

**LAWS OF BRUNEI**

**REVISED EDITION 1984**

**CHAPTER 11**

**PROBATE AND ADMINISTRATION**

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**PROBATE AND ADMINISTRATION ACT**

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

18 of 1955  
3 of 1957  
S. 99/59  
7 of 1979

*Commencement: 1st February 1956*

**PART I**

**PRELIMINARY**

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

**2.** In this Act —

Interpreta-  
tion

“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 and, where the estate of a deceased person who was a Muslim domiciled in Brunei 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, and in relation to the estates in Brunei 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 form 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;

(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.

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.

Powers as to requiring attendance of and examining parties and witnesses

(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

Power of ordering production of testamentary writings

**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.

(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 —

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

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

(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.

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

**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.

Person having or finding will to produce it

**17.** (1) When any person dies leaving a will within Brunei, 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.

(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

**18.** Where any person dies, whether in Brunei or elsewhere, leaving estate in Brunei 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.

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

**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 —

Cases in which Probate Officer is entitled to administration

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

(b) where a person dying intestate, whether in Brunei or elsewhere, has left property situate in Brunei and the next of kin of such person who are resident in Brunei 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 or elsewhere, has left property situate in Brunei 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 or elsewhere, has left property situated in Brunei and the next of kin of such person who are resident in Brunei 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 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 ser-

Saving as to estates of certain persons

vices of Her 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.

Commission  
on moneys  
received

**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.

Keeping of  
books of  
account

**23.** (1) The 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.

(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.

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.

Half-yearly  
returns

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.

Redress  
against  
Probate  
Officer in his  
capacity as  
administrator

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

Will to be  
deposited

(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 that the Probate Officer is satisfied that the provisions thereof do not conflict with Muslim law as practised in Brunei.

Persons  
entitled to  
probate and  
letters of  
administration

**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.

(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, and in such case probate or administration shall be granted to the person entitled according to Muslim law as practised in Brunei.

## 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

Effect of  
executor  
renouncing  
probate

**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 not  
taking  
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.

## Administration

Appointment  
of  
administrator  
of intestate's  
estate

**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, 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.

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

(2) If —

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

(b) there is no other person present in Brunei 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.

**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, it shall be lawful for the Probate

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

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, 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.

Payment of  
costs relating  
to special  
administra-  
tion

**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.

Case of infant  
being sole  
executor

**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.



(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 person entitled unfit to act

38. No probate of 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 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.

Lunatics

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 of trust 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.

Letters of administration to collect and preserve property

Grants of  
effects  
unadminis-  
tered

**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.

Amount of  
bond

**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.

**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*.

**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 probate or administration subsequently revoked

**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. Validation of payments made under defective 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.

Powers of Probate Officer sitting in office

**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 the Probate Officer with regard to costs

**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.

## 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, 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, to order his examination, upon interrogatories or otherwise, before any person named for that purpose in the order.

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

Use of affida-  
vit sworn out  
of Brunei

**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.

Rules of  
evidence

## PART IV

## RULES FOR ADMINISTRATION OF PROPERTY

Duties of  
executors and  
administra-  
tors

**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, in accordance with Muslim law as practised in Brunei;

(ii) where the deceased was not a Muslim but was an Asian domiciled in Brunei 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, 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, 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  
administra-  
tion 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  
estate  
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.

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

**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.



(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.

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.

Executors' assent necessary to complete devisee's title

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 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

Cap. 77

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

72. Whenever any person who is a native of China dies intestate leaving property within Brunei, 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 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 departments 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 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, 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.

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.

Validity of payment made under s.73

#### Estate 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.

Summary administration of estates of subordinate police and prison officers

(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

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 on board of any vessel which afterwards arrives in Brunei —

Administration of estate of passenger dying on voyage to Brunei

(a) where any passenger has died on board any vessel in the course of a voyage to Brunei, the master of the vessel in which such passenger has died shall, immediately upon the arrival of the vessel in Brunei, 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” means the voyage of a passenger which would in the ordinary course terminate in Brunei 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 BRÚNEI

Interpreta-  
tion

77. In this Part —

“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 as if granted by that officer.

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

Conditions to be fulfilled before sealing

(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; 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 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.

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 of probate or letters of administration admissible

**82.** The power conferred on 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 shall apply to applications for sealing under this Part, and subject to any exceptions and modifications

Rules as to practice under this Part

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.

## PART VII — MISCELLANEOUS

Reference to  
the court

**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.

Appeals

**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.

(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.

86. His Majesty in Council may make rules —

*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.

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.

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

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.

Copy of will, etc.

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, in so far as it is applicable to the conditions of Brunei.

Application of English law

Jurisdiction  
of the High  
Court and  
Probate  
Officer

**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.

(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.



