will has been granted, or the person or persons to whom administration has been granted, is or are residing out of Brunei Darussalam, it shall be lawful for the Probate Officer, on the application of any creditor, next of kin or legatee, grounded on an affidavit made for that purpose, to grant such special administration as he may think fit of the estate of such deceased person.

(2) It shall be lawful for the Probate Officer, on application made for that purpose by any person interested, to direct any shares or stock in any joint-stock company to be transferred into the name of the Probate Officer, in trust for such purposes as the Probate Officer may direct, in any action in which the person to whom such special administration has been granted is a party:

Provided, nevertheless, that if any executor or administrator of such deceased person, being capable of acting as such, returns to and resides within Brunei Darussalam, the Probate Officer may, if he thinks fit, revoke such special grant:

Provided further, that if any action is pending in relation to the estate of such deceased person, such executor or administrator shall be entitled to be made a party thereto.

35. The costs incurred by granting any such special administration shall be paid by such person or out of such fund as the Probate Officer may direct, and the costs incurred by proceeding in any action against any such administrator shall be paid by such person or out of such fund as the court in which the action is pending may direct.

Payment of costs relating to special administration.

36. (1) Where an infant is sole executor of any deceased person, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Probate Officer may think fit until such infant has ceased to be an infant, at which period, and not before, probate of the will shall be granted to him, if he is of sound mind and not suffering from any legal disability and is willing to act.

Case of infant being sole executor.

(2) The person to whom such administration is granted shall until such infant has ceased to be an infant have the same powers vested in him as if probate had been granted to him in his own right.

37. If the Probate Officer considers that the person or persons entitled to probate or letters of administration is or are unfit to act or that it is necessary for the benefit or protection of the estate, he may issue the grant to the person or persons next entitled, or to any suitable person or persons who may be willing to act.

Power to issue grant to any other person when entitled unfit to act.

38. No probate or letters of administration shall be granted to a lunatic or a person of unsound mind, but where any such person, if of sound mind, would be entitled to probate or letters of administration, letters of administration with or without the will annexed, as the case may be, may be granted to the person to whom the care of his estate has been lawfully committed, or

Lunatics.

to such other person as to the Probate Officer seems fit, for the use and benefit of the lunatic or person of unsound mind, until he becomes of sound mind and obtains a grant to himself.

Letters of administration of trust property.

39. Where a person dies, leaving property in which he had no beneficial interest on his own account, and does not leave a representative who is able and willing to act, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Letters of administration to collect and preserve property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Probate Officer may grant to any person whom he thinks fit, letters of administration limited to the collection and preservation of the property of the deceased and giving discharges of debts due to his estate, subject to the directions of the Probate Officer.

Grants of effects unadministered.

41. If a person to whom probate has, or letters of administration have, been granted has died leaving a part of the deceased's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Appointment of administrator *pendente lite.*

42. (1) Pending any action or the appeal from any decision given as a result of any action touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Probate Officer may appoint an administrator of the estate of such deceased person.

(2) The administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such estate.

(3) Every such administrator shall be subject to the immediate control of the Probate Officer and act under his direction.

Administration Bond

Bond to be given.

43. Every person (other than the probate officer) to whom any grant of administration is committed shall, unless the

Probate Officer otherwise directs, give a bond, with (if the Probate Officer requires) one or more surety or sureties, conditioned for duly collecting, getting in and administering the estate of the deceased person, and the bond shall be in such form as the Probate Officer may direct.

44. Every such bond shall be in a penalty of double the amount under which the estate of the deceased person is sworn, unless the Probate Officer in any case thinks fit to direct the same to be reduced, in which case it shall be lawful for the Probate Officer to do so; and the Probate Officer may also direct that more bonds than one shall be given so as to limit the liability of any surety to such amount as the Probate Officer thinks reasonable.

Amount of bond.

45. (1) A list of all the property declared for the purposes of estate duty shall be annexed to the grant of probate or letters of administration.

Annexures.

(2) A certified copy of the will shall be annexed to all grants of probate.

46. The issue by a Probate Officer of probate or letters of administration shall vest in the executor or administrator named therein, and if more than one, jointly, for the purpose of administration, all the property, estate and effects of the deceased set out in the list annexed to the grant.

Effect of grant of probate, etc.

Revocation of grant

47. (1) The Probate Officer may revoke his grant of probate or letters of administration at any time upon good cause being shown.

Revocation of grant.

(2) Notice of revocation shall be posted outside the Government Offices of the Probate Officer and shall be inserted in the *Gazette*.

Validation of payments made under probate or administration subsequently revoked.

48. When any probate or administration is revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall be a legal discharge to the person making the same, and the executor or administrator who has acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration is afterwards granted might have lawfully made.

Validation of payments made under defective or administration.

49. All persons making or permitting to be made any payment or transfer *bona fide* upon any probate or administration granted in respect of the estate of any deceased person shall be indemnified and protected in so doing, notwithstanding any defect or other thing whatsoever affecting the validity of such probate or administration.

Continuance of proceedings begun under temporary administration subsequently revoked.

50. Where, before the revocation of any temporary administration, any proceedings have been commenced in the High Court in its original jurisdiction by or against any administrator so appointed, the Probate Officer may order that a suggestion be made upon the record of the revocation of such administration, and the grant of probate or administration which has been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as the Probate Officer may direct.

Practice in matters not provided for.

51. The practice to be followed by the Probate Officer shall, except where otherwise provided by this Act or by the rules or orders made thereunder, be, so far as the circumstances of the case will admit, according to the practice in force in the High Court of Justice in England in its probate jurisdiction.

Sittings in office.

52. It shall be lawful for the Probate Officer to sit in his office for the despatch of such business as can, in his opinion, with advantage to the suitors be heard in his office; and the times at which sittings shall be held shall be fixed by the Probate Officer.

Provided that no matter shall be heard in his office which either party requires to be heard in public.

53. The Probate Officer, when sitting in his office, shall have and exercise the same power and jurisdiction in respect of any business brought before him as if he were sitting in public.

Powers of
Probate
Officer sitting
in office.

54. The Probate Officer shall have the same powers with regard to the costs of any action or other proceeding as the High Court has with regard to costs in actions and other proceedings in its original jurisdiction.

Powers of the
Probate
Officer with
regard to
costs.

Evidence

55. (1) Subject to any rules or orders made under this Act, the witnesses, and where necessary the parties, in such contentious matters as may be prescribed by the Chief Justice in accordance with the Proviso to section 5 where their attendance can be had shall be examined orally by or before the Probate Officer:

Examination
of parties and
witnesses.

Provided that, subject to any such rules or orders as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, in the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally as aforesaid, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

(2) When a witness in any such matter is out of Brunei Darussalam, or when, by reason of his illness or otherwise, the Probate Officer does not think fit to enforce his attendance in person, it shall be lawful for the Probate Officer to order a commission to issue for his examination upon interrogatories or otherwise, or, if the witness is within Brunei Darussalam, to order his examination, upon interrogatories or otherwise, before any person named for that purpose in the order.

Use of
affidavit
sworn out of
Brunei
Darussalam.

56. Any affidavit sworn out of Brunei Darussalam in the manner mentioned in any Act relating to evidence may be used in any action or proceeding before the Probate Officer.

Rules of
evidence.

57. The rules of evidence observed in the High Court in its original jurisdiction shall be applicable to and be observed in the trial of all questions of fact by the Probate Officer.

PART IV

RULES FOR ADMINISTRATION OF PROPERTY

Duties of
executors and
administrators.

58. On obtaining probate or letters of administration the legal personal representative shall forthwith —

(a) collect and recover all the property, assets and effects covered by the grant;

(b) discharge thereout all the debts due by the deceased which are legally recoverable; and

(c) distribute the residue of the estate —

(i) where the deceased was a Muslim domiciled in Brunei Darussalam, in accordance with Muslim law as practised in Brunei Darussalam;

(ii) where the deceased was not a Muslim but was an Asian domiciled in Brunei Darussalam and the race to which he belonged has its own recognised and clearly-defined customs relating to the administration and distribution of the estates of deceased persons, in accordance with the terms of the will or, if no will has been produced, according to those customs;

- (iii) in all other cases where the deceased was domiciled in Brunei Darussalam, in accordance with the terms of the will or, if no will has been proved according to the law for the time being in force in England relating to the administration of the estates of deceased person; and
- (iv) in all cases where the deceased was not domiciled in Brunei Darussalam, in accordance with the law of the country of his domicile:

Provided that before distributing the residue of the estate an executor or administrator may reimburse himself out of the assets of the estate in respect of any monies paid by him on account of funeral expenses, estate duty, other probate or administration expenses and any other necessary expenses incurred by him on behalf of the estate.

59. (1) An executor or administrator may sell all or any portion of the estate for any of the following purposes —

Sale of assets
for
administration
purposes.

(a) paying off the deceased's debts;

(b) recovering any expenses lawfully incurred on behalf of the estate (including funeral expenses, estate duty, other probate or administration expenses and any other expenses necessarily incurred by him on behalf of the estate;

(c) distributing the estate among the heirs or beneficiaries; or

(d) converting the assets of the estate into property of a non-wasting nature or into investments approved by the Probate Officer:

Provided that any property or asset specifically bequeathed in the deceased's will shall not be sold —

- (i) for the purposes specified in paragraph (c) and (d), in any event;
- (ii) for the purposes specified in paragraphs (a) and (b), until all the other assets of the estate have been realised and the proceeds found insufficient; and then only so much of such property or assets so specifically bequeathed shall be sold as is necessary for such purpose.

(2) For the purpose of this section property “specifically bequeathed” means any particular property or asset (other than money) bequeathed to any particular person or persons or for any particular purpose, not being the subject of a residuary bequest.

Abatement of legacies.

60. Where the assets of the estate are insufficient to enable all the pecuniary legacies under the will to be paid in full, such legacies shall, unless the will otherwise provides, abate proportionately.

Retention of state pending ultimate distribution.

61. If, owing to the terms of the will, the minority or unsoundness of mind of any heir or beneficiary, or for any other cause, the executor or administrator is unable to transfer the property or any portion thereof to the heirs or beneficiaries or any of them, he shall apply without delay to the Probate Officer for his directions.

Specialty and simple contract debts to stand in equal degree.

62. In the administration of the estate of every deceased person, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed or other instrument under seal or is otherwise made or constituted a specialty debt; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable:

Provided that this Act shall not prejudice or affect any lien, charge or other security which any creditor may hold or be entitled to for the payment of his debt.

63. (1) Any executor or administrator may apply to the Probate Officer for an order limiting the time for creditors and others to send in their claims against the estate of the testator or intestate, and specifying what notices are to be given of the making of such order and of the time thereby limited; and the Probate Officer may make such order thereon as he thinks fit.

Power of the Probate Officer to make an order limiting time for creditors to send in claims against estate.

(2) Where an executor or administrator has given the notices specified in any such order, he shall, at the expiration of the time limited thereby for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which he has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim he has not had notice at the time of distribution of the assets or a part thereof, as the case may be.

(3) Nothing in this section shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of any persons who may have received the same respectively, nor the operation of any written law relating to trustees.

64. (1) An executor or administrator shall be responsible to the beneficiaries or heirs for any loss, deterioration or depreciation of the property while in his possession or under his control if caused by his own negligence or default.

Devastavit of executors, etc.

(2) If an executor or administrator —

(a) continues at a loss a business of which the deceased was sole proprietor; or

(b) allows the deceased's share in any business in which he was a partner and which is being continued at a loss by the remaining partners to remain in the business without taking steps to recover such share,

he shall be liable to the beneficiaries or heirs to the extent of the loss suffered by the estate, unless he satisfies the Probate Officer that his conduct was justifiable in the circumstances.

Administrators to account for all profit made.

65. An executor or administrator shall account to the beneficiaries or heirs for any profit made by him out of, or in respect of, the assets of the estate, other than authorised remuneration.

Administrators to keep accounts.

66. (1) Executors and administrators shall keep true and complete accounts of their administration and shall —

(a) produce the accounts to the beneficiaries or heirs when called upon to do so; and

(b) file a copy with the Probate Officer when called upon to do so.

(2) An executor or administrator who fails to produce a true and complete account of his administration when called upon to do so by the Probate Officer shall be guilty of an offence: Penalty, a fine of \$2,000.

Leases, mortgages etc. by administrators.

67. (1) An executor or administrator who leases, mortgages or pledges any portion of the estate without the written sanction of the Probate Officer shall be guilty of an offence: Penalty, a fine of \$1,000.

(2) No Land Officer shall register any deed of lease or mortgage by an executor or administrator with production of such sanction or order.

Debts incurred by administrators not to be charged on the estate.

68. An executor or administrator shall be personally liable for all debts incurred by him on behalf of the estate, and such debts shall not be recoverable by the creditors against the assets of the estate, but the executor or administrator shall be entitled to be indemnified out of such assets in respect of debts properly and lawfully incurred by him on such behalf.

Executors' assent necessary to complete devisee's title.

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

70. It shall be lawful for the Probate Officer to allow to any executor or administrator, including an administrator appointed *pendente lite* as aforesaid, (or to a person acting under a power of attorney as attorney for an executor or administrator in the matter of the sealing of a probate or administration under Part VI, or in the matter of the realisation and administration of an estate under a probate or administration so sealed) such remuneration out of the estate of the deceased person as may be just and reasonable for his pains and trouble therein:

Allowance of remuneration to executor, administrator or attorney.

Provided that no allowance whatever shall be made to any executor or administrator or attorney who neglects to pass his accounts at such time, or to dispose of any moneys, goods, chattels, or securities with which he is chargeable in such manner, as, in pursuance of any rule or order or practice, may be requisite:

Provided further, that no such remuneration shall exceed five *per cent* on the first one thousand dollars, two and a half *per cent* on the next four thousand dollars and one per cent on the balance of the gross value of all property of whatsoever nature administered.

71. Wherever the Probate Officer is required by this Act to act in accordance with Muslim law as practised in Brunei Darussalam or to act with the advice of the Religious Council he shall refer the matter to the Court of the Chief Kadi and shall act upon any written statement which is certified by that Court to have been obtained for the purpose of the matter so referred in accordance with section 50 of the Religious Council and Kadis Courts Act.

Proof of Muslim law.

72. Whenever any person who is a native of China dies intestate leaving property within Brunei Darussalam, and it is necessary to obtain proof of the law of China for the purpose of regulating the administration of the property of such deceased person according to the law of his domicile, it shall be lawful for the Probate Officer in his discretion, to receive in evidence any written statement of the law of China which is certified by any British consular officer in China under his official seal to have been obtained by him from an officer of the Chinese

Proof of Chinese law as to administration of property of deceased person.

Government for the purposes of such administration and with reference to the facts of the particular case under consideration, and thereafter to act upon such written statement in such manner as he thinks fit.

PART V

SPECIAL PROVISIONS

Small sums payable by public department to deceased persons

Power of Permanent Secretary where sum not exceeding \$2,500 is payable to deceased person.

73. (1) On the death of any person to whom any sum of money not exceeding \$2,500 is payable by a public department within Brunei Darussalam in respect of civil pay or allowances or annuities granted either under the authority of Her Britannic Majesty's Government or of the Government of Brunei Darussalam, it shall be lawful for the Permanent Secretary, on being satisfied of the expediency of dispensing with probate or administration, to authorise the payment of such sum to such person or persons as the Permanent Secretary may consider entitled thereto, without requiring the production of probate or administration.

(2) Payment of all such sums of money shall be made under such regulations as the Permanent Secretary may, with the approval of the Minister, make for that purpose.

Validity of payment made under s.73.

74. Any payment made under the provisions of section 73 shall be valid against all persons whatever, and all persons acting under the said provisions shall be absolutely discharged from all liability in respect of any moneys duly paid or applied by them under the said provisions.

Estate of subordinate police and prison officers

Summary administration of estates of subordinate police and prison officers.

75. (1) Any person employed in the police force, not above the rank of inspector, and any such person seconded to the prisons department, who shall die whilst so employed, shall not be deemed to be within the meaning of the preceding provisions of this Act.

(2) The Commissioner of Police and the Superintendent of Prisons respectively are hereby constituted administrators of the estates of such persons in their departments and are required, without any legal formality, to get in and administer the same, and, within one month after the death of any such person, to certify the same and the amount thereof to the Probate Officer for registration, and to pay over to the Permanent Secretary the balance of every such estate, after payment of all lawful claims against the same.

(3) It shall be lawful for the Probate Officer, in his discretion, on the application of the Commissioner of Police or the Superintendent of Prisons, as the case may be, to sign an order upon the Permanent Secretary for the payment of the whole or any part of such balance to such person or persons as may appear to him to be entitled thereto, and the Permanent Secretary shall comply with such order.

Estates of persons dying on voyages to Brunei Darussalam

76. (1) The following special provisions shall regulate the administration of the estates of passengers who die at sea in the course of a voyage to Brunei Darussalam on board of any vessel which afterwards arrives in Brunei Darussalam —

Administration
of estate
of passenger
dying on
voyage to
Brunei
Darussalam.

(a) where any passenger has died on board any vessel in the course of a voyage to Brunei Darussalam, the master of the vessel in which such passenger has died shall, immediately upon the arrival of the vessel in Brunei Darussalam, hand over to the Director of Marine all the goods and effects of such passenger then on board of such vessel;

(b) thereupon the Director of Marine shall take possession of goods and effects, and —

(i) if he thinks that their value is more than \$500, he shall forthwith hand them over to the Probate Officer to whom he shall also furnish in writing all such

information as he may have been able to obtain about the deceased passenger and as he may consider likely to be useful for the estate; and

(ii) if he thinks that their value is not more than \$500, he shall, in such manner as he may consider just and convenient, distribute them amongst the persons who may appear to him, in his discretion, to be entitled thereto, or, if he can find no such persons within one month of the time when the goods and effects came into his hands, then he shall sell them and pay the proceeds of the sale to the Permanent Secretary, to a special account to be there kept for that purpose;

(c) at any time within 12 months of the time when the proceeds of any estate have been paid to the Permanent Secretary under this section, any person entitled to the said proceeds, or to any portion thereof, may apply to the Director of Marine for the same, and, at the expiration of the said 12 months, the Director of Marine may make application in that behalf to the Permanent Secretary, and the Permanent Secretary shall pay to the Director of Marine the said proceeds or a portion thereof, and the Director of Marine shall distribute the same amongst the applicants in such manner as he may consider just and convenient;

(d) before distributing any estate or paying the proceeds of any estate into the Treasury under this section, the Director of Marine shall deduct the amount of any expenses or costs which he may have incurred in advertising or otherwise in the administration of the same; and

(e) if no person entitled applies to the Director of Marine under paragraph (c) within the 12 months mentioned in that paragraph, the proceeds of the estate

shall be paid over to the general revenue; but it shall be lawful for the Minister, within a period of 6 years thereafter, to direct a refund of the same, or any portion thereof, to any person who establishes, to his satisfaction, a legal, equitable or moral claim thereto.

(2) Where such goods and effects have been handed over to, or taken possession of by, the Probate Officer, he may, after such inquiry as he may think sufficient, distribute them, in such manner as he may consider just and convenient, amongst the persons who may appear to him, in his discretion, to be entitled thereto or if he can find no such persons within 6 months of the time when the goods and effects come into his hands, then he shall sell them and pay the proceeds of the sale into the Treasury, to a special account to be there kept for that purpose, or into the account of the Government at such bank as the Permanent Secretary may direct.

(3) The provisions of any written law relating to unclaimed balances shall apply to moneys paid into any account under this section as they do to any balance of an intestate's estate.

(4) For the purposes of this section "voyage of a passenger to Brunei Darussalam" means the voyage of a passenger which would in the ordinary course terminate in Brunei Darussalam as the port of destination of the passenger.

(5) Any master of a vessel who refuses or neglects to comply with the requirements of this section shall be guilty of an offence: Penalty, a fine of \$5,000.

PART VI

SEALING OF GRANTS MADE BY BRITISH COURTS OUTSIDE BRUNEI DARUSSALAM

77. In this Part —

Interpretation.

"British court in a foreign country" means any British court having jurisdiction out of the

Commonwealth in pursuance of an Order in Council, whether made under any Act or otherwise;

“court of probate” means any court or authority, by whatever name designated, having jurisdiction in matters of probate;

“probate” and “letters of administration” include confirmation in Scotland, and any instrument having in any other part of the Commonwealth the same effect which under English law is given to probate and letters of administration respectively;

“estate duty” includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted.

Sealing of
probates and
letters of
administra-
tion.

78. Where a court of probate in any part of the Commonwealth, or a British court in a foreign country, has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Probate Officer, be sealed with the seal of the Probate Officer, and thereupon shall be of the like force and effect, and have the same operation in Brunei Darussalam as if granted by that officer.

Conditions to
be fulfilled
before sealing.

79. The Probate Officer shall, before sealing a probate or letters of administration under this Part, be satisfied —

(a) that estate duty has been paid or postponement of payment allowed in respect of so much, if any, of the estate as is liable to estate duty in Brunei Darussalam; and

(b) in the case of letter of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in Brunei Darussalam to which the letters of administration relate,

and may require such evidence, if any, as he thinks fit as to the domicile of the deceased person.

80. The Probate Officer may also, if he thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Brunei Darussalam.

Security for payment of debts.

81. For the purposes of this Part, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

Duplicate or copy admissible.

82. The power conferred on the His Majesty in Council by section 86 to make general rules for regulating the procedure and practice, including fees and costs, in and incidental to applications for grants of probate or letters of administration in Brunei Darussalam shall apply to applications for sealing under this Part, and subject to any exceptions and modifications made by such rules, the Acts for the time being in force in relation to estate duty (including the penal provisions thereof) shall apply as if the person who applies for sealing under this Part were applying for probate or letters of administration.

Rules as to practice under this Part.

PART VII

MISCELLANEOUS

83. The Probate Officer may refer to the High Court for decision any question of law other than a question of Muslim law arising out of any proceedings under this Act and the costs thereof shall be borne by the estate.

Reference to the court.

84. (1) Any person aggrieved by the decision of the Probate Officer, other than a decision made after reference to the Court of the Chief Kadi under the provisions of section 71 or to the High Court under the provisions of section 83, may, subject to the provisions of any written law relating to civil appeals to the High Court from the judgment of the Court of a Magistrate, appeal to the High Court.

Appeals.

(2) Any person aggrieved with the decision of the High Court on sitting on a reference or an appeal from a decision of the Probate Officer may, subject to the provisions of any written law relating to civil appeals to the Court of Appeal, appeal to such Court.

Protection of
Probate
Officer and
Deputy and
Assistant
Probate
Officers.

85. No action shall be brought against the Probate Officer or any Deputy or Assistant Probate Officer for anything done by him in respect of the execution or the intended execution of any power vested in him by this Act or for anything done by him in the exercise of the office as administrator under any grant of letters of administration taken out by him under this Act if this was done in good faith.

Rules.

86. His Majesty in Council may make rules —

(a) to prescribe for the procedure to be followed in all probate and administration causes and matters;

(b) to prescribe forms;

(c) to fix fees and costs;

(d) to prescribe all matters and things which under or by reason of this Act require to be prescribed; and

(e) generally to give effect to the provisions of this Act.

Application of
rules and
orders of
Probate
Division of
High Court in
England.

87. Until such rules have been made as aforesaid, the rules and orders in relation to matters of probate and administration in the Probate Division of the High Court of Justice in England, and the forms of proceedings in use therein, with such modifications as the circumstances may require, shall, unless the Probate Officer otherwise directs, be followed and adopted in Brunei Darussalam.

Copy of will,
etc.

88. An official copy of the whole or any part of a will, or an official certificate of the grant of any administration, may be obtained from the Probate Officer on the payment of such fees as may be fixed for the same by the rules made under this Act.

89. Where no provision is made by this Act for any matter concerning or connected with the obtaining of probate or the administration of deceased persons' estates, the relevant law in force in England shall apply and have effect in Brunei Darussalam, in so far as it is applicable to the conditions of Brunei Darussalam.

Application of English law.

90. (1) Nothing contained in this Act shall be deemed as ousting the jurisdiction of the High Court or of depriving the High Court of any jurisdiction which it possessed immediately before the coming into force of this Act.

Jurisdiction of the High Court and Probate Officer.

(2) The High Court and its predecessors shall have, and shall be deemed to have had ever since the coming into force of Enactment No. 1 of 1908, exclusive jurisdiction in all contentious probate matters, and shall have, and shall be deemed to have had ever since the coming into force of this Act, concurrent jurisdiction with the Probate Officer in all non-contentious and common form probate business and in all other matters concerned with the administration of the estates of deceased persons in respect of which jurisdiction has been conferred upon the Probate Officer by this Act.

SCHEDULE

(Section 25)

FORM OF RETURN OF ESTATES OF INTESTATES

FORM OF RETURN OF ESTATES OF INTESTATES
Return of estates of intestates for the half-year ending , 19 .

Name of intestate	Amount received on account of estate	Deductions for disbursements	Balance on closing account	Disposal of balance
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Dated the _____ day of _____, 19 ____.

(Signed) (Signed) Probate Officer

SUBSIDIARY LEGISLATION

Rules under section 86

PROBATE AND ADMINISTRATION (PROCEDURE) RULES

ARRANGEMENT OF RULES

Rules

1. Citation.

CITATION UNDER SECTION 31

2. Application for citation.

PETITIONS

3. Applications for grants to be made by petition.
4. Contents of petition.
5. Description of relatives of the deceased.
6. Verification by oath.
7. Powers of attorney.
8. Will or copy will to be filed.
9. Notice of petition.

CAVEATS

10. Form of caveat.
11. Limited caveat.
12. Petitioner to be notified of caveat.
13. Withdrawal of caveat.

CITATIONS BY PETITIONERS

14. Citation by petitioner.
15. Probate Officer may dispense with citations.
16. Appearance to citation.

HEARING OF PETITIONS

17. Appointment for hearing.

UNCONTESTED MATTERS

- 18.** Hearing in chambers.

CONTESTED MATTERS

- 19.** Adjournment into Court.
- 20.** Trial of issue.
- 21.** Where pleadings are ordered.
- 22.** Consolidation.
- 23.** Intervention by person not a party.

ALTERATION OR REVOCATION OF GRANTS

- 24.** Correction of errors in grants.
- 25.** Application to be by motion.
- 26.** Powers of Court.

RESEALING OF GRANTS

- 27.** Application by petition.
- 28.** Copy grant to be annexed to petition.
- 29.** Applications under section 80.
- 30.** Memorandum of resealing.

BOOKS TO BE KEPT

- 31.** Contents of Probate Book.
- 32.** High Court Caveat Book.
- 33.** Caveat Books to be open to inspection.
- 34.** Register of Wills.
- 35.** Inspection of Wills.
- 36.** Receipt for Will.
- 37.** Inspection of register.
- 38.** Forms.

SCHEDULE — Forms

SUBSIDIARY LEGISLATION

Rules under section 86

PROBATE AND ADMINISTRATION (PROCEDURE) RULES

1. These Rules may be cited as the Probate and Administration (Procedure) Rules. Citation.

CITATION UNDER SECTION 31

2. (1) A citation under section 31 of the Act shall be issued on application to a Probate Officer, supported by evidence showing how the applicant claims to be interested in the estate, and how the right of the person to be cited arises. It shall ordinarily require appearance thereto to be entered within 8 days from the day of service thereof, inclusive of the day of such service, and shall be in accordance with Form 1 in the Schedule, with such variations as may be necessary. Application for citation under section 31.

(2) It shall ordinarily be served in the manner prescribed for service of a writ of summons but a Probate Officer may for any sufficient reason order that it be served by substituted service.

(3) Where the person to be cited is resident out of the jurisdiction, or where substituted service is allowed, a special time for appearance shall be limited in accordance with the directions of the Probate Officer.

(4) A citation under this rule shall be entitled as a petition and entered and numbered in the Probate Book.

PETITIONS

3. Applications for probate or letters of administration shall be by petition in one of the forms in Form 2 in the Schedule, with such variations as circumstances require. Application for grants to be made by petition.

4. (1) Petitions shall, in addition to all matters required by Form 2 in the Schedule, state the names and addresses (so far as known to the petitioner) of all persons having a prior or equal right to grant, and on what ground the petitioner claims a grant in priority to each of such persons.

(2) Where the petitioner applies as the attorney of any other person, or for the use and benefit of an infant or person of unsound mind, or other person not qualified to obtain a grant to himself, the petition shall state with full particularity the source of the petitioner's authority, or the grounds on which he claims to be entitled to a grant for the use and benefit of such other person.

5. In all petitions —

Description of relatives of the deceased.

(a) where any person is named as a relative of the deceased, he shall, if a lawful relative, be so described, and where the legality of any such relationship is alleged by virtue of any law or custom foreign to English law, such law or custom shall be mentioned;

(b) where it is alleged that any person is entitled to share in the distribution of an intestate's estate, it shall be stated how such person is related to the deceased, and whether he is the only or one of the next-of-kin by English law or is, otherwise and by what law or customs so entitled.

Verification by oath.

6. Petitions shall be verified by the oath of the petitioner. It shall not be necessary that all the facts stated therein shall be within his personal knowledge, but he shall state his belief in the truth thereof.

Powers of attorney.

7. Where the petitioner applies as the attorney of another person, he may be required to file his power of attorney or to deposit it in the Registry of the Supreme Court.

Will or copy will to be filed.

8. (1) In the case of petitions for probate or letters of administration with a will annexed, the will (or a copy thereof, as the case may be) shall be filed with the petition.

(2) When any such will is not in the English language, there shall be annexed thereto a translation verified by the affidavit of a person qualified to translate it.

Notice petition.

9. The Probate Officer may, when any petition for probate or letters of administration (whether with the will annexed or not) is filed, direct the petitioner to advertise, publish, or serve notice of the petition in such manner and on such persons as he thinks fit.

CAVEATS

Form of caveat.

10. Caveats shall be in accordance with Form 3 in the Schedule, and shall state the nature of the caveator's interest and give an address for service within Brunei.

Limited Caveats.

11. (1) If a caveat contains a statement that the caveator desires only that a will be proved in solemn form and intends to attend and cross-examine the witnesses called to prove the will, the petitioner shall, if he propounds a will, serve on the caveator 2 clear days' notice in writing of the time and place appointed for the hearing of the petition; and the caveator shall be entitled to attend on such hearing and cross-examine any witnesses called by the petitioner.

(2) If the caveat contains a statement that the caveator intends only to require that the sureties to an administration bond be called upon to justify, the Probate Officer shall require any proposed sureties to justify, and the petitioner shall serve on the caveator 2 clear days' notice in writing of any appointment for justification by the proposed securities and shall state thereon their names and addresses.

(3) Caveats within this rule shall be called "limited caveats".

12. The Probate Officer where a petition is filed shall give notice in writing thereof to the petitioner of any caveat filed in the Court.

Petitioner to be notified of caveat.

13. A caveat may be withdrawn by the caveator by filing a notice to that effect in the Court in which the caveat was entered.

Withdrawal of caveat.

CITATIONS BY PETITIONERS

14. (1) Before proceeding with a petition, the petitioner shall, subject to the provisions of rule 15, cause citations, in Form 1 in the Schedule, to be served upon —

Citation by petitioner.

(a) all persons having a prior or equal right to probate or administration, except such as have renounced that right, and

(b) any person who has filed or files a caveat in respect of the deceased's estate, other than a limited caveat;

Provided that where, on the death of an executor or the survivor of executors who have proved a will, application is made for letters of administration with the will annexed, it shall not be necessary to cite any executor who has not proved the will, unless in any case the Probate Officer so directs.

(2) Citations under this rule shall be served in the manner prescribed for citations under rule 2.

15. (1) Where any person having such prior or equal right is not within the jurisdiction, or where his place of residence is unknown, or where such persons are numerous and it would cause undue delay and expense to cite them all, the petitioner may apply to the Probate Officer for directions for citations, and the Probate Officer may make such order for dispensing with service of a citation on any person as he deems fit.

Probate Officer may dispense with citations.

(2) An application under this rule shall be supported by affidavit stating all the material facts to the best of the petitioner's knowledge and belief.

16. (1) A person served with a citation under rule 14 may, within 8 days from the service thereof, or within such further time as may in any case be limited by the citation, cause an appearance to be entered thereto in the manner prescribed for entry of appearance to a writ of summons.

Appearance to citation.

(2) The provisions of Order 12, rule 11, shall apply, *mutatis mutandis* to an appearance to a citation.

HEARING OF PETITIONS

Appointment for hearing.

17. (1) The petitioner may at any time after the expiration of the time limited for appearance to all citations, or, if no citation is issued, after 8 days from the filing of the petition, obtain an appointment for the hearing of the petition.

(2) Two clear days' notice in writing of such appointment shall be given by the petitioner to all persons who have entered appearance to a citation.

UNCONTESTED MATTERS

Hearing in Chambers.

18. Where no appearance has been entered to any citation, and no limited caveat within rule 11 (1) has been filed, the petition may be heard by the Probate Officer in Chambers and evidence in support of the petition may be by affidavit.

CONTESTED MATTERS

Adjournment into Court.

19. (1) Where appearance has been entered to any citation, or where a limited caveat within the provisions of rule 11 (1) has been entered and not withdrawn, and it appears at the time appointed for the hearing of the petition that the petition is contested, it shall be adjourned into Court.

Powers of Court on adjournment.

(2) The Court may on such adjourned hearing either —

(a) dispose of the matter in dispute in a summary manner, and grant or refuse the petitioner's prayer, or make any other order that is just; or

(b) settle the terms of an issue to be tried between the parties; or

(c) order that pleadings be delivered, and the matter proceed as an action.

Trial of issue.

20. If an issue is ordered to be tried, the plaintiff on the issue may set down the same for trial in the manner prescribed for the trial of actions; and on such trial the Court may make such order for representation of the deceased's estate as is just.

Where pleadings are ordered.

21. (1) If it is ordered that pleadings be delivered, and the matters proceed as an action, the order to that effect shall be entered as an action in the Cause Book, entitled —

"In the estate of (the deceased)

Between (the petitioner)

Plaintiff

and

Defendant".

(Caveator or person cited)

(2) A copy of the petition shall be attached to the order, and shall for the purposes of the action be deemed a statement of claim. The defendant shall have such time, commencing from the date of the order, for delivery of his defence as is prescribed for the delivery of a defence to a statement of claim, and the matter shall in all other respects proceed and be subject to the rules relating to the conduct of an action commenced by writ of summons.

22. Where at any time more than one petition is pending in respect of any deceased persons' estate, the Probate Officer may order that all such petitions be consolidated in the manner prescribed for the consolidation of actions.

Consolidation.

23. A person not a party to a probate action may apply to a Judge for leave to be added as a party thereto. The application shall be supported by affidavit showing how the applicant is interested in the estate, and the reasons for the intervention sought.

Intervention by person not a party.

ALTERATION OR REVOCATION OF GRANTS

24. Any accidental error or omission in a grant made under the Act may be ordered to be rectified on application to the Probate Officer, and the grant may thereupon be amended accordingly.

Correction of errors in grants.

25. (1) Applications to alter or revoke grants of probate or letters of administration shall be made by motion, supported by affidavit setting out the facts.

Application to be by motion.

(2) The notice of motion, to be served on the executor or administrator or other persons affected, shall be an 8 days' notice, unless the Probate Officer shall otherwise order.

26. (1) Upon any such motion the Probate Officer may deal with the matter summarily or may order the matter to proceed as an action.

Powers of Court.

(2) If the matter is ordered to proceed as an action, the applicant shall be the plaintiff and the respondent the defendant. The plaintiff shall, within 8 days commencing from the date of the order, or such further time as the Probate Officer may allow, deliver a statement of claim, and the matter shall then be entered in the Cause Book as an action and shall be subject to the rules relating to the conduct of an action commenced by writ of summons.

RESEALING OF GRANTS

27. (1) Applications for resealing probates or letters of administration shall be by petition, verified by affidavit, in accordance with Form 5 in the Schedule with such variations as circumstances require. They may be made by the original grantees or one of them, or by the duly authorised attorney of one or more of them. Where the petition is by an attorney, the power of attorney may be required to be filed or deposited in the manner prescribed by rule 7.

Applications by petition.

(2) Where a period exceeding 3 years has elapsed since the death of the deceased, the petitioner shall explain the reason for the delay.

(3) If such explanation is unsatisfactory, such further proof of the cause of such delay shall be required by the Probate Officer as he thinks fit.

(4) Petitions shall contain an address for service within Brunei Darussalam where writs of summons, notices and other documents relating to the estate of the deceased may be left or served; and every writ, notice or other documents so left or served shall be deemed to have been duly served upon the executor or administrator by or on whose behalf the application is made.

Copy grant to be annexed to petition.

28. The copy grant required to be deposited by section 78 of the Act shall be annexed to the petition and verified as a true copy by the affidavit.

Applications under s.80.

29. Application under section 80 of the Act shall be by summons to be served on the petitioner.

Memorandum of resealing.

30. On resealing any copy of a Grant the Probate Officer shall endorse thereon or affix thereto a memorandum in accordance with Form 6 in the Schedule with such variations as the circumstances may require.

BOOKS TO BE KEPT

Contents of Probate Book.

31. (1) The Probate Book to be kept by the Probate Officer at the High Court shall contain entries regarding —

- (a) all petitions for probate or letters of administration filed in the High Court;
- (b) all applications for altering or revoking grants;
- (c) petitions for resealing grants;
- (d) orders made on any such petitions or applications;
- (e) caveats entered in respect of filed petitions;
- (f) probate actions pending;
- (g) citations under section 31 of the Act.

(2) Matters referred to in paragraphs (a), (b), (c) and (g) of Clause 1 of this rule and shall be numbered consecutively in each year.

High Court Caveat Book.

32. The Caveat Book to be kept by the Probate Officer shall contain entries of all caveats entered in the High Court or of which notice is received by the Probate Officer under the provisions of rule 14 and of all withdrawals of caveats.

Caveat Books to be open to inspection.

33. Caveat Books shall be open to inspection by the public.

Register of Wills.

34. (1) When any will or other testamentary document has been proved or resealed in the High Court, such will or document (or, where it is in a foreign

language, an official translation thereof) shall be copied or a copy thereof affixed into a book, to be called the Register of Wills and kept by the Probate Officer.

(2) The original of any such document so copied, if in the custody of the Court, shall be deposited in such place of safe custody as the Chief Justice may appoint, and shall not be taken therefrom or inspected except by leave of and subject to the directions of the Probate Officer and payment of a fee of \$5 for such inspection.

(3) The register shall show the date of each will and the place where it is deposited, and shall contain an index under the names of the respective testators.

35. No original will in the custody of the High Court may be inspected or copied save in the presence of an officer of the Court under the directions of the Probate Officer.

Inspection of Wills.

36. Upon any person bringing into the Registry any will or document purporting to be testamentary, the Probate Officer shall give him a receipt therefor.

Receipt for Will.

37. The register of wills may be inspected, and copies made therefrom, at any time during office hours upon payment of a fee of \$5 for such inspection.

Inspection of register.

38. The form of the administration bond, as required by section 43 of the Act, shall be in accordance with Form 3 in the Schedule.

Forms.

LAWS OF BRUNEI

50

CAP. 11

Probate and Administration

[Subsidiary]

SCHEDULE

Form No. 1

CITATION

(Rule 2)

(General Heading as in Form No. 2)

BY THE GRACE OF GOD,

WE, HASSANAL BOLKIAH, ETC.

To E.F. of

Whereas C.D. of has presented a Petition to Our High Court at praying for a grant of of the said A.B. deceased to him as (here describe the capacity of the Petitioner as in his Petition) and that or whereas it appears by the affidavit of C.D. of that also claims to be of the said A.B. deceased and that you are (executor or one of the next of kin, stating relationship as the case may be) of the said A.B. deceased.

Now this is to command you that, within days after service hereof inclusive of the day of such service, you do enter or cause to be entered an appearance for you in Our said Court, and show cause why such should not be granted to the said C.D., and take notice that, in default of your so appearing and showing cause in Our said Court within the said days, you will be deemed to have renounced all right and title to such and Our said Court will make such grant to the said C.D. or such other person as may seem expedient, your absence notwithstanding.

Witness & c.

N.B.—This citation is to be served within 12 calendar months from the date hereto.

The said E.F. may appear hereto by entering an appearance either personally or by advocate at the Registry of the Supreme Court at

Endorsement to be made on the Citation

This citation was issued by G.H. of advocate for the said C.D., or by the said C.D. in person who resides at

Endorsement to be made after Service

This citation was served on
by me this day of , 19.....

(Signed)

L.M.

Form No. 2

PETITION FOR PROBATE

(Rule 3)

In the High Court of Brunei Darussalam

In the Estate of

A. B. Deceased

Probate

19 No.

To the Honourable the Judges of the Supreme Court.

The Petition of C.D., of

Showeth,

1. A.B., who resided at died on
the day of 19.....,
at domiciled in

2. The whole of the estate and effects of the deceased moveable and
immovable within the jurisdiction of this Court, exclusive of what he may
have been possessed of or entitled to as a trustee for any other person or
persons and not beneficially, and without deducting anything on account of
the debts due and owing from him, other than the principal of any mortgage
debt secured upon any immovable property, do not exceed in value the sum of
Dollars to the
best of the Petitioner's knowledge, information and belief.

3. The Petitioner believes the paper writing hereto annexed and
marked A to contain the true and original last will and testament (with a
codicil thereto) of the said A.B. deceased.

4. The Petitioner is the sole executor (or one of the executors) named
in the said will (E.F. of the other executor
therein named died on the day

of or on the day of by instrument duly signed renounced probate and execution of the said will).

The Petitioner prays that Probate of the said Will (and Codicil) of the said A.B. may be granted to him (leave being reserved to G.H. to come in and prove the same or as the case may be).

ADMINISTRATION WITH WILL

In place of paragraph 4 of Form No. 2 proceed:

4. The Testator did not in his said Will name any executor, (or E.F. the executor named in the said Will died on the day of or has renounced probate and execution thereof), and the Petitioner is the (state relationship if any) of the said deceased, and the residuary legatee or one of the residuary legatees named in the said Will.

or the Testator (died a widower or bachelor (if so) and) did not in his Will name any executor or residuary legatee and the Petitioner is the (as in Rule 5(a)).

ADMINISTRATION

In place of paragraphs 3 and 4 of the above Form proceed:

3. The said A.B. deceased who was a British subject and a Christian (or as the case may be) died intestate (a widow, bachelor or spinster, as the case may be) and the Petitioner is the (as in Rule 5(b)).

or is a creditor of the said deceased for the sum of Dollars due for (money lent by me to him or as the case may be).

4. *I.H.* of has prior right to the Petitioner being (state relationship) but he on the day of by writing signed by him renounced such right.

If the Petitioner claims the representative of another person then proceed:

5. The Petitioner claims as the representative of X.Y. to whom letters of administration were granted by this Court on the day of

In all cases add the following paragraph:

The address for service of the Petitioner is

Form No. 3

ADMINISTRATION BOND

(Rule 38)

(General Heading as in Form No. 2)

Know all men by these presents that we *A.B.* of,
C.D. of , and *E.F.* of are jointly
and severally bound unto His Highness the Sultan and Yang Di-Pertuan in the
sum of Dollars of good and lawful money of Brunei
Darussalam, to be paid to the Treasury for the time being, for which payment
to be well and truly made we bind ourselves and each of us, our heirs,
executors and administrators, by these presents.

Sealed with our Seals this day of , 19.....

The Condition of the Obligation is such that if the above-bounden *A.B.*
the Administrator of the Estate and Effects of *X.Y.* late of
deceased, who died on the day of , 19..... ,
do well and truly administer according to law the moveable and immovable
property of the said deceased which has or shall come to his hands, possession
or knowledge or into the hands or possession of any other person for him, then
this Obligation to be void and of none effect but otherwise to remain in full
force and virtue.

Truly translated to the obligators in
the language by
me A Sworn Interpreter of the
Court.

Signed, sealed and delivered
by the above-named
in the presence of

Magistrate/Registrar

Form No. 4

CAVEAT (Rule 10)

(General Heading as in Form 2)

Let nothing be done in the goods of *A.B.* late of
deceased, who died on the day of
at , unknown to *C.D.* of
having interest.

LAWS OF BRUNEI

54

CAP. 11

Probate and Administration

[Subsidiary]

Dated this day of , 19.....

(Signed) *C.D.*

Address for service

or

E.F. Advocate for *C.D.*

Address for service

Form No. 5

FORM OF PETITION FOR RESEALING

(Rule 27)

(General Heading as in Form 2)

To the Honourable the Judges of the Supreme Court.
The Petition of *C.D.* of

Showeth:

1. *A.B.* late of deceased died on the day of , 19..... ,
domicile in (*or* without any known
domicile or without any fixed domicile or as the case may be).

2. The said deceased died intestate and Letters of
Administration of his estate and effects of which a true copy is hereunto
annexed were duly granted to your Petitioner (*or* to *E.F.* of
.....) by the (name of Court).

Or 2. The said deceased duly executed his last Will and Testament
dated the day of , 19..... ,
and Probate thereof, of which a true copy is hereunto annexed, was duly
granted to your Petitioner the executor thereof (*or* to *E.F.* of
the executor thereof) by the (name of Court).

Or 2. The said deceased duly executed his last Will and Testament
dated the day of , 19..... ,
and Letters of Administration with such Will and Testament annexed thereto,
of which Letters and Will a true copy is hereunto annexed, were duly granted
to your Petitioner (*or* to *E.F.* of) by the (name of Court).

3. The said deceased did not reside or carry on business in this Colony
at any time within 12 months next before his death.

4. So far as your Petitioner is aware there are no debts due from the estate of the said deceased to creditors residing in this Country.

5. Your Petitioner has been duly authorised by the said *E.F.* by Power of Attorney dated the day of , 19....., which has been deposited in the Supreme Court at under

6. The address for service under rule 23(4), is —

Your Petitioner prays that the Probate or Letters of Administration may be sealed with the Seal of this Court in accordance with the provisions of the Probate and Administration (Procedure) Rules.

(Signed).

I, C.D. make oath and say that the statements contained in the foregoing petition are to the best of my knowledge, information and belief in all respects true.

Sworn at
the day of
19.....,
Before me

(Name and designation of officer administering oath)

Form No. 6

MEMORANDUM OF RESEALING

(Rule 30)

(General Heading as in Form 2)

Be it known that this (certified copy) Grant of Probate of the Will (or Letters of Administration of the Estate or Letters of Administration with the Will annexed of the Estate, as the case may be) of the abovenamed *A.B.* deceased late of (give address and other particulars as in original Grant) having been produced, and a copy thereof deposited with this Honourable Court, is now sealed this
day of , 19..... , pursuant to the Probate
on the petition of *C.D.* of the executor (or one of the executors) named in the Will (or by the administrator named in the Letters of Administration, or if the petition be by an attorney, of *E.F.* as attorney on behalf of *C.D.* (the original grantee) or as the case may be).

Chief Registrar