Chapter 122. Deception

SECTION ANALYSIS

§ 3045. Deception

Any person who knowingly sells, offers to sell, or attempts to sell the right to participate in a pyramid sales scheme, as defined in the Consumer Fraud and Deceptive Business Practices Act, codified in title 12A, chapter 6 of this Code, commits a misdemeanor and, in addition to any fines and penalties imposed by the Consumer Fraud and Deceptive Business Practices Act, may be imprisoned not more than one year.—Added May 17, 2006, No. 6833, § 2, Sess. L. 2006, p. 44.

TITLE FIFTEEN

Decedents' Estates and Fiduciary Relations

PART I. DECEDENTS' ESTATES

CHAPTER ANALYSIS SECTIONS

PART II. ADMINISTRATION OF ESTATES

PART III. FIDUCIARY RELATIONS

63. Uniform Durable Power of Attorney Act [Repealed.]

HISTORY

Editor's note. Act No. 7150 repealed Chapters 1–51 and 63 of Title 15 related to Decedents' Estates and Fiduciary Relations, and enacted the Virgin Islands Uniform Probate and Fiduciary Relations Code, effective May 1, 2010. Act No. 7174 amended the effective date, extending it to January 1, 2011. Act No. 7241 repealed additional chapters of former Title 15, amended various sections of the Uniform Probate Code, including extending its effective date again to July 1, 2011. Then, Act No. 7254 repealed Articles II and III of the Uniform Probate Code and reenacted Chapters 1–5 and 11–29 of the former Title 15 relating to Decedents' Estates and Fiduciary Relations. The effective date of Act No. 7254 is April 9, 2011. Subsequently, Act No. 7267 again extended the effective date of the Uniform Probate Code to October 1, 2011. In consultation with the Chief Legal Counsel, the amendments by Act No. 7254 and 7267 are being given effect.

Revision note—1957. Chapters 1 and 3 of Part I were derived from the New York Decedent Estate Law, and provide a new body of law relating to wills and descent and distribution for the Virgin Islands.

—Prior law. Prior law will continue to apply to matters arising from deaths which occurred prior to the effective date of this Code. Such prior law relating to wills and the descent and distribution of property is set out below.

The 1921 Codes, Title II

CHAPTER TEN

OF THE DISPOSITION OF PROPERTY BY WILL

"Section 1.—Every person of twenty-one years of age and upwards, of sound mind, may by last will devise all his or her property, real or personal, saving in the case of a married man to the widow her dower, and saving in the case of a married woman any rights which her husband may have as tenant by curtesy.

"Section 2.—Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator, at the request of the testator and in the presence of each other.

"Section 3.—If, after making a will disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

"Section 4.—A will made by an unmarried person shall be deemed revoked by his or her subsequent marriage.

"Section 5.—A bond, covenant, or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

"Section 6.—A charge or incumbrance upon any real or personal estate for the purpose of

securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

"Section 7.—If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportional part.

"Section 8.—[There was no section 8 in Title II, ch. 10, of the 1921 Codes].

"Section 9.—If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

"Section 10.—When any estate shall be devised to any child or grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants such descendants shall take the estate, real and personal as such devisee would have done in case he had survived the testator.

"Section 11.—If after making any will the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

"Section 12.—Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

"Section 13.—No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within ten days after they were spoken.

"Section 14.—No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased that they may contest the will if they think proper.

"Section 15.—Any person not an inhabitant of, but owning property, real or personal, in the Virgin Islands may devise or bequeath such property by last will executed according to the laws in force in the islands or the state or territory or foreign country in which the will may be executed and if such will be probated in any State, Territory, or other district or possession of the United States, or in any foreign country or state, copies of such will and of the probate thereof, certified by the clerk of the court in which such will was probated, with the seal of the court affixed thereto, if there be a seal together with a certificate of the Chief Judge or presiding magistrate, that the certificate is in due form and made by the clerk or other person having the legal custody of the record, shall be recorded in the same manner as wills executed and proved in the island, and shall be admitted in evidence in the same manner and with like effect.

"Section 16.—Any such will may be contested and annulled within the same time and in the same manner as wills executed and proved in the Virgin Islands.

"Section 17.—If any person has attested or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting real or personal

estate other than or except charges in lands, tenements, or hereditaments for the payment of any debt or debts shall be thereby given or made, such devise, legacy, estate, gift or appointment shall, so far only as concerns such person attesting the execution of such will or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

"Section 18.—If any such witness would be entitled to any share in the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

"Section 19.—If the execution of such will be attested by a sufficient number of other competent witnesses, as required by the code, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

"Section 20.—If by any will any real estate be charged with any debt, and any creditor whose debt is so charged has attested the execution of such, every such creditor shall be admitted as a witness to the execution of such will.

"Section 21.—If any person has attested or shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have released such bequest or legacy and renounced without valuable consideration all benefits under said will, such person shall be admitted as a witness to the execution of such will.

"Section 22.—If any legatee or devisee who has attested or shall attest the execution of any will shall have died or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest on a tender made thereof such legatee or devisee shall be deemed a legal witness to the execution of such will.

"Section 23.—No person to whom any estate, gift, or appointment shall be given or made which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest or tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in section three of chapter seventeen hereinafter any profit or benefit of or from such estate, interest, gift, or appointment, so given or made to him by such will, or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

"Section 24.—[Provisions of this section were carried into Title 28 of this Code.]

"Section 25.—A devise of real property shall be deemed and taken as a devise of all the estate or interest of the testator therein subject to his disposal, unless it clearly appears from the will that he intended to devise a less estate or interest; and any estate or interest in real property acquired by anyone after the making of his or her will shall pass therefrom that such was not the intention of the testator; nor shall any conveyance or disposition of real property by anyone after the making of his or her will prevent or affect the operation of such will upon any estate or interest therein subject to the disposal of the testator at his or her death.

"Section 26.—When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

"Section 27.—The term 'will', as used in this chapter, shall be so construed as to include all codicils as well as wills.

"Section 28.—All courts and others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all

matters brought before them.

"Section 29.—[Provisions of this section were carried into Title 28 of this Code].

"Section 30.—A last will and testament, except when made by a soldier in actual military service or by a mariner at sea, is invalid unless it be in writing and executed with such formalities as are required by law.

"Section 31.—A written will can not be revoked or altered otherwise than by another written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities required by law for the will itself; or unless the will be burnt, torn, cancelled, obliterated, or destroyed with the intent and for the purpose of revoking the same by the testator himself, or by another person in his presence, by his direction and consent and when so done by another person the direction and consent of the testator, and the fact of such injury or destruction shall be proved by at least two witnesses."

CHAPTER SIXTEEN

OF THE DESCENT OF REAL PROPERTY

"Section 1.—When any person shall die seized of any real property, or any right thereto, or entitled to any interest therein in fee simple or for the life of another, not having lawfully devised the same, such real property shall descent, subject to his debts, as follows:

"(1) In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally; or otherwise they shall take according to the right of representation.

"(2) [St. Croix] If the intestate shall leave no lineal descendants, such real property shall descend to his wife; or if the intestate be a married woman and leave no lineal descendants, then such real property shall descend to her husband; and if the intestate leave no wife nor husband, then such real property shall descend to his or her father, and or, mother.

"(2) [St. Thomas and St. John] If the intestate shall leave no lineal descendants, the half of such real property shall descend to his wife, and the other half to his father, and or mother, or to the brothers and sisters of the intestate and to the issue of any deceased brother and sister by right of representation in the order of succession herein mentioned; or if the intestate be a married woman, the half of such property shall descend to her husband, and the other half to her father, and or mother, or to her brothers and sisters and the issue of any deceased brother and sister by right of representation in the order herein mentioned. If the intestate leave surviving a husband or widow, as the case may be, and no child, father, mother, or lineal descendants, brother, sister, or the issue of a brother or sister, the surviving husband or widow, as the case may be, shall be entitled to the whole. (As amended Ord. Col. C. St. T. and St. J. App. Apr. 13, 1927.)

"(3) [St. Croix] If the intestate shall leave no lineal descendants, neither husband nor wife nor father or mother, such real property shall descend in equal shares to the brothers and sisters of the intestate and to the issue of any deceased brother or sister by right of representation.

"(3) [St. Thomas and St. John] If the intestate shall leave no lineal descendants, neither husband nor wife, such real property shall descend to his or her father, and or mother, or in the absence of such ancestors, in equal shares to the brothers and sisters of the intestate and the issue of any deceased brother or sister by right of representation. In the absence of father, mother, brother, sister, and the issue of any brother or sister such real property shall be inherited by the grand parents of the deceased and their descendants by right of representation. (As amended Ord. Col. C. St. T. and St. J. App. Apr. 13, 1927.)

"(4) [St. Croix] If the intestate shall leave no lineal descendants, neither husband nor wife nor father, mother, brother nor sister nor descendants of brother and sister such real property shall descend to his or her next of kin in equal shares, excepting that when there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through a more remote ancestor. (As added Ord. Col. C. St. C. App. May 27, 1927.)

"(4) [St. Thomas and St. John; (5) St. Croix] If the intestate shall leave one or more children, and the issue of one or more deceased children, and any of such surviving children shall die under age all such real property that came to such deceased child by inheritance from such intestate shall descend in equal shares to the other children of such intestate who shall have died, by right of representation. But if all the other children of such intestate shall also be dead, and any of them shall have left issue, such real property so inherited by such deceased child shall descend to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise they shall take by right of representation.

"(5) [St. Croix—same as paragraph (4), St. Thomas and St. John, set out immediately above].

"(5) [St. Thomas and St. John] If the intestate shall leave no lineal descendants or kindred as above provided, or recognized illegitimate children subject to proof of filiation approved by the District Court, such real property shall escheat to the Municipality.

"(6) [St. Croix, only] If the intestate shall leave no lineal descendants or kindred as above provided, such real property shall escheat to the Municipality."

CHAPTER SEVENTEEN

OF THE DISTRIBUTION OF PERSONAL PROPERTY

"Section 1.—When any person shall die possessed of any personal property, or of any right to or interest therein, not having lawfully bequeathed the same, such personal property shall be applied and distributed as follows:

"(1) If the intestate shall leave a widow, she shall be allowed all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered; and this allowance shall be made as well as when the widow waives the provision made for her in the will of her husband as when he dies intestate.

"(2) The personal property of the intestate remaining after such allowance shall be applied to the payment of the debts of the deceased and the charges and expenses of administration as provided by law.

"(3) [St. Croix] The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, as provided in this ordinance, and in the like proportion or share, except as herein otherwise provided.

"(3) [St. Thomas and St. John] The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, as provided in this ordinance, and in the like proportion or share.

"(4) [St. Croix] If the intestate shall leave a husband and issue, such husband shall be entitled to receive the residue of the personal property.

"(4) [St. Thomas and St. John] If there be no husband, widow, kindred or recognized illegitimate children subject to proof of filiation to be approved by the District Court, entitled to inherit of the intestate, the whole of such residue shall escheat to the Municipality.

"(5) [St. Croix, only] If the intestate leave a widow, such widow shall be entitled to receive the whole of such residue of the personal property.

"(6) [St. Croix, only] If there be no husband, widow, or kindred entitled to inherit of the intestate, the whole of such residue shall escheat to the Municipality."

CHAPTER EIGHTEEN

OF MISCELLANEOUS PROVISIONS CONCERNING THE DESCENT AND DISTRIBUTION OF PROPERTY

"Section 1.—An illegitimate child shall be considered an heir of its mother, and shall inherit or receive her property, real or personal, in whole or in part, as the case may be, in like manner as if such child had been born in lawful wedlock; and such child shall be entitled to inherit or receive, as representing his mother, any property real or personal, of the kindred, either lineal or collateral, of such mother; Provided, When the parents of such child have formally married such child shall not be regarded as illegitimate within the meaning of this code, although such formal marriage shall be adjudged to be void.

"Section 2.—If an illegitimate child shall die intestate without leaving a widow, husband, or lawful issue, the property, real and personal, of such intestate shall descend to or be received by the mother; or failing her by her ascendants; but if after the birth of an illegitimate child the parents thereof shall intermarry, such child shall be considered legitimate to all intents and purposes.

"Section 3.—The kindred of the half blood shall inherit or receive equally with those of the whole blood in the same degree.

"Section 4.—Any property, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descendant shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant toward his share of the intestate's estate.

"Section 5.—If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further share or portion in the division or distribution of the estate, but shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, such heir shall be entitled to so much more as will give him his full share or portion of the estate of the intestate.

"Section 6.—If any such advancement is made in real property the value thereof shall, for the purpose of the last section, be considered as part of the real property to be divided; and if the advancement be either in real or personal property, and shall in either case not exceed the share or portion of such real or personal property that would come to the heirs so advanced, such heir shall not refund any part of it, but shall take or receive so much less out of the whole share equal to those of the other heirs who are in the same degree with the heir so advanced.

"Section 7.—All grants and gifts shall be deemed to be made in advancement if so expressed in the grant or gift, or if so charged, in writing, by the intestate, or acknowledged, in writing, to be so made by the child or other descendant to whom it is made, and not otherwise.

"Section 8.—If the value of the property, real or personal so advanced is expressed in the conveyance or writing whereby the same is granted or given, or in the charge thereof made by the intestate, or in the acknowledgment made by the party receiving it, in the division and distribution of the estate, such advancement shall be considered of the value so expressed; otherwise, it shall be estimated at its value when granted or given.

"Section 9.—If any child or lineal descendant to whom advancement is made shall die before the intestate, leaving issue, such advancement shall be deemed made to such issue and the division and distribution of the estate shall be made accordingly.

"Section 10.—Nothing contained in this chapter shall affect or impair the estate of a husband as tenant by the curtesy, nor that a widow as tenant in dower.

"Section 11.—The word 'issue', as used in this chapter, includes all the lineal descendants of

the ancestor; and the term 'real property' includes all lands, tenements, and hereditaments, and rights thereto, and all interests therein, whether in fee simple or for the life of another. The term 'personal property' includes all goods and chattels, moneys, credits and effects of whatever nature not included in the term 'real property'. Inheritance 'by right of representation' takes place when the lineal descendants of any deceased heir take the same share or portion of the estate of an intestate that the parent of such descendant would have taken if living. For the purpose of this code a posthumous child is to be deemed living at the death of its parents."

PART I. DECEDENTS' ESTATES

Chapter 1. Wills

SECTION ANALYSIS

CROSS REFERENCES

Living wills generally, see section 190 et seq. of Title 19.

Procedure in probate and other fiduciary matters, see Rule 190 et seq. of the Rules of the Superior Court of the Virgin Islands.

Proof of wills and appointment of executors and administrators, see section 231 et seq. of this title.

ANNOTATIONS

1. **Applicability.** Where living quarters were made uninhabitable due to negligence of now deceased water supplier hired by tenant, and where landlord was not liable under respondeat superior, negligent entrustment or contract theories, tenant's remedy, if any, lay in filing claim against supplier's estate. Wilson v. Joseph, 28 V.I. 29, 1992 V.I. LEXIS 17 (Terr. Ct. St. C. 1992).

§ 1. Definitions

When used in a statute, in a will or in any other written instrument prescribing the devolution of property rights and unless the statute, the will or the instrument expressly or impliedly declares otherwise, the terms "heirs", or "heirs at law", "next of kin" and "distributees" and any terms of like import shall be construed to mean the distributees, including a surviving spouse, who are defined in section 84 of the title.

HISTORY

Revision note—1957. Suggested by former New York Decedent Estate Law § 47-c (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

CROSS REFERENCES

Definition of "will", see section 41 of Title 1 of this Code.

ANNOTATIONS

Cited. Cited in In re Estate of Lilienfeld, 22 V.I. 131, 1986 V.I. LEXIS 9 (Terr. Ct. St. T. and St. J. 1986).

§ 2. Capacity to devise

All persons, except idiots, persons of unsound mind and persons under eighteen years of age, may devise their real property, by last will and testament, duly executed, according to the provisions of this chapter.—Amended Nov. 29, 1972, No. 3334, Sess. L. 1972, p. 607.

HISTORY

Revision notes—1957. Derived from section 10 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provisions on the subject in former law were contained in the 1921 Codes, Title II, ch. 10, § 1. See note preceding section 1 of this title.

Amendments—1972. Reduced age from "21" to "18".

ANNOTATIONS

1. Jurisdiction.
2. Construction.

1. Jurisdiction. Subsequent petitioning of court of other jurisdiction to grant Letters of Administration of decedent's estate as if she died without leaving valid will did not preempt or deprive Territorial Court [now Superior Court] of jurisdiction. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

Territorial court [now Superior Court] had jurisdiction to determine whether will of long-time resident of Virgin Islands who died in Florida was valid and, if so, to admit it to probate. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

Will of mother who resided in Virgin Islands for many years but died in Florida met and fulfilled all requisite legal criteria and therefore could be proved in Virgin Islands jurisdiction. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

2. Construction. Testatrix was not of unsound mind when she signed her third will while in hospital for treatment of advanced cervical cancer, which included administration of narcotic medication, where evidence showed that from 10:00 a.m. to 7:00 p.m. on day in question, testatrix did not have any complaints and was totally oriented and comfortable; she had opportunity to and did read the will before signing it at approximately 6:00 p.m., and three witnesses all testified that she was alert, recognized and joked with them, and understood that what she was reading and signing was her will. In re Estate of Savain, 39 V.I. 77, 1998 V.I. LEXIS 18 (Terr. Ct. St. T. and St. J. 1998).

Cited. Cited in Rhymer v. Rhymer, 21 V.I. 176, 1984 V.I. LEXIS 2 (Terr. Ct. St. T. and St. J. 1984).

§ 3. Real property which may be devised

Every estate and interest in real property descendible to heirs, may be devised as provided in this chapter.

HISTORY

Revision notes—1957. Suggested by section 11 of the former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Former law on this subject was contained in the 1921 Codes, Title II, ch. 10, § 1. See note preceding section 1 of this title.

§ 4. Capacity to take real property by devise

A devise of real property may be made to every person capable by law of holding real estate; but no devise to a corporation shall be valid, unless such corporation is expressly authorized by its charter, or by statute, to take by devise.

HISTORY

Revision note—1957. Suggested by section 12 of the former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 5. Statutory power to take possession, and to sell, mortgage or lease real property in absence of valid power in will

(a) Notwithstanding the absence of a valid power therein, every will of a person dying after the effective date of this Code, shall be construed to give to the executor or trustee, who has duly qualified, the power to take possession, collect the rents, and manage, and to sell, mortgage and lease, all of the real property, and any interest in any real property, owned by the decedent at the time of his death, and such power may be exercised by the executor or executors, or by any administrator with the will annexed, or by a successor or substituted trustee, subject to the limitations stated in subsection (b) of this section.

(b) The power to take possession, collect rent, and manage, and to sell, mortgage or lease, referred to in subsection (a) of this section, shall not be exercised, however, (1) where the will expressly prohibits the exercise thereof; (2) or as to such real property as the will expressly provides shall not be sold, mortgaged or leased; (3) and shall not be deemed to include such real property as has been specifically devised to any one person not under disability at the time the sale, mortgage or lease takes effect, or to any one corporation capable of taking the same; (4) except that the power to take possession, collect the rents, and manage, and to sell, mortgage or lease, may be exercised, in the case of property devised and within clauses

(1), (2), and (3) of this subsection, where such power is necessary for the payment of administration expenses, funeral expenses, debts or transfer or estate tax, upon approval by the district court.

(c) This additional grant of power to sell, mortgage and lease shall not be deemed to affect any existing authorization or judicial proceeding or action for the sale, mortgage or lease of real estate pursuant to the provisions of Title 28.

HISTORY

Revision note—1957. Suggested by section 13 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

CROSS REFERENCES

Sale of decedent's realty by order of court, see section 491 of this title.

ANNOTATIONS

1. **Power to sell real property.** Under statute in the Virgin Islands executor has power to sell decedent's real estate without leave of court. Johnson v. Childs, 7 V.I. 8, 407 F.2d 395, 1969 U.S. App. LEXIS 8824 (3d Cir. 1969).

This section expressly provides that every will, even though it does not contain a valid power of sale, shall be construed to give the executor the power to sell all the real property owned by decedent at the time of death which has not been specifically devised, unless the will expressly prohibits its sale. Johnson v. Childs, 6 V.I. 354, 1968 U.S. Dist. LEXIS 12829 (D.C.V.I. 1968).

This section and section 491 of this title requiring court approval of an executors sale unless otherwise authorized by law or the decedent's will are not inconsistent, but rather complement each other. Johnson v. Childs, 6 V.I. 354, 1968 U.S. Dist. LEXIS 12829 (D.C.V.I. 1968).

Where decedent's will neither specifically devised real estate nor expressly prohibited its sale, the defendant had full power to sell and convey real estate to plaintiffs without leave of court. Johnson v. Childs, 6 V.I. 354, 1968 U.S. Dist. LEXIS 12829 (D.C.V.I. 1968).

§ 6. Construction of will of real estate

Every will that shall be made by a testator devising, in express terms, all his real property, or in any other terms denoting his intent to devise all his real property, shall be construed to pass all the real estate, which he was entitled to devise, at the time of his death.

HISTORY

Revision notes—1957. This section was suggested by section 14 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Similar provision in former law was contained in the 1921 Codes, Title II, ch. 10, § 25. See note preceding section 1 of this title.

ANNOTATIONS

1. Whole of testator's estate.
2. Life estate.

1. Whole of testator's estate. It is law of the Virgin Islands that a devise of real property is to be construed as passing the whole of testator's interest subject to his disposal unless it clearly appears from his will that he meant to dispose of a lesser interest. Bough v. King, 3 V.I. 391, 167 F. Supp. 191, 1958 U.S. Dist. LEXIS 3398 (D.C.V.I. 1958).

2. Life estate. A life estate, like any other, may be given where the entire will shows such intention, although it is not set forth in express language in any clause thereof. Bough v. King, 3 V.I. 391, 167 F. Supp. 191, 1958 U.S. Dist. LEXIS 3398 (D.C.V.I. 1958).

§ 7. Capacity to make wills of personal estate

Every person of the age of eighteen years or upwards, of sound mind and memory, and no others, may give and bequeath his personal estate, by will in writing.

HISTORY

Revision notes—1957. Suggested by section 15 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Former law was contained in the 1921 Codes, Title II, ch. 10, § 1. See note preceding section 1 of this title.

§ 8. Nuncupative or holographic wills

No nuncupative or unwritten or holographic will, bequeathing or devising personal or real estate, shall be valid, unless made by a soldier or sailor while in actual military or naval service, or by a mariner while at sea and when made in the following manner—

(1) a nuncupative oral will made within the hearing of two persons and the execution and the tenor thereof proved by at least two witnesses; or

(2) a holographic will when written entirely in the handwriting of the maker even though the same be unattested.

Any such disposition of property by a soldier or sailor shall become invalid and unenforceable upon the expiration of one year following his discharge from military or naval service provided he possesses testamentary capacity at the time of such expiration. If, however, he shall lack testamentary capacity at the expiration of one year from the date of such discharge, it shall continue to be valid and enforceable until the expiration of one year from the time he shall have regained testamentary capacity.

HISTORY

Revision notes—1957. Suggested by section 16 of the New York Decedent Estate Law

(repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Related provisions in former law were contained in the 1921 Codes, Title II, §§ 12, 13, 14 and 30. See note preceding section 1 of this title.

ANNOTATIONS

1. Construction and application.
2. Particular instruments.

1. Construction and application. This section is limited in its applicability to wills that do not otherwise satisfy formal requirements of testation. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

Intent of this section was to save bona fide testations that do not satisfy formal rules. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

2. Particular instruments. Holographic will, in sense that it was entirely in handwriting of testatrix, was not subject, by its handwritten character alone, to provisions of this section. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

Handwritten will dated and executed by testatrix and signed by five witnesses satisfied formal requirements of execution and was not to be excluded from probate because it was executed by person not entitled to privilege of informal testation. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

Will which was handwritten by testatrix and, therefore, literally a holograph, was not a holograph for purposes of this section, where will was dated and executed by testatrix in presence of five attesting witnesses, who then signed document, thus meeting all formal execution requirements required by law. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

§ 9. Devise or bequest to certain societies, associations, corporations or purposes

No person having a husband, wife, child, or descendant or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association, corporation or purpose, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one-half, and no more. The validity of a devise or bequest for more than such one-half may be contested only by a surviving husband, wife, child, descendant or parent. When payment of a devise or bequest to such society, association, corporation or purpose is postponed, in computing its one-half part, no allowance may be made for such postponement or for any interest or gains or losses which may accrue after the testator's death. The value of an annuity or life estate, legal or equitable, shall not be computed upon the actual duration of the life, but shall be computed upon the actuarial value according to the American Experience Table of Mortality at the rate of four per centum per annum. Such value shall be deducted from the fund or property, which is subject to

the annuity or life estate, in order to ascertain the value of a future estate or remainder interest passing to such society, association, corporation or purpose.

HISTORY

Revision note—1957. Suggested by section 17 of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

ANNOTATIONS

1. Municipal corporations.
2. Construction.
3. Definitions.
4. Conflicting rule of court.
5. Competency to contest disposition.

1. Municipal corporations. While legacies are not distributed until the estate is closed, a municipality may take immediate possession of real property devised to it, after posting a bond with the District Court. 1 V.I.Op.A.G. 201.

2. Construction. This section providing for contest of will devising over one-half of decedent's property to charity was modeled after section 17 of the New York Decedent Estate Law and it is appropriate to turn to New York law for guidance in construction of such section. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

3. Definitions. The word "descendant" as used in describing those competent to contest decedent's disposition of more than one-half of his estate to charity means only lineal heirs. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

4. Conflicting rule of court. Where a rule of court providing for contesting of decedent's will conflicts with statutory provisions relating to the same subject, insofar as it conflicts it is void and of no force. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

5. Competency to contest disposition. Testator's sister, nieces and nephews and grandnephews, were not competent to contest decedent's disposition of more than one-half of his estate to religious society. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

§ 10. Election by surviving spouse regarding share

(a) Where a testator dies after the effective date of this Code, and leaves surviving a husband or wife, a personal right of election is given to the surviving spouse to take his or her share of the estate as in intestacy, subject to the limitations, conditions and exceptions contained in this section.

(1) In exercising the right of election herein granted a surviving spouse shall in no event be entitled to take more than one-half of the net estate of the decedent, after the deduction of debts, funeral and adminis-

tration expenses and any estate tax, and the words "intestate share" wherever used in this section shall not be construed to mean more than one-half of such net estate.

(2) Where the intestate share is over $2,500 and where the testator has devised or bequeathed in trust an amount equal to or greater than the intestate share, with income thereof payable to the surviving spouse for life, the surviving spouse shall have the limited right to elect to take the sum of $2,500 absolutely which shall be deducted from the principal of such trust fund and the terms of the will shall otherwise remain effective.

(3) Where the intestate share of the surviving spouse in the estate does not exceed $2,500, the surviving spouse shall have such right to elect to take his or her estate share absolutely, which shall be in lieu of any provision for his or her benefit in the will.

(4) Where the will contains an absolute legacy or devise, whether general or specific, to the surviving spouse, of or in excess of the sum of $2,500 and also a provision for a trust for his or her benefit for life of a principal equal to or more than the excess between said legacy or devise and his or her intestate share, no right of election whatever shall exist in the surviving spouse.

(5) Where the will contains an absolute legacy or devise, whether general or specific, to the surviving spouse in an amount less than the sum of $2,500 and also a provision for a trust for his or her benefit for life of a principal equal to or more than the excess between such legacy or devise and his or her intestate share, the surviving spouse shall have the limited right to elect to take not more than the sum of $2,500 inclusive of the amount of such legacy or devise, and the difference between such legacy or devise and the sum of $2,500 shall be deducted from the principal of such trust fund and the terms of the will shall otherwise remain effective.

(6) Where the aggregate of the provisions under the will for the benefit of the surviving spouse including the principal of a trust, or legacy or devise, or any other form of testamentary provision, is less than the intestate share, the surviving spouse shall have the limited right to elect to take the difference between such aggregate and the amount of the intestate share, and the terms of the will shall otherwise remain effective. In every estate the surviving spouse shall have the limited right to withdraw the sum of $2,500 if the intestate share is equal to or greater than that amount. Such sum shall, however, be inclusive of any absolute legacy or devise, whether general or specific. Where a trust fund is created for his or her benefit for life, such sum of $2,500 or any necessary part thereof to make up that sum shall be payable from the principal of such trust fund.

(7) The provisions of this section with regard to the creation of a trust, with income payable for life to the surviving spouse, shall likewise apply to

a legal life estate or to an annuity for life or any other form of income for life created by the will for the benefit of the surviving spouse. In the computation of the value of the provisions under the will, the capital value of the fund or other property producing the income shall be taken and not the value of the life estate.

(8) The purported grant of authority in a will to an executor, administrator with the will annexed, or trustee, or the successor of any of them to—

(A) act without bond; or

(B) name his successor to act without bond; or

(C) sell assets of the estate upon terms fixed by him; or

(D) invest the funds of the estate in other than legal investments; or

(E) retain in the assets of the estate investments or property owned by a testator in his lifetime; or

(F) make distribution in kind; or

(G) make a binding and conclusive fixation of values of assets in the distribution thereof; or

(H) allocate assets either outright or in trust for the life of a surviving spouse; or

(I) conduct the affairs of the estate with partial or total exoneration from the legal responsibility of a fiduciary—

shall not be deemed either singly or in the aggregate to give to a surviving spouse an absolute right of election to take his or her intestate share; but the court, notwithstanding the terms of the will, may, in an appropriate proceeding by the surviving spouse or upon an accounting, direct and enforce for the protection of the surviving spouse an equitable distribution, allocation or valuation of the assets, and enforce the lawful liability of a fiduciary, and may also make such other direction consistent with the provisions and purposes of this section as the court deems necessary for the protection of the surviving spouse.

(b) Where any such election shall have been made, the will shall be valid as to the residue remaining after the elective share provided in this section has been deducted and the terms of the will shall as far as possible remain effective.

(c) The right of election shall not be available to a spouse against whom or in whose favor a final decree or judgment of divorce recognized as valid by the law of the Virgin Islands has been rendered, or against whom a final decree or judgment of separation recognized as valid by the laws of the Virgin Islands has been rendered. Nor shall such right of election be available to a spouse who has procured without the Virgin Islands a final decree or judgment dissolving the marriage with the testator where such a decree or judgment is not recognized as valid by the law of the Virgin Islands.

(d) No husband who has neglected or refused to provide for his wife, or has abandoned her, shall have the right of such an election.

(e) No wife who has abandoned her husband shall have the right of such election.

(f) The election as herein provided may be made by the general guardian of an infant, when authorized so to do by the court, or may be made in behalf of an incompetent when authorized by the court.

(g) An election made under this section shall be made within six months from the date of the issuance of letters testamentary or, if letters testamentary have not been issued, from the date of the issuance of letters of administration with the will annexed, and shall be made by serving written notice of such election upon the representative of the estate personally or in such other manner as the court directs and by filing and recording a copy of such notice with proof of service in the court where such will was probated. The time to make such election may be enlarged before its expiration by an order of the court, for a further period of not exceeding six months upon any one application. If a spouse shall default in filing such election within six months after the date of issuance of such letters, the court may relieve the spouse from such default and authorize the making of such election within a period to be fixed by order, provided no decree settling the account of the fiduciary has been made and provided further that twelve months have not elapsed since the issuance of letters. Such an application for enlargement of time to elect or for relief from default in electing shall be made upon a petition showing reasonable cause and on notice given to such persons and in such manner as the court directs. A certified copy of any such order shall be indexed and recorded in the office of the recorder of deeds in the judicial division wherein any real property of the decedent is situated. The limitations in this section regulating the time within which an election shall be made are exclusive. No provision of law suspending or affecting the operation of rules of limitation shall be applicable to the time of making an election but the court may, in its discretion, permit an election to be made in behalf of an infant or incompetent spouse at any time up to but not later than the entry of the decree on the first judicial account of the permanent representative of the estate made more than seven months after the issuance of letters.

(h) Any question arising as to the right of election shall be determined by the court in a proceeding brought for that purpose after the service of citation upon the persons interested, or in a proceeding for the judicial settlement of the accounts of the representative of the estate.

(i) The husband or wife, during the lifetime of the other, may waive or release the right of election to take as against a particular last will, or as against any last will of the other spouse. A waiver or release of all rights in

the estate of the other spouse shall be deemed to be a waiver or release of the right of election as against any last will. A waiver or release to be effective under this subsection shall be subscribed by the maker thereof and either acknowledged or proved in the manner required for the recording of a conveyance of real property.

A waiver or release of the right of election granted in this section shall be effective, in accordance with its terms, whether—

(1) executed before or after the marriage of the spouses affected; or

(2) executed before, on, or after the effective date of this Code; or

(3) unilateral in form, executed only by the maker thereof, or bilateral in form, executed by both of the spouses affected; or

(4) executed with or without consideration; or

(5) absolute or conditional.

HISTORY

Revision note—1957. Suggested by section 18 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

ANNOTATIONS

1. Waiver of election.
2. Competency of petitioner.

1. Waiver of election. Surviving spouse's filing of petition to probate will of decedent did not constitute an irrevocable election to take under the will; nor did the filing constitute a waiver of surviving spouse's right to elect to take an intestate share. In re Estate of Thomson, 8 V.I. 636, 1972 U.S. Dist. LEXIS 5234 (D.C.V.I. 1972).

2. Competency of petitioner. District Court Commissioner had discretionary power to permit an election to take an intestate share to be made by an incompetent spouse at any time up to the entry of an approved first account of the executor made after seven months subsequent to the issuance of Letters Testamentary. In re Estate of Thomson, 8 V.I. 636, 1972 U.S. Dist. LEXIS 5234 (D.C.V.I. 1972).

Where full evidentiary hearing was held on incompetence of surviving spouse who, due to incompetence, was allowed to file late petition to take intestate share, and interested parties had due notice and were present, District Court Commissioner's determination, adduced from all the evidence, of incompetence would be affirmed, and where election was filed, surviving spouse would be allowed to take his intestate share. In re Estate of Thomson, 8 V.I. 636, 1972 U.S. Dist. LEXIS 5234 (D.C.V.I. 1972).

§ 11. Compromise of controversies where interests of infants, incompetents or persons unknown or not in being are or may be affected

(a) The court may authorize executors, administrators and trustees to adjust by compromise any controversy that may arise between different claimants to the estate or property in their hands to which agreement such

executors, administrators or trustees and all other parties in being who claim an interest in such estate and whose interests are affected by the proposed compromise shall be parties in person or by guardian as hereinafter provided.

(b) The court may likewise authorize the person or persons named as executors in one or more instruments purporting to be the last will and testament of a person deceased, or the petitioners for administration with such wills or wills annexed, to adjust by compromise any controversy that may arise between the persons claiming as devisees or legatees under such will or wills and the persons entitled to or claiming the estate of the deceased under the provisions of chapter 3 of this title, to which agreement or compromise the persons named as executors or the petitioners for administration with the will annexed, as the case may be, those claiming as devisees or legatees and those claiming the estate as intestate, shall be parties, provided that persons named as executors in any instrument who have renounced or shall renounce such executorship and any person whose interest in the estate is unaffected by the proposed compromise shall not be required to be parties to such compromise.

(c) Where an infant, lunatic, person of unsound mind or habitual drunkard is a necessary party to a compromise under this section he shall be represented in the proceedings by a special guardian appointed by the court, who shall in the name and on behalf of the party he represents make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court.

(d) If it appears to the satisfaction of the court that the interests of persons unknown or the future contingent interest of persons not in being are or may be affected by the compromise, the court shall appoint some suitable person or persons to represent such interest in the compromise and to make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court. If, by the terms of any compromise made pursuant to this section, money or property is directed to be set apart or held for the benefit of or to represent the interest of infants, incompetents or persons unknown or unborn, the same may in a proper case be paid or deposited in court and remain subject to the order of the court.

(e) An agreement of compromise made in writing pursuant to this section, if found by the court to be just and reasonable in its effects upon the interests in said estate or property of infants, lunatics, persons of unsound mind, unknown persons or the future contingent interests of persons not in being, shall be valid and binding upon such interests as well as upon the interests of adult persons of sound mind.

(f) An application for the approval of a compromise pursuant to this section must be made by petition duly verified, which shall set forth the

provisions of any instruments or documents by virtue of which any claim is made to the property or estate in controversy and any and all facts relating to the claims of the various parties to the controversy and the possible contingent interests of persons not in being and all facts which made it proper or necessary that the proposed compromise be approved by the court. The court in its discretion may entertain such application prior to the execution of the proposed compromise by all the parties required to execute it and may permit the execution by the necessary parties to be completed after the inception of the proceeding for approval thereof if the proposed compromise has been approved by the estate representatives described in subsections (a) and (b) of this section. The court shall inquire into the circumstances and make such order or decree as justice requires. The order or decree may also be made in any pending proceeding.

HISTORY

Revision note—1957. Suggested by section 19 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 12. Mortgages and liens on or pledges of personal property specifically bequeathed

Where personal property subject to any lien, mortgage or pledge is specifically bequeathed by will, the legatee must satisfy the lien, mortgage or pledge out of his own property without resorting to the executors of his testator unless there is in the will of such testator a direction, expressly or by necessary implication, that such mortgage, lien or pledge be otherwise paid. Where such personal property specifically bequeathed has been made subject to any lien, mortgage or pledge with other personal property, the specifically bequeathed property shall bear its proportionate share of the total lien, mortgage or pledge.

HISTORY

Revision notes—1957. Suggested by section 12 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provisions relating to this subject in former law were contained in the 1921 Codes, Title II, ch. 10, §§ 6, 26 and 28. See note preceding section 1 of this title.

CROSS REFERENCES

Real property, similar provisions, see section 429 of this title.

Redemption and sale of mortgaged property, see sections 522 and 523 of this title.

§ 13. Manner of execution of will

Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

(1) It shall be subscribed by the testator at the end of the will.

(2) Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the attesting witnesses.

(3) The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.

(4) There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

HISTORY

Revision notes—1957. Suggested by section 21 of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 10, § 2. See note preceding section 1 of this title.

ANNOTATIONS

1. Admission to probate.
2. Particular instruments.
3. Meeting of the minds.
4. Valid will.

1. Admission to probate. Where will was executed in accordance with Virgin Islands law it was properly admitted to probate. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

2. Particular instruments. Will notarized after the testatrix's death was properly executed, as it was subscribed by the testatrix at the end of the document; the required signatures and addresses of the three attesting witnesses appeared below the signature of the testatrix as well; and the witnesses in their affidavits and deposition testimony explained that the testatrix in their presence declared the will to be her last will and testament and signed the will. In re Estate of Lecuyer, 50 V.I. 156, 2008 V.I. LEXIS 17 (Dec. 12, 2008).

Notwithstanding the inconsistencies between the deposition testimony of the witnesses and that of a notary, the "cross-outs" and "insertions" made on the second page of a will had been satisfactorily explained by the witnesses, who stated that the notary had changed the date of the witnesses' signatures to reflect the date that they actually appeared before her and that she had mistakenly changed the number of pages, then corrected her mistake. In re Estate of Lecuyer, 50 V.I. 156, 2008 V.I. LEXIS 17 (Dec. 12, 2008).

Will that was properly executed under 15 V.I.C. § 13 in 1983 was admitted to probate because the 2000 will proferred by contestants was notarized in the Virgin Islands by a citizen of Georgia, and under 3 V.I.C. § 772, the notary was required to be a citizen of the Virgin Islands. In re Estate of Smith, 48 V.I. 82, 2006 V.I. LEXIS 20 (Oct. 13, 2006).

Testatrix substantially complied with statutory request and publication requirements when she and three witnesses signed her first will, and will was therefore presumed to be valid. In re Estate of Savain, 39 V.I. 77, 1998 V.I. LEXIS 18 (Terr. Ct. St. T. and St. J. 1998).

Testatrix substantially complied with statutory request and publication requirements in regard to second witness to her will, where evidence indicated there was a meeting of the

minds between witness and testatrix that document she was signing was her will and that witness was signing document at her request. In re Estate of Savain, 39 V.I. 77, 1998 V.I. LEXIS 18 (Terr. Ct. St. T. and St. J. 1998).

Handwritten will dated and executed by testatrix and signed by five witnesses satisfied normal requirements of execution and was not to be excluded from probate because it was executed by person not entitled to privilege of informal testation. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

Will which was handwritten by testatrix and, therefore, literally a holograph, was not a holograph for purposes of 15 V.I.C. § 8, providing that no holographic will shall be valid unless made by soldier or sailor on military or naval service, or by mariner while at sea, where will was dated and executed by testatrix in presence of five attesting witnesses, who then signed document, thus meeting all formal execution requirements of this section. In re Estate of Buckley, 13 V.I. 345, 536 F.2d 580, 1976 U.S. App. LEXIS 8721 (3d Cir. 1976).

3. Meeting of the minds. Where the deceased did not declare that her third will was her last will and testament and the two witnesses signed the document at the bequest of the plaintiff and not the deceased, neither subsections (3) or (4) of 15 V.I.C. § 13 were technically satisfied and the will was therefore invalid. Rabsatt v. Estate of Savain, 31 V.I. 237, 878 F. Supp. 762, 1995 U.S. Dist. LEXIS 2291 (D.C.V.I. 1995), aff'd in part, rev'd in part, Rabsatt v. Schack, 72 F.3d 123, 1995 U.S. App. LEXIS 35698 (3d Cir. 1995).

Under 15 V.I.C. § 13, the testatrix must ask the witnesses to execute the will, thus representing that the testatrix knows what she is signing; although use of exact words are not always necessary, and actions are evaluated as well as words, most courts construing these requirements analogize it to a meeting of minds between testatrix and witnesses. Rabsatt v. Estate of Savain, 31 V.I. 237, 878 F. Supp. 762, 1995 U.S. Dist. LEXIS 2291 (D.C.V.I. 1995), aff'd in part, rev'd in part, Rabsatt v. Schack, 72 F.3d 123, 1995 U.S. App. LEXIS 35698 (3d Cir. 1995).

Where the deceased did not declare that her second will was her last will and testament and the two witnesses signed the document at the bequest of the attorney present and not the deceased, neither subsections (3) or (4) of 15 V.I.C. § 13 were technically satisfied and the will was therefore invalid. Rabsatt v. Estate of Savain, 31 V.I. 237, 878 F. Supp. 762, 1995 U.S. Dist. LEXIS 2291 (D.C.V.I. 1995), aff'd in part, rev'd in part, Rabsatt v. Schack, 72 F.3d 123, 1995 U.S. App. LEXIS 35698 (3d Cir. 1995).

4. Valid will. A will is valid if it meets the testamentary formalities set out in this section. Failure to abide by these formalities renders a will invalid. In re Estate of Walters, 38 V.I. 14, 1997 V.I. LEXIS 25 (Terr. Ct. St. C. 1997).

Cited. Cited in Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

§ 14. Witnesses to will to write names and places of residence

The witnesses to any will shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction shall write his own name as a witness to the will. Omission to comply with either of these provisions shall not affect the validity of any will; nor shall any person be excused or incapacitated on account of such an omission from testifying respecting the execution of such will.

HISTORY

Revision note—1957. Suggested by section 22 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

ANNOTATIONS

1. Particular instruments. Will notarized after the testatrix's death was properly executed, as it was subscribed by the testatrix at the end of the document; the required signatures and addresses of the three attesting witnesses appeared below the signature of the testatrix as well; and the witnesses in their affidavits and deposition testimony explained that the testatrix in their presence declared the will to be her last will and testament and signed the will. In re Estate of Lecuyer, 50 V.I. 156, 2008 V.I. LEXIS 17 (Dec. 12, 2008).

Notwithstanding the inconsistencies between the deposition testimony of the witnesses and that of a notary, the "cross-outs" and "insertions" made on the second page of a will had been satisfactorily explained by the witnesses, who stated that the notary had changed the date of the witnesses' signatures to reflect the date that they actually appeared before her and that she had mistakenly changed the number of pages, then corrected her mistake. In re Estate of Lecuyer, 50 V.I. 156, 2008 V.I. LEXIS 17 (Dec. 12, 2008).

§ 15. Validity of wills executed without the Islands

A will executed without the Virgin Islands in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Virgin Islands, provided such will is in writing and subscribed by the testator.

HISTORY

Revision notes—1957. Suggested by section 22-a of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 10, § 15. See note preceding section 1 of this title.

ANNOTATIONS

1. Generally. Wills which are executed outside of the Virgin Islands may be admitted to probate in the Virgin Islands if they are executed in accordance with either the laws of the Virgin Islands, the laws of the place of execution, or the laws of the place of testator's domicile. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

§ 16. Wills which may be proved

A will of real or personal property, executed as prescribed by the laws of the Virgin Islands, or a will of real or personal property executed without the Virgin Islands in the mode prescribed by the law, either of the place where executed or of the testator's domicile, provided such will is in writing and subscribed by the testator, may be admitted to probate in the Virgin Islands.

HISTORY

Revision notes—1957. Suggested by section 23 of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 10, § 15. See note preceding section 1 of this title.

CROSS REFERENCES

Proof of wills, see section 231 et seq. of this title.

ANNOTATIONS

1. Generally.
2. Jurisdiction.

1. Generally. Will of mother who resided in Virgin Islands for many years but died in Florida met and fulfilled all requisite legal criteria and therefore could be proved in Virgin Islands jurisdiction. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

Wills which are executed outside of the Virgin Islands may be admitted to probate in the Virgin Islands if they are executed in accordance with either the laws of the Virgin Islands, the laws of the place of execution, or the laws of the place of testator's domicile. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

2. Jurisdiction. Subsequent petitioning of court of other jurisdiction to grant Letters of Administration of decedent's estate as if she died without leaving valid will did not preempt or deprive Territorial Court [now Superior Court] of jurisdiction. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

Territorial court [now Superior Court] had jurisdiction to determine whether will of long-time resident of Virgin Islands who died in Florida was valid and, if so, to admit it to probate. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

§ 17. Effect of change of residence

The right to have a will admitted to probate, the validity of the execution thereof, or the validity or construction of any provision contained therein, is not affected by a change of the testator's residence made since the execution of the will.

HISTORY

Revision note—1957. Suggested by section 24 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 18. Child born after making of will

(a) Whenever a testator shall have a child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child, so afterborn, unprovided for by any settlement, and neither provided for, nor in any way mentioned in such will, every such child

shall succeed to the same portion of such parent's real and personal estate, as would have descended or been distributed to such child, if such parent had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to and out of the parts devised and bequeathed to them by such will.

(b) The word "child" as used in subsection (a) of this section shall be construed to include an illegitimate child, provided that in cases where such testator is the father, he admitted of record paternity of such child by signing the official birth certificate; or he was adjudged the father of such child by a court of competent jurisdiction; or by written acknowledgment he recognized such child as his.

HISTORY

Revision notes—1957. Subsection (a) was suggested by section 26 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967). Similar provision in prior law was contained in the 1921 Codes, Title II, ch. 10, § 7.

Subsection (b) was inserted on advice of the Code Advisory Committee.

See note preceding section 1 of this title.

ANNOTATIONS

0.5. Purpose. The purpose behind the Pretermitted Child Statute (this section) is to protect children inadvertently omitted from a will executed prior to their birth. Further, the spirit of this statute comprehends the prevention of unintentional disinheritance of children. In re Estate of Walters, 38 V.I. 14, 1997 V.I. LEXIS 25 (Terr. Ct. St. C. 1997).

The Pretermitted Child Statute was designed for the limited purpose of re-interpreting an otherwise valid will to the extent the will reflects the intestate share of a pretermitted child, who presumably was inadvertently left out of the will. In re Estate of Walters, 38 V.I. 14, 1997 V.I. LEXIS 25 (Terr. Ct. St. C. 1997).

1. Illegitimate children. An illegitimate child is not entitled to a distributive share in the estate of paternal grandmother who died testate, where nothing from the predeceased father's estate went to the grandmother or her estate and where the decedent specified unequivocally in her will which children and grandchildren should share in her estate. In re Estate of Creque, 5 V.I. 332, 1966 U.S. Dist. LEXIS 3193 (D.C.V.I. 1966).

An illegitimate child was entitled to a distributive share, as in intestacy, in estate of paternal grandmother who died testate, since right of inheritance given to an illegitimate child by 1949 statute [see section 84(13) of this title] brings such child within class of children or descendants entitled under pretermission statute to take against parent's or ancestor's will. In re Estate of Heyn, 4 V.I. 97, 266 F.2d 206, 1959 U.S. App. LEXIS 4161 (3d Cir. 1959).

2. Inheritance. The Pretermitted Child Statute is reserved only to omitted children born after the execution of a will. The statute no longer requires that a testator expressly disinherit children born before the execution of a will for effective disinheritance. In re Estate of Walters, 38 V.I. 14, 1997 V.I. LEXIS 25 (Terr. Ct. St. C. 1997).

The testator's lack of express language disinheriting two earlier children had no effect

whatever upon the validity of the will. In re Estate of Walters, 38 V.I. 14, 1997 V.I. LEXIS 25 (Terr. Ct. St. C. 1997).

The birth of a child after the death of its parent did not, of itself, affect such child's inheritance rights in St. Croix, either in cases of legitimacy or illegitimacy. 2 V.I.Op.A.G. 211.

§ 19. Devise or bequest to subscribing witness

If any person shall be a subscribing witness to the execution of any will, wherein any beneficial devise, legacy, interest or appointment of any real or personal estate shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest or appointment shall be void, so far only as concerns such witness, or any claiming under him; and such person shall be a competent witness, and compellable to testify respecting the execution of such will, in like manner as if no such devise or bequest has been made.

Except as hereinafter provided in this section, no subscribing witness to a will shall be entitled to receive any beneficial devise, legacy, interest or appointment of any real or personal estate thereunder unless there are two other subscribing witnesses to the will who are not beneficiaries thereunder.

But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended, or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will, in proportion to, and out of, the parts devised and bequeathed to them.

HISTORY

Revision notes—1957. Suggested by section 27 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Similar provisions in former law were contained in the 1921 Codes, Title II, ch. 10, §§ 17–23.

See note preceding section 1 of this title.

§ 20. Action by after-born child, or by subscribing witness

A child, born after the making of a will, who is entitled to succeed to a part of the real or personal property of the testator, or a subscribing witness to a will, who is entitled to succeed to a share of such property, may maintain an action against the legatees or devisees, as the case requires, to recover his or her share of the property; and he or she is subject to the same liabilities and has the same rights, and is entitled to the same remedies, to compel a distribution or partition of the property, or a contribution from other persons interested in the estate, or to gain

possession of the property, as any other person who is so entitled to succeed.—Amended July 7, 1958, No. 349, § 1, Sess. L. 1958, p. 129.

HISTORY

Revision note—1957. Suggested by section 28 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Amendments—1958. The 1958 amendment struck out "or the surviving husband, or wife, or the issue entitled to succeed to a share of such property under the provisions of section 27 of this title".

§ 21. Devise or bequest to descendant or to relative not to lapse

Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant or relative of the testator, and such legatee or devisee shall die during the lifetime of the testator, leaving a child or other descendant who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate.

HISTORY

Revision notes—1957. Suggested by section 29 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Similar provision in former law was contained in the 1921 Codes, Title II, ch. 10, § 10. See note preceding section 1 of this title.

§ 22. Safe keeping of wills by district court

The clerk of the district court, upon being paid the fees allowed therefor by law, shall receive and deposit in his office, any last will or testament of a resident of the Virgin Islands which any person shall deliver to him for that purpose, and shall give a written receipt therefor to the person depositing the same. A subscribing witness to any last will or testament may make and sign an affidavit before any officer authorized to administer oaths setting forth such facts as he would be required to testify to in order to prove such will. Such affidavit may be written upon said will, or on some paper securely attached thereto, and may be filed for safe keeping with the last will or testament to which it relates. There may also be filed with such will, affidavits of qualified physicians licensed or permitted to practice in the Virgin Islands, certifying that the maker of said will was of sound mind at the time of its execution, together with any facts supporting such opinion.

HISTORY

Revision note—1957. Suggested by section 30 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 23. Sealing and indorsing wills received for safe keeping

A will delivered to the clerk of the district court for safe keeping shall be inclosed in a sealed wrapper, so that the contents thereof can not be read, and shall have indorsed thereon the name of the testator, his place of residence, and the day, month and year when delivered; and shall not, on any pretext whatever, be opened, read or examined, until delivered to a person entitled to the same, as hereinafter directed.

HISTORY

Revision note—1957. Suggested by section 31 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 24. Delivery of wills received for safe keeping

A will received by the clerk of the district court for safe keeping shall be delivered only—

(1) to the testator in person; or,

(2) upon his written order, duly proved by the oath of a subscribing witness; or,

(3) after his death to the persons named in the indorsement on the wrapper of such will, if any such indorsement be made thereon.

HISTORY

Revision note—1957. Suggested by section 32 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 25. Opening wills received by court for safe keeping

If a will has been deposited with the clerk of the district court for safe keeping and has not been delivered as provided in section 24 of this title, the clerk of the court, after the death of the testator, shall publicly open and examine the same, and make known the contents thereof, and shall file the same in his office, there to remain until it shall have been duly proved, if capable of proof, and then to be delivered to the person entitled to the custody thereof; or until required by the authority of some competent court to produce the same in such court.

HISTORY

Revision note—1957. Suggested by section 33 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 26. Revocation and cancellation of written wills

No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses.

HISTORY

Revision notes—1957. Suggested by section 34 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Similar provision in former law was contained in the 1921 Codes, Title II, ch. 10, § 31. See note preceding section 1 of this title.

ANNOTATIONS

1. Presumption of revocation.
2. Methods of revocation.
3. Reciprocal wills.

1. Presumption of revocation. It is a well-settled principle that if a will or codicil known to have been in existence during testator's lifetime, and in his custody, or in a place where he had ready access to it, cannot be found at his death, a presumption arises that the will was destroyed by the testator in his lifetime with the intention of revoking it, and in the absence of rebutting evidence, this presumption is sufficient to justify a finding that the will was revoked. Duvergee v. Sprauve, 7 V.I. 248, 413 F.2d 120, 1969 U.S. App. LEXIS 11824 (3d Cir. 1969).

In order to rebut the presumption of revocation of will known to have been in existence during testator's lifetime, burden is on proponent of the will to establish by clear, satisfactory and convincing evidence that there is no possibility that the will was destroyed by testator. Duvergee v. Sprauve, 7 V.I. 248, 413 F.2d 120, 1969 U.S. App. LEXIS 11824 (3d Cir. 1969).

Proponent of the will failed to supply sufficient evidence to overcome presumption of revocation established by the failure to find will which, by proponent's own testimony, had been in testator's possession. Duvergee v. Sprauve, 7 V.I. 248, 413 F.2d 120, 1969 U.S. App. LEXIS 11824 (3d Cir. 1969).

District Court did not err in holding that the paper offered by proponent of will was not entitled to probate since she failed to overcome presumption of revocation by failure to find will which was known to have been in possession of testator, however, judgment entered by court should have dismissed the petition for probate and letters testamentary but not entire probate proceeding. Duvergee v. Sprauve, 7 V.I. 248, 413 F.2d 120, 1969 U.S. App. LEXIS 11824 (3d Cir. 1969).

2. Methods of revocation. A will may be entirely revoked in two ways: revocation by physical act and revocation by a subsequent writing. In re Estate of Walters, 38 V.I. 14, 1997 V.I. LEXIS 25 (Terr. Ct. St. C. 1997).

3. Reciprocal wills. Considering, arguendo, that there was a valid contract, a wife was not prohibited under the terms of the will from altering or revoking a reciprocal will, as nothing in the reciprocal wills prevented either spouse from conveying or contracting away property during the spouse's lifetime, neither will stated that it was irrevocable, and none of the parties presented evidence supporting a conclusion that the wife's will was unalterable. Wheatley v. Magras, — V.I. —, 2012 V.I. LEXIS 3 (Jan. 11, 2012).

Cited. Cited in In re Estate of Storie, 21 V.I. 170, 1984 V.I. LEXIS 4 (Terr. Ct. St. C. 1984).

§ 27. Repealed. July 7, 1958, No. 349, § 2, Sess. L. 1958, p. 129.

HISTORY

Former § 27. Repealed section related to revocation of will by marriage. It was suggested by section 35 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967). Provision in former law on this subject was contained in the 1921 Codes, Title II, ch. 10, § 4.

§ 28. Bond or agreement to convey property devised or bequeathed

A bond, covenant, or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

HISTORY

Source. 1921 Codes, Title II, ch. 10, § 5.

§ 29. Charge or incumbrance not a revocation

A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

HISTORY

Source. 1921 Codes, Title II, ch. 10, § 6.

§ 30. Conveyance, when not deemed a revocation

A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property, previously devised or bequeathed by him,

shall be altered, but not wholly divested, shall not be deemed a revocation of the devise or bequest of such property; but such devise or bequest shall pass to the devisee or legatee, the actual estate or interest of the testator, which would otherwise descend to his heirs, or pass to his next of kin; unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest.

HISTORY

Revision notes—1957. Suggested by section 39 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 10, §§ 5, 25. See note preceding section 1 of this title.

ANNOTATIONS

1. Removal to new location. Bequest of personal property at a particular location was not adeemed by its removal to a new location by the testator. In re Estate of Tanggaard, 2 V.I. 77, 1946 U.S. Dist. LEXIS 1504 (D.C.V.I. 1946).

§ 31. Conveyance, when deemed a revocation

If the provisions of the instrument by which the alteration referred to in section 30 of this title is made are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition is not performed, or such contingency does not happen.

HISTORY

Revision note—1957. Suggested by section 40 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

ANNOTATIONS

Cited. Cited in In re Estate of Storie, 21 V.I. 170, 1984 V.I. LEXIS 4 (Terr. Ct. St. C. 1984).

§ 32. Effect of cancellation of revocation of second will

If, after making any will, the testator duly makes and executes a second will, the destruction, canceling or revocation of such second will, shall not revive the first will, unless it appears by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless after such destruction, canceling or revocation, he duly republishes his first will.

HISTORY

Source. 1921 Codes, Title II, ch. 10, § 11.

§ 33. Record of wills of real property

A will of real property, which has been at any time, either before or after this Code takes effect, duly proved in the district court, with the certificate of proof thereof annexed thereto or indorsed thereon, or a certified copy of the will, may be recorded in the office of the recorder of deeds in the judicial division in which the real property is situated, in the same manner as a deed of real property. Where the will relates to real property, the executor or administrator, with the will annexed, shall cause the same, or a certified copy thereof, to be so recorded in the office of recorder of deeds in each judicial division in which real property of the testator is situated, within twenty days after letters are issued to him. An exemplification of the record of such a will, from any office where the same has been so recorded, either before or after this Code takes effect, may be in like manner recorded in the office of any recorder of deeds. Such a record or exemplification, or an exemplification of the record thereof, shall be received in evidence, as if the original will was produced and proved.

HISTORY

Revision note—1957. Suggested by section 42 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 34. Index of wills by recorder of deeds

Upon recording a will or exemplification, as prescribed in section 33 of this title, the recorder of deeds must note and index it in the same books, and substantially in the same manner, as if it were a deed recorded in his office.

HISTORY

Revision note—1957. Suggested by section 43 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 35. Recording will established or proved without the Territory

Where real property situated within the Virgin Islands, or an interest therein, is devised or made subject to a power of disposition by a will in writing, subscribed by the testator, duly executed in conformity with the laws of the Virgin Islands or of the place where executed or of the testator's domicile, and established or admitted to probate without the Territory and filed or recorded in the proper office as prescribed by the laws of the State

or foreign country where the will was established or probated, or if such real property is cast by descent through lack of a devise thereof or of a power of disposition thereof by such a will in writing, a copy of such will or of the record thereof and of letters testimentary granted thereon or of the record thereof and of the proofs or of the records thereof, or if the proofs are not on file or recorded in such office, of any statement on file or recorded in such office, of the substance of the proofs, or a copy of a petition for letters of administration or of the record thereof and of letters of administration granted thereon or of the record thereof, authenticated as prescribed in section 36 of this title, or if no proofs and no statement of the substance of the proofs be on file or recorded in such office, a copy of such will or of the record thereof, authenticated as prescribed in such section 36, may be recorded in the office of the recorder of deeds in the judicial division in which such real property is situated, except that where it appears that such will was executed without the Territory no copy of proofs or of the record thereof and no statement of the substance of such proofs or of the record thereof shall be required; and such record in the office of the recorder of deeds or an exemplified copy thereof shall be presumptive evidence of such will and of the execution thereof and of the letters testamentary granted thereon and of such petition for letters of administration and of the letters of administration granted thereon, in any action or special proceeding relating to such real property.

HISTORY

Revision notes—1957. Suggested by section 44 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provision in former law on this subject was contained in the 1921 Codes, Title II, ch. 10, § 15. See note preceding section 1 of this title.

§ 36. Authentication of papers from without the Territory

To entitle a copy of a will established or admitted to probate or a copy of a petition for letters of administration or of letters testamentary or of letters of administration, granted in any State of the United States, and of the proofs or of any statement of the substance of the proofs of any such will, or of the record of any such will, petition, letters, proofs or statement to be recorded or used in this Territory as provided in section 35 of this title, such copy shall be authenticated by the seal of the court or officer by which or whom such will was established or admitted to probate or such letters were granted, or having the custody of the same or the record thereof, and the signature of a judge of such court or the signature of such officer and of the clerk of such court or officer if any. To entitle a copy of a will established or admitted to probate or a copy of a petition for letters of

administration or of letters testamentary, or of letters of administration granted in a foreign country, and of the proofs or of any statement of the substance of the proofs of any such will, or of the record of any such will, petition, letters, proofs or statement, to be recorded or used in this Territory, as provided in such section, such copy shall be authenticated in the manner prescribed by the laws of the foreign country, and be accompanied by a certificate to the effect that the authentication is in the manner prescribed by the laws of such foreign country. Such certificate may be made by an attorney-at-law admitted to practice in the Virgin Islands, resident in such foreign country, or by a consular officer of the United States resident in such foreign country, under the seal of his office, or by a consular officer of such foreign country, resident in the Virgin Islands, under the seal of his office, or by such other person as the court may deem qualified. In case such certificate is made by a person so deemed qualified by the court, instead of by an officer or person specifically above-described, the judge presiding, shall sign and append to the papers for recording, his statement in writing that he deems such person qualified to make such certificate.

HISTORY

Revision notes—1957. Suggested by section 45 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Provision in former law on this subject was contained in the 1921 Codes, Title II, ch. 10, § 15. See note preceding section 1 of this title.

§ 37. Validity of purchase notwithstanding devise

The title of a purchaser in good faith and for a valuable consideration, from the heir of a person who died seized of real property, shall not be affected by a devise of the property made by the latter unless, within two years after the testator's death, the will devising the same is either admitted to probate and recorded as a will of real property in the office of the recorder of deeds in the judicial division in which the property is situated, or established by the final judgment of the district court, in an action brought for that purpose. But if, at the time of the testator's death, the devisee is either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or without the Territory; or, if the will was concealed by one or more of the heirs of the testator, the limitation created by this section does not begin until after the expiration of one year from the removal of such a disability, or the delivery of the will to the devisee or his representative, or to the proper recorder of deeds.

HISTORY

Revision note—1957. Suggested by section 46 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 38. Validity and effect of testamentary dispositions

The validity and effect of a testamentary disposition of real property, situated within the Virgin Islands, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the Virgin Islands, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the Territory, and the ownership and disposition of such property, where it is not disposed of by will, are regulated by the laws of the State or country, of which the decedent was a resident, at the time of his death. Whenever a decedent, being a citizen of the United States or a citizen or a subject of a foreign country, wherever resident, shall have declared in his will and testament that he elects that such testamentary dispositions shall be construed and regulated by the laws of this Territory, the validity and effect of such dispositions shall be determined by such laws.

HISTORY

Revision note—1957. Suggested by section 47 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

ANNOTATIONS

1. Real property.
2. Personal property.
3. Residency.

1. Real property. Distribution of testator's real property in the Virgin Islands, or any interest in real property so situated, must be governed by the laws of the Virgin Islands. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

2. Personal property. Distribution of testator's personal property in the Virgin Islands was controlled by law of state or country of which decedent was a resident at the time of his death. Estate of Georg v. Congregacion Religrosa Hermanas Mercedarias de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741, 1969 U.S. Dist. LEXIS 4166 (D.C.V.I. 1969).

3. Residency. Residency at death of long-time Virgin Islands resident who died in Florida did not need to be decided, since Virgin Islands law governed effect her death had on her Virgin Islands real property without regard to residency, and principle that questions not clearly arisen should not be decided applied anyway. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

§ 39. Issue to take per stirpes

If a person dying after the effective date of this Code devises or bequeaths any present or future interest in real or personal property to the "issue" of himself or another, such issue shall, if in equal degree of consanguinity to their common ancestor, take per capita, but if in unequal degree, per stirpes, unless a contrary intent is expressed in the will.

HISTORY

Revision note—1957. Suggested by section 47a of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 40. Testamentary directions to purchase annuities

If a person dying after the effective date of this Code directs in his will the purchase of an annuity, the person or persons to whom the income thereof is directed to be paid shall not have the right to elect to take the capital sum directed to be used for such purchase in lieu of such annuity except to the extent the will expressly provides for such right, or except to the extent that the will expressly provides that an assignable annuity be purchased. But nothing herein contained shall affect or lessen the rights of election by a surviving spouse against, or in absence of, testamentary provision as provided under section 10 of this title.

HISTORY

Revision note—1957. Suggested by section 47b of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 41. Payment of legacies out of real property not specifically devised

If the personal property of a testator is insufficient for full payment of his general legacies, so much of his real property not specifically devised as shall be necessary for payment of the balance shall be sold and the proceeds used for such payment unless the will shall contain an express direction to the contrary.

HISTORY

Revision note—1957. Suggested by section 47d of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 42. Devise or bequest to unincorporated association; trust to preserve property

(a) If a will devises or bequeaths property to an association which lacks capacity to take the gift because it is unincorporated, and the association is

one authorized to become incorporated by the law of the Virgin Islands or by the law of the jurisdiction in which it has its principal office, the devise or bequest shall not lapse or be deemed invalid because of the lack of capacity of the named beneficiary if, within one year after probate of the will or within any period during which the vesting of the devise or bequest is otherwise lawfully postponed by the will, whichever period is greater, such named beneficiary shall become incorporated, under the law of either such jurisdiction, with power to take such devise or bequest.

(b) This section does not limit any power or authority of the court to effectuate the intent of the testator and to preserve legacies and devises for the use and benefit of unincorporated associations.

(c) Whenever any property, real or personal, is devised or bequeathed to an unincorporated association in such manner that the estate or interest devised or bequeathed will lawfully vest in such association, pursuant to the terms of the will or as provided in subsection (a) of this section, at a future time or upon a future event if it be incorporated at such time or upon such event as the case may be, with power to take such devise or bequest, the estate or interest so devised or bequeathed shall be deemed to be vested forthwith, either in the trustees in whom any estate preceding such devise or bequest shall be vested, or if there be no such precedent trust, then in the personal representative or representatives of the decedent as trustees, to be held subject to any intermediate estate or interest created by the will, whether legal or equitable. A trust arising as provided in this subsection shall be deemed to be created by the will, and the trust and trustees shall be subject to the direction and control of the district court to the same extent as if the trust had been created by express provision in the will. The trustees shall hold the estate or interest upon trust to reduce the property to possession at such future time or upon such future event if the association then be incorporated and empowered to receive such devise or bequest, to transfer, pay over and deliver it to the corporation so formed, or if the association be not, at such future time or upon such future event, incorporated and empowered to receive such devise or bequest, then to transfer, pay over and deliver the property to such persons as may be entitled thereto. A trust arising as provided in this subsection shall be deemed executed upon the incorporation of such association with power to receive the devise or bequest even though such incorporation occurs prior to the time or event fixed for vesting thereof.

(d) If a devise or bequest to an association be made in such manner as to take effect upon incorporation of such association, pursuant to the terms of the will or as provided in subsection (a) of this section, and no disposition is made of the rents and profits or income prior to such incorporation, the will shall be deemed to direct the trustees described in subsection (c) of this

section to receive the rents and profits, or the income, and hold them for the benefit of the corporation when formed, or if such corporation be not formed within the time fixed for vesting of the estate or interest, then for the benefit of the persons entitled to the property devised or bequeathed upon the failure of such devise or bequest.

(e) Notwithstanding any other statute or rule of law of this territory governing—

(1) the purposes for which trusts may be created; or

(2) the duration of suspension of the power of alienation; or

(3) the remoteness of vesting of estates; or

(4) the accumulation of rents, profits or income—

a trust created as provided in subsection (c) of this section, its continuation during the period provided in subsection (a) of this section, and any suspension of the power of alienation or postponement of vesting provided for in subsection (a) of this section, and any accumulation provided for in subsection (d) of this section, shall be valid.

(f) During the continuance of any trust provided for in subsection (c) of this section the right to enforce the performance of such trust shall be held by the unincorporated association to which the devise or bequest is made upon the event of its incorporation, and any such association shall have capacity and power as such, notwithstanding the fact that it is not incorporated, to hold such right and to take such proceedings as may be appropriate for its exercise or waiver, or, in the manner permitted by law for renunciation by a devisee or legatee, to renounce the devise or bequest on behalf of itself and of the corporation contemplated in the devise or bequest. In the event of any such renunciation the trust provided for in subsection (c) of this section shall terminate and the property so devised or bequeathed, with any accumulations, shall vest in the persons otherwise entitled thereto, as if no such devise or bequest had been made.

(g) This section does not limit the operation of any other provisions in the laws of the Virgin Islands authorizing the devise or bequest of real or personal property, even though the devise or bequest has been deemed to have been made to an association as provided in subsection (a) of this section.

The rule of construction stated in subsection (c) of this section has no effect upon the question whether the persons entitled to distributive shares in the estate of a testator take as distributees or take by reason of the will.

HISTORY

Revision note—1957. Suggested by section 47-e of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Chapter 3. Descent and Distribution

SECTION ANALYSIS

ANNOTATIONS

Cited. Cited in James v. James, 17 V.I. 40, 1980 V.I. LEXIS 96 (Terr. Ct. St. C. 1980).

§ 81. Definitions and use of terms; effect of chapter

(a) The term "real property" as used in this chapter, includes every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seized or possessed thereof, or in any manner entitled thereto, leases for years, estates for the life of another person, and real property held in trust, not devised by the beneficiary.

(b) When in this chapter a person is described as "living," it means living at the time of the death of the intestate from whom the descent or distribution came; when he is described as having "died," it means that he died before such intestate.

(c) This chapter does not affect a limitation of an estate by deed or will.

HISTORY

Revision note—1957. Suggested by section 80 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 82. Modes, rules, and canons of descent abolished

All existing modes, rules and canons of descent are hereby abolished. The determination of the degree of consanguinity of distributees of real and personal property shall be uniform, and shall be in accordance with the rules as applied immediately before the taking effect of this section to the determination of the next of kin of an intestate leaving personal property. All distinctions between the persons who take as heirs at law or next of kin

are abolished and the descent of real property and the distribution of personal property shall be governed by this chapter except as otherwise specifically provided by law. Whenever in any statute the words heirs, heirs at law, next of kin, or distributees, are used, such words shall be construed to mean and include the persons entitled to take as provided by this chapter.

HISTORY

Revision note—1957. Suggested by section 81 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

§ 83. Dower and curtesy abolished; provisions in lieu thereof

The shares of the surviving spouse as to real property as provided in this chapter and in section 10 of this title are in lieu of all rights of dower or curtesy therein. All rights of dower or curtesy in the estate of any person who dies after the effective date of this Code are abolished.

HISTORY

Revision notes—1957. Suggested by section 82 of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Under New York Real Property Law §§ 189–207, dower and curtesy were abolished as of Sept. 1, 1930, except that inchoate rights of dower which had accrued prior to that time were preserved. Under the common law, such inchoate rights of dower consisted of a third part of all the lands whereof the husband was seized of an estate of inheritance at any time during coverture.

Under the 1921 Codes, quoted below, the widow was entitled during her natural life to one-half part of all the lands whereof her husband died seized of an estate of inheritance. Therefore, in the Virgin Islands, the wife had no inchoate right of dower prior to the husband's death.

For this reason, this section abolishes all rights of dower or curtesy in the estate of any person who dies after the effective date of this Code. This chapter and section 10 of this title give the surviving spouse more benefits than would have been obtained under the former rights of dower or curtesy.

The 1921 Codes, Title II, chapters 11 and 12, provided:

"CHAPTER ELEVEN

"OF ESTATES IN DOWER

"Section 1. The widow of every deceased person shall be entitled to dower, or the use during her natural life of one-half part in value of all the lands whereof her husband died seized of an estate of inheritance.

"Section 2. When a widow is entitled to dower in the lands of which her husband died seized, it may be assigned to her by the district court upon application of the widow or any person interested in the lands; notice of application shall be given to such heirs, devisees, or other persons in such manner as the court shall direct.

"Section 3. For the purpose of assigning such dower the district court shall direct a warrant

to issue to three discreet and disinterested persons, as commissioners, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

"Section 4. The commissioners shall be sworn by any officer authorized to administer impartially oaths to discharge their duties, and shall as soon as may be, set off the dower according to the command of such warrant, and make return of their doing, with an account of their charges and expenses, in writing, to the District Court; and the same being confirmed by the court and recorded, and an attested copy thereof filed in the office of the Recorder of Deeds. The dower shall remain fixed and certain unless such confirmation be set aside or reversed; all costs to be apportioned in the discretion of the court.

"Section 5. When the estate or any part thereof out of which dower is to be assigned can not be equitably divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

"Section 6. When a widow is entitled to dower in the lands of which her husband died seized she may, if residing thereon continue to occupy the same, and enjoy the rents, issues, and profits thereof with the children or other heirs of the deceased, or if not residing thereon may receive one-half part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

"Section 7. A woman may be barred of her dower in all the lands of her husband by jointure settled on her with her assent before the marriage; Provided, Such jointure consists of a free hold estate in lands, for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband.

"Section 8. Such assent shall be expressed, if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age by her joining with her father or guardian in such conveyance.

"Section 9. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section bar her right to dower in all the lands of her husband.

"Section 10. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband whether she will take such jointure or pecuniary provision or be endowed of the lands of her husband, but she shall not be entitled to both.

"Section 11. If any lands be devised to a woman, or the provision be made for her in the will of her husband, expressly in lieu of dower, she shall make the election whether she will be endowed of the lands of her husband; but shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator.

"Section 12. When a widow shall be entitled to an election under either of the two sections last preceding she shall be deemed to have elected to take such jointure, devise or other provision unless within one year after the death of her husband she shall file in the District Court her election in writing to relinquish her rights under the jointure, devise or provision.

"Section 13. If any woman be lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or be deprived of the provisions made for her by will or otherwise in lieu of dower, she may be endowed anew in like manner as if such judgment, jointure, or other provision had not been made.

"Section 14. A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the Virgin Islands shall be entitled to dower of the lands of her deceased husband lying in the islands of which her husband died seized of an estate of inheritance; and the same may be assigned to her or recovered by her in like manner as if she and her deceased husband had been residents within the island at the time of his death.

"Section 15. [This section is covered by section 356 of this title.]

"Section 16. Whenever, in any action brought for the purpose, a widow shall recover her dower in the lands of which her husband died seized, she shall be entitled also to recover damages for the withholding of such dower.

"Section 17. Such damages shall be one-third of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in action against the heirs of her husband from the time of his death and in action against other persons from the time of demanding her dower of such persons.

"Section 18. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs or by any other person claiming title to such lands.

"Section 19. When a widow shall recover her dower in any lands aliened by the heir of her husband she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower from the time of the death of her husband to the time of alienation by the heir, not exceeding six years in the whole, and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

"Section 20. When a widow not having a right of dower shall, during the infancy of the heirs of the husband, or any of them, or of any other person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs, or such other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age he shall have an action against such widow to recover the lands so wrongfully awarded for dower."

"CHAPTER TWELVE

"OF ESTATE BY THE CURTESY

"Section 1. When any man and his wife shall be seized in her right of any estate of inheritance in lands the husband shall on the death of his wife, hold the lands for his life as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive."

Conveyance of property. Since dower and curtesy are abolished by this section, the following sections of the 1921 Codes, Title II, ch. 15, have been omitted as obsolete:

"Section 2. A husband and wife shall, by their joint deed, convey his or her or their real estate but the wife shall not be bound by any covenant contained in a joint deed conveying the property of the husband."

"Section 15. An instrument executed by a husband or wife without the signature of the other spouse shall operate only to convey or bind the interest of the one executing the same, and the grantee, etc., shall take such interest subject to all of the rights of dower or curtesy of the one not joining in the execution of the instrument."

ANNOTATIONS

1. Decisions under prior law.
2. Dower.
3. Curtesy.

1. Decisions under prior law. Mere declaration by a surviving spouse that real property, purchased after community property was abolished by a decedent married before the abolition, was purchased with the earnings of both, was insufficient for court to find that the realty was community property. In re Estate of Samuel, 2 V.I. 387, 1945 U.S. Dist. LEXIS 1351

(D.C.V.I. 1945), Prob. no. 13–1944.

Under the 1921 Codes, Title II, ch. 11, wife's dower interest in property acquired by her husband during their marriage and after enactment of the 1921 Codes, which he conveyed away without her signature, was enforced against the estate of the person who acquired the property from her husband. In re Estate of Sebastian, 2 V.I. 38, 1942 U.S. Dist. LEXIS 1669 (D.C.V.I. 1942).

The wife's interest in community property purchased by her husband prior to the acquisition of the islands by the United States, which he sold, without his wife joining in the deed, after enactment of the 1921 Codes, was enforced against the estate of the person who acquired the property from her husband. In re Estate of Sebastian, 2 V.I. 38, 1942 U.S. Dist. LEXIS 1669 (D.C.V.I. 1942).

2. **Dower.** The right of dower has been abolished in the Virgin Islands in the estates of persons who died after September 1, 1957. Weston v. Stuckert, 4 V.I. 539, 329 F.2d 681, 1964 U.S. App. LEXIS 5775 (1st Cir. 1964).

3. **Curtesy.** The right of curtesy has been abolished in the Virgin Islands in the estates of persons who died after September 1, 1957. Weston v. Stuckert, 4 V.I. 539, 329 F.2d 681, 1964 U.S. App. LEXIS 5775 (1st Cir. 1964).

§ 84. Descent and distribution of estate of decedent

The real property of a deceased person, male or female, not devised, shall descend, and the surplus of his or her personal property, after payment of debts and legacies, and if not bequeathed, shall be distributed to the surviving spouses, children, or next of kin or other persons, in manner following:

(1) One-third to the surviving spouse, and the residue in equal portions to the children, and such persons as legally represent the children if any of them have died before the deceased.

(2) If the deceased leaves a surviving spouse and both parents surviving, and no child or descendant, the surviving spouse shall take five thousand dollars and one-half of the residue, and the parents shall each take one-half of the balance; if there be no surviving spouse, the parents shall each take one-half of the whole.

(3) If the deceased leaves one parent surviving, and no child or descendant, and a surviving spouse, the surviving spouse shall take five thousand dollars and one-half of the residue, and the surviving parent shall take the balance; if there be no surviving spouse, the surviving parent shall take the whole.

(4) If the deceased leaves a surviving spouse, and no descendant, parent, brother or sister, nephew or niece, the surviving spouse shall be entitled to the whole thereof; but if there be a brother or sister, nephew or niece, and no descendant or parent, the surviving spouse shall take ten thousand dollars and one-half of the residue, and the balance shall descend and be distributed to the brothers and sisters and their representatives.

(5) If there be no surviving spouse, the whole thereof shall descend and be distributed equally to and among the children, and such as legally represent them.

(6) If there be no surviving spouse, and no children, and no representatives of a child, and no parent, the whole shall descend and be distributed to the next of kin in equal degrees to the deceased; and if all the brothers and sisters of the intestate be living, the whole shall descend and be distributed to them; if any of them be living and any be dead, per stirpes to the brothers and sisters living, and the descendants in whatever degree of those dead; so that to each living brother or sister shall descend or be distributed such shares as would have descended or been distributed to him or her if all the brothers and sisters of the intestate who shall have died leaving issue had been living, and so that there shall be distributed to such descendants in whatever degree, collectively, the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

(7) If the deceased was illegitimate and leaves a mother, and no child, or descendant, and no surviving spouse, such mother shall take the whole and shall be entitled to letters of administration in exclusion of all other persons. If the deceased shall leave a surviving spouse, the surviving spouse shall take five thousand dollars and one-half of the residue, and the mother shall take the balance. If the mother of such deceased be dead, the relatives of the deceased on the part of the mother shall take in the same manner as if the deceased had been legitimate, and be entitled to letters of administration in the same order.

(8) Where the distributees of the deceased, entitled to share in his estate, are all in equal degree to the deceased, their shares shall be equal.

(9) When such distributees are of unequal degrees of kindred, the whole shall descend and shall be distributed to those entitled thereto, according to their respective stocks; so that those who take in their own right shall receive equal shares, and those who take by representation shall receive the share to which the parent whom they represent, if living, would have been entitled.

(10) No representation shall be admitted among collaterals after brothers' and sisters' descendants.

(11) Relatives of the half-blood shall take equally with those of the whole blood in the same degree; and the representatives of such relatives shall take in the same manner as the representatives of the whole blood.

(12) Descendants and other distributees of the deceased, begotten before his death, but born thereafter, shall take in the same manner as if they had been born in the lifetime of the deceased, and had survived him.

(13) An illegitimate child shall be considered to have the same status, for the purpose of the descent and distribution of the property of his or her ancestors, as if he or she were born in lawful wedlock provided that in cases

where the ancestor in question is a father, he admitted of record paternity of such child by signing the official birth certificate; or he was adjudged the father of such child by a court of competent jurisdiction; or by written acknowledgment he recognized such child as his.

(14) The right of an adopted child to take a share of the estate and the right of succession to the estate of an adopted child shall continue as provided in Title 16.

HISTORY

Source. See revision note below.

Revision notes—1957. Descent and distribution were covered generally in former law in the 1921 Codes, Title II, chapters 16, 17 and 18, as amended.

Subdivision (1): No similar provision appeared in former law.

Subdivisions (2), (3) and (4): Provisions in former law on this subject were contained in the 1921 Code of St. Croix, Title II, ch. 16, § 1(2); the 1921 Code of St. Thomas and St. John, Title II, ch. 16, § 1(2), as amended Ord. Col. C. St. T. and St. J., app. Apr. 13, 1927; the 1921 Codes, Title II, ch. 17, § 1.

Subdivision (5): Provisions in former law on this subject were contained in the 1921 Code of St. Thomas and St. John, Title II, ch. 16, § 1(1) and § 1(4); the 1921 Code of St. Croix, Title 11, ch. 16, § 1(1) and § 1(4), as amended by Ord. Col. C. St. C. app. May 27, 1927; the 1921 Codes, Title II, ch. 17, § 1.

Subdivision (6): Provisions in former law on this subject were contained in the 1921 Code of St. Croix, Title II, ch. 16, § 1(3) and § 1, as amended by Ord. Col. C. app. May 27, 1927; the 1921 Code of St. Thomas and St. John, Title II, ch. 16, § 1(3), as amended by Ord. Col. C. St. T. and St. J. app. Apr. 13, 1927; the 1921 Codes, Title II, ch. 17, § 1.

Subdivision (7): Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 18, § 2.

Subdivisions (8) and (9): Provisions in former law on this subject were contained in the 1921 Code of St. Croix, Title II, ch. 16, § 1(4), as amended by Ord. Col. C. St. C. app. May 27, 1927; the 1921 Code of St. Thomas and St. John, Title II, ch. 16, § 1(4); the 1921 Codes, Title II, ch. 17, § 1.

Subdivision (10): No similar provision appeared in former law.

Subdivision (11): Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 18, § 3.

Subdivision (12): Provisions in former law on this subject were contained in the 1921 Codes, Title II, ch. 18, § 11.

Subdivision (13): Provisions in former law on this subject were contained in Act Leg. Assem. app. May 18, 1949 (Bill no. 9), § 1. The wording of this subdivision is new and was suggested by the Code Advisory Committee.

Subdivision (14): No similar provision appeared in former law.

See note preceding section 1 of this title.

ANNOTATIONS

1. Prior law. Although subdivision (13) of this section previously provided for the posthumous adjudication of paternity for inheritance, the Legislature, in its wisdom, subsequently amended the law to provide that such adjudication must be done during the lifetime of the putative father. In re Baby Girl Lake, 33 V.I. 66, 1995 V.I. LEXIS 33 (Terr. Ct. St. T. and St. J. 1995).

The word "issue" as used in the 1921 Codes, Title II, ch. 16, § 2, whereby, in the absence of other takers, property of intestate was to descend to brothers and sisters and to the "issue" of any deceased brother or sister, referred only to children of brothers and sisters and, therefore, allowed inheritance only to nephews and nieces of intestate. Municipality of St. Thomas & St. John v. Robinson, 1 V.I. 88, 1925 U.S. Dist. LEXIS 850 (D.C.V.I. 1925).

In St. Croix, children inherited only if there was no surviving spouse, and in such event only legitimate children inherited, in equal shares. 1 V.I.Op.A.G. 306.

In St. Thomas and St. John, personal property descended in the same manner as in St. Croix, except that illegitimate children inherited to the same extent as legitimate children, provided the father has admitted paternity of such children of record by signing the official birth certificate, or provided he was adjudged the father of such children by a court of competent jurisdiction. 1 V.I.Op.A.G. 306.

In the absence of judicial administration of an estate, title to real property owned by a decedent did not pass to his heirs. 1 V.I.Op.A.G. 220.

2. Illegitimate children. The repeal of 16 V.I.C. § 462 does not expressly provide that the rights of children previously legitimated by their father pursuant to that section are to be released or extinguished; therefore, it followed that if a child could satisfy the requirements of 16 V.I.C. § 462 that existed prior to the repeal of that statute, the child had to be deemed a legitimate child for all purposes including the intestate distribution provisions of 15 V.I.C. § 84. Tyler v. Armstrong, — V.I. —, 365 F.3d 204, 2004 U.S. App. LEXIS 7219 (3d Cir. 2004).

Pro se petitioner was denied appointment as successor administrator to an estate for lack of standing as an heir-at-law because the required evidence under either Danish law, or Virgin Islands law, was not provided to prove the legitimization of the son through whose lineage priority was claimed. Sewer v. Sewer (In re Sewer), — V.I. —, 208 F. Supp. 2d 557, 2002 U.S. Dist. LEXIS 12496 (D.C.V.I. 2002).

An illegitimate child is not entitled to a distributive share in the estate of paternal grandmother who died testate, where nothing from the predeceased father's estate went to the grandmother or her estate and where the decedent specified unequivocally in her will which children and grandchildren should share in her estate. In re Estate of Creque, 5 V.I. 332, 1966 U.S. Dist. LEXIS 3193 (D.C.V.I. 1966).

A petitioner's right as an illegitimate child to heirship accrued upon the death of her putative father, and not when the claim was filed with the court or on the date of the court's adjudication that the decedent was the putative father of the petitioner. In re Estate of Creque, 4 V.I. 568, 230 F. Supp. 849, 1964 U.S. Dist. LEXIS 7004 (D.C.V.I. 1964).

Act of the Legislative Assembly, approved, May 18, 1949 (Bill No. 9), which permitted an illegitimate child to have the same status for purpose of descent of property as a legitimate child, allowed the court in two instances of time to adjudicate the decedent the putative father; the first instance was in a paternity suit by the mother of the illegitimate child, and the second instance was when the decedent could be adjudged the putative father in a proceeding

subsequent to the death of the putative father. In re Estate of Creque, 4 V.I. 568, 230 F. Supp. 849, 1964 U.S. Dist. LEXIS 7004 (D.C.V.I. 1964).

Under the provisions of this section, the illegitimate child of a mother who died in 1958 is entitled to inherit her interest in real estate in the Virgin Islands. In re Estate of Wright, 4 V.I. 327, 207 F. Supp. 912, 1962 U.S. Dist. LEXIS 5348 (D.C.V.I. 1962).

Where decedent died intestate in 1910, owning real estate in Virgin Islands, Danish Law governed descent and distribution of real estate, and sister of decedent, rather than illegitimate children of decedent, inherited real estate, where decedent and mother of illegitimate children had not declared their intention to marry and decedent had not formally declared children to be his and made a deed of inheritance. In re Estate of Wright, 4 V.I. 327, 207 F. Supp. 912, 1962 U.S. Dist. LEXIS 5348 (D.C.V.I. 1962).

Where father had not admitted or acknowledged paternity, and had not been adjudged by court as the father, child was not an illegitimate child within meaning of subd. (13) of this section, and could not inherit from father. In re Estate of Wright, 4 V.I. 291, 192 F. Supp. 812, 1961 U.S. Dist. LEXIS 5757 (D.C.V.I. 1961).

An illegitimate child was entitled to a distributive share, as in intestacy, in estate of paternal grandmother who died testate, since right of inheritance given to an illegitimate child by 1949 statute brings such child within class of children or descendants entitled under pretermission statute to take against parent's or ancestor's will. In re Estate of Heyn, 4 V.I. 97, 266 F.2d 206, 1959 U.S. App. LEXIS 4161 (3d Cir. 1959).

Act Leg. Assem. app. May 18, 1949 (Bill no. 9) (from which subd. (13) of this section was derived, but in somewhat modified form), contemplated adjudication of paternity either before or after death of putative father. In re Estate of Heyn, 3 V.I. 354, 163 F. Supp. 431, 1958 U.S. Dist. LEXIS 3987 (D.C.V.I. 1958), rev'd on other grounds, 4 V.I. 97, 266 F.2d 206, 1959 U.S. App. LEXIS 4161 (3d Cir. 1959).

Illegitimate children have the same status as legitimate children for inheritance purposes if the father has acknowledged paternity or has been adjudged the father by a court of competent jurisdiction. 2 V.I.Op.A.G. 219.

3. **Law governing.** Where decedent died intestate in New York in 1910, owning real estate in Virgin Islands, Danish Law in force in Virgin Islands in that year governed right or title to such real estate. In re Estate of Wright, 4 V.I. 327, 207 F. Supp. 912, 1962 U.S. Dist. LEXIS 5348 (D.C.V.I. 1962).

4. **Historical.** Subsection (13) of this section amended the Act of May 18, 1949, which provided that an illegitimate child should have the same status for purpose of descent of property as a legitimate child upon proper adjudication, by substituting the words "was adjudged" for the words "was or is adjudged"; and the law as amended makes reference to a paternity proceeding while the putative father was living and not such a proceeding after the death of the putative father. In re Estate of Creque, 4 V.I. 568, 230 F. Supp. 849, 1964 U.S. Dist. LEXIS 7004 (D.C.V.I. 1964).

5. **Construction.** The argument that the intestate distribution statute (this section) was intended in any way to create preferential classes among individuals who are decedent's next-of-kin was rejected. In re Estate of Garvey, 38 V.I. 68, 1997 V.I. LEXIS 22 (Terr. Ct. St. C. 1997).

This section, which allows an illegitimate child to have the same status for purpose of descent of property as a legitimate child is in derogation of common law, and thus in effect a remedial statute which should be construed broadly and in favor of the innocent child. In re Estate of Creque, 4 V.I. 568, 230 F. Supp. 849, 1964 U.S. Dist. LEXIS 7004 (D.C.V.I. 1964).

6. **Jurisdiction.** Claimant's allegation of paternity which would give her a share in decedent's estate failed for lack of subject-matter jurisdiction under paternity statute, since

issue of paternity may be adjudicated before and not after death of putative father, for purposes of taking distributive share in estate. In re Estate of Moolenaar, 24 V.I. 234, 1989 V.I. LEXIS 41 (Terr. Ct. St. T. and St. J. 1989).

In a proceeding to establish heirship the District Court of the Virgin Islands had jurisdiction to find that decedent was the putative father of the petitioner under Act of the Legislative Assembly, approved May 18, 1949 (Bill No. 9), which allowed an illegitimate child to have the same status for purpose of descent of property as a legitimate child, although under this section, enacted subsequent to the death of the decedent the District Court would not have jurisdiction over the subject matter of the petition. In re Estate of Creque, 4 V.I. 568, 230 F. Supp. 849, 1964 U.S. Dist. LEXIS 7004 (D.C.V.I. 1964).

7. **Finding of paternity.** As subdivision (13) specifically prohibits the posthumous adjudication of paternity, 15 V.I.C. § 84(13) must be read in the same light because, if the Court were to allow a petitioner to establish paternity under 16 V.I.C. § 301(a), there would be nothing to prevent her from filing a subsequent claim against the decedent's estate as she would be armed with the Court's decree adjudging the person to be a child and, thus, an heir of the decedent; the petitioner would, therefore, be able to accomplish through the back door what the Legislature specifically prohibited her from doing through the front. In re Baby Girl Lake, 33 V.I. 66, 1995 V.I. LEXIS 33 (Terr. Ct. St. T. and St. J. 1995).

8. **Stepchildren.** Because the Virgin Islands statutes of descent and distribution do not provide for intestacy succession by stepchildren, the stepchildren of the decedent had no entitlement as heirs-at-law to share in the estate of the decedent; the stepchildren could not be treated as natural children simply because they were designated by the decedent as "children" in his will. In re Estate of Desrochers, 36 V.I. 59, 1997 V.I. LEXIS 6 (Terr. Ct. St. T. and St. J. 1997).

9. **Preferential distribution.** This section only provides preferential distributions to a decedent's widow and children; it does not circumscribe the definition of "next-of-kin" nor govern the law regarding the appointment and qualifications of administrators. In re Estate of Garvey, 38 V.I. 68, 1997 V.I. LEXIS 22 (Terr. Ct. St. C. 1997).

Cited. Cited in Zawadski De Bueno v. Bueno Castro, 822 F.2d 416, 1987 U.S. App. LEXIS 8336 (3d Cir. V.I. 1987); Government of the Virgin Islands ex rel. Seaton v. Appleton, 23 V.I. 44, 1987 V.I. LEXIS 9 (Terr. Ct. St. T. and St. J. 1987); In re Estate of Hodge, 24 V.I. 210, 1989 V.I. LEXIS 43 (Terr. Ct. St. T. and St. J. 1989); Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992); In re Estate of Phillip, 41 V.I. 37, 1999 V.I. LEXIS 13 (Terr. Ct. St. C. 1999); In re Estate of Harris, 48 V.I. 166, 2006 V.I. LEXIS 29 (Dec. 17, 2006).

§ 85. Advancements of real and personal estates

If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible and to be distributed to his distributees; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants shall receive so much, only, of the personal property, and inherit so much only, of the real property, of the intestate, as shall be sufficient to make all

the shares of all the children in the whole property, including the advancement, equal. The value of any real or personal property so advanced shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given. Maintaining or educating a child, or giving him money without a view to a portion or settlement in life is not an advancement. An estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust with a right of selection, is an advancement.

HISTORY

Revision notes—1957. Suggested by section 85 of the New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Similar provisions in former law were contained in the 1921 Codes, Title II, ch. 18, §§ 4, 5, 7 and 9. See note preceding section 1 of this title.

§ 86. How advancement adjusted

When an advancement to be adjusted consisted of real property, the adjustment must be made out of the real property descendible to the distributees. When it consisted of personal property, the adjustment must be made out of the surplus of the personal property to be distributed to the distributees. If either species of property is insufficient to enable the adjustments to be fully made, the deficiency must be adjusted out of the other.

HISTORY

Revision notes—1957. Suggested by section 86 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Similar provisions in former law were contained in the 1921 Codes, Title II, ch. 18, §§ 6 and 8. See note preceding section 1 of this title.

§ 87. Effect of divorce, abandonment, or refusal to support upon rights to distributive share

No distributive share of the estate of a decedent shall be allowed under the provisions of this chapter, either—

(1) to a spouse against whom or in whose favor a final decree or judgment of divorce recognized as valid by the law of this territory has been rendered; or

(2) to a spouse who has procured without this territory a final decree or judgment dissolving the marriage with the decedent, where such decree or judgment is not recognized as valid by the law of this territory; or

(3) to a husband who has neglected or refused to provide for his wife, or has abandoned her; or

(4) to a wife who has abandoned her husband; or

(5) in the estate of a child to a parent who has neglected or refused to provide for such child during infancy or who has abandoned such child during infancy whether or not such child dies during infancy, unless the parental relationship and duties are subsequently resumed and continue until the death of the child.

If the spouse or parent is deprived of a distributive share in the estate of a decedent by the provisions of this section the estate of such decedent shall be distributed, in accordance with the other provisions of this chapter, as though such spouse or parent had predeceased the decedent.

HISTORY

Revision note—1957. Suggested by section 87 of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

ANNOTATIONS

1. Construction. Petitioner was barred from receiving a distributive share of decedent's estate, as she had affirmatively participated in procuring an invalid divorce from decedent. In re Estate of Pringle, 43 V.I. 15, 2000 V.I. LEXIS 12 (Terr. Ct. St. C. 2000).

Cited. Cited in Zawadski De Bueno v. Bueno Castro, 822 F.2d 416, 1987 U.S. App. LEXIS 8336 (3d Cir. V.I. 1987).

§ 88. Simultaneous deaths

(a) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as otherwise provided in this section.

(b) Where a testamentary disposition of property depends upon the time of death or two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries and such portions shall be distributed respectively to those who would have taken the whole property in the event that the designated beneficiary through whom they take had survived.

(c) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(c) Not less than thirty days after the death of a creditor, unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the debtor to pay not more than $5,000 of the debt to—

(1) the surviving spouse;

(2) one or more of the children 18 years of age or older;

(3) the father or mother;

(4) the brother or sister; or

(5) any other surviving relative, friend, or agent of decedent, preference being given in the order named if request for payment shall have been made by more than one such person, or, upon the request of the surviving spouse or one of such relatives, to a creditor of the decedent or to a person who has paid or incurred the funeral expenses of the decedent, upon an affidavit made by the surviving spouse, or relative to whom or at whose request the payment is made, accompanied by a certified copy of the death certificate, with the affidavit showing:

(A) the date of the death of the decedent;

(B) the relationship of the affiant to the decedent;

(C) that no executor or administrator has qualified or been appointed;

(D) the names and addresses of the persons entitled to and who will receive the money paid; and

(E) that such payment and all other payments made, under this section by all debtors, known to the affiant, after diligent inquiry, do not in the aggregate exceed such amount as provided by regulation promulgated by the Commissioner of Banking.

This subsection does not limit the right of a debtor to make payment to a surviving spouse within less than thirty (30) days after the death of the creditor as provided in subsection (b) of this section.

(d) [Repealed.]

(e) A payment made in good faith under this section shall be a complete discharge to the debtor to the extent of the payment, even though the affidavit on which payment is made is false, and even though payment pursuant to subsection (c) of this section was not made in the order of preference indicated in that subsection, provided only that the creditor is dead and that the required number of days elapses between death and payment and, in the case of a payment under subsection (b) of this section or subsection (c) of this section, that the affiant in fact bears the stated relationship to the decedent, and in the case of a payment under subsection (d) of this section, that the affiant is in fact a distributee or creditor, or has paid or incurred the funeral expenses.

(f) Any person receiving payment pursuant to this section is accountable therefor to the lawful executor or administrator of the decedent if one is

appointed, or to the district court; except that a surviving spouse entitled to have property set aside to him or to her pursuant to section 352 of this title need not account for such payments to the extent of the exemption provided in such section 352, and the amount so received shall be credited to such exemption.

(g) Nothing in this section shall deprive any person of any right which he would otherwise have to receive payment of a debt, except as against a debtor who has made a payment which is a discharge under subsection (e) of this section; nor shall anything in this section deprive any debtor of any right to make or refuse payment which it would otherwise have.

(h) This section shall apply to payments not otherwise governed by applicable law.—Amended Aug. 9, 1994, No. 6003, §§ 1, 2, Sess. L. 1994, p. 136; Apr. 7, 2004, No. 6662, § 3, Sess. L. 2004, p. 17; Mar. 5, 2005, No. 6730, § 24, Sess. L. 2005, p. 106.

HISTORY

Revision note—1957. Suggested by section 103-a of former New York Decedent Estate Law (repealed by L. 1966, ch. 952, eff. Sept. 1, 1967).

Amendments—2005. Act 6730, § 24, substituted "$5,000" for "$2,000" in subsections (b) and (c).

—2004. Act 6662, § 3, substituted "$2,000" for "1,000" in subsections (b) and (c).

—1994. Subsection (c): Rewrote paragraph (4) and added paragraph (5).
Subsection (d): Repealed.

Reimbursement for funeral expenses. Act Aug. 9, 1994, No. 6003, § 2, provided: "Notwithstanding the provisions of Title 15, Chapter 3, Section 89, subsection (c), item 5, Virgin Islands Code, as added by this act [Act Aug. 9, 1994, No. 6003, § 1], and until amended by regulation promulgated by the Commissioner of Banking, the aggregate amount which a bank may pay to a survivor of a decedent as reimbursement for funeral expenses shall be $4,000.00."

CROSS REFERENCES

Funeral expenses permissibly paid out of decedent's estate, see section 424 of this title.
Use of affidavits, see section 696 of Title 5.

Chapter 5. Escheats

SECTION ANALYSIS

CROSS REFERENCES

Uniform Unclaimed Property Act, see § 651 et seq. of Title 28.

§ 121. Escheat of property

When any person dies without heirs entitled by law to inherit, leaving any real or personal property in this territory, the same shall escheat to and become the property of this territory.

HISTORY

Source. 1921 Codes, Title 21, ch. 19, § 1.

§ 122. Action by Virgin Islands to recover property

The government of the Virgin Islands may maintain any action or proceeding necessary to recover the possession of any property left under the conditions described in section 121 of this title, or for the enforcement or protection of the rights of this territory thereto or on account thereof, in like manner and with like effect as any natural person. Such action or proceeding shall be prosecuted by the United States attorney by the leave and under the direction of the Governor, and not otherwise.

HISTORY

Source. 1921 Codes, Title II, ch. 19, § 2.

ANNOTATIONS

1. Generally. When an amount was deposited as an amount accruing to the Colonial Treasury, it belonged to the treasury of the municipality and was not the proper subject of escheat proceedings. 1 V.I.Op.A.G. 116.

§ 123. Commencement of action

When the Governor is informed or has reason to believe that any real or personal property has escheated to this territory he shall direct the United States attorney to file an information in behalf and in the name of the Government of the Virgin Islands in the district court, setting forth a description of the estate, the name of the person last seized, the name of the occupant or the person in possession and claiming such estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have been escheated, with an allegation that by reason thereof this territory has right by law to such estate. Upon such information a summons must issue to such person requiring him to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in this territory, which order must be published for at least six consecutive weeks from the date thereof in a newspaper published in the judicial division in which the property is situated, if one be published therein, and in case no newspaper is published in the division then in such newspaper as the court by order may direct.

HISTORY

Source. 1921 Codes, Title II, ch. 19, § 3.

§ 124. Appointment of receiver

The court, upon the information being filed as provided in section 123 of this title, with and upon the application of the United States attorney, either before or after answer, upon notice to the party claiming such estate, if known, may upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate, and receive the rents and profits of the same, until the title to such estate is finally settled.

HISTORY

Source. 1921 Codes, Title II, ch. 19, § 4.

§ 125. Appearance and trial of issues

(a) All persons named in the information referred to in section 123 of this title may appear and answer or deny the facts stated at any time before the time for answering expires; and any other person claiming an interest in such estate may appear and be made a defendant by motion for that

purpose in open court within the time allowed for answering; and if no person appears and answers within the time, then judgment shall be rendered that this territory is the owner of the property in such information claimed.

(b) If any person appears and denies the title set up by this territory, or denies any material fact set forth in the information, the issue of fact must be tried as issues of facts are tried in civil actions. If, after the issues are tried, it appears from the facts found or admitted that this territory has good title to the property in the information mentioned, or any part thereof, judgment shall be rendered that this territory is the owner and entitled to the possession thereof, and that it recover costs of action against the defendants who have appeared and answered.

HISTORY

Source. 1921 Code of St. Thomas and St. John, Title II, ch. 19, § 5, as amended Ord. Mun. C. St. T. and St. J. app. Oct. 13, 1947 (Bill no. 111), § 2; Title II, ch. 19, § 7; the 1921 Code of St. Croix, Title II, ch. 19, §§ 5, 7.

§ 126. Order of sale

In any judgment rendered by any court of competent jurisdiction, escheating property to this territory, on motion of the United States attorney, the court shall make an order that such property be sold at public sale, and upon such terms, whether for cash or credit, or both, as shall be deemed for the best interests of this territory. After giving such notice of the time and place of sale as may be prescribed by the court in the order, the marshal shall, within ten days after such sale, make a report thereof to the court, and, upon hearing the report, the court may examine the same and witnesses in relation thereto, and if the proceedings of such sale are unfair; or the sum or sums bid are disproportionate to the value of the portion sold, and if it appear that a greater sum can be obtained for the property, or any portion thereof, exceeding such bid by at least ten per centum, exclusive of the expense of a new sale, the court may vacate the sale and direct another sale to be had and the new sale shall be conducted in all respects as if no previous sale had taken place. But if it appears to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, and that a greater sum than ten per centum, exclusive of the expense of a new sale, can not be obtained, the court shall make an order confirming the sale and directing the marshal in the name of this territory to execute to the purchaser or purchasers a conveyance of the property sold, and the conveyance shall vest in the purchaser or purchasers all the right and title of this territory therein, and also directing that the purchaser shall execute

and deliver to the marshal his note or notes, payable to this territory, for any deferred payments, with a first mortgage upon the property conveyed, to secure such deferred payments. The marshal shall, out of the proceeds of such sale, pay the cost of the proceedings incurred on behalf of this territory, including the expense of making such sale, and the remainder, together with the notes and mortgages, he shall deliver to the Commissioner of Finance.

HISTORY

Source. 1921 Code of St. Croix, Title II, ch. 19, §§ 5, 7; the 1921 Code of St. Thomas and St. John, Title II, ch. 19, § 5, as amended Ord. Mun. C. St. T. and St. J. app. Oct. 13, 1947 (Bill no. 111), § 2; Title II, ch. 19, § 7.

Editor's note. Proper party to move for sale of property escheated to the territory is now the Attorney General. See Smith v. Government of Virgin Islands, 6 V.I. 136, 375 F.2d 714, which is noted below, and 3 V.I.C. §114.

ANNOTATIONS

1. Prior law. While the Code of Laws required escheated real property to be sold at public auction, for good and sufficient reasons in a particular case, a special order of the court could confirm a sale direct to a specific individual. 1 V.I.Op.A.G. 133.

2. Generally. This section prescribes in detail the procedure for the sale of property which has been escheated to the Government of the Virgin Islands. Smith v. Government of Virgin Islands, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

Although this section names the United States attorney as the party who is to move for a sale of escheated property in the event the government of the Virgin Islands desires to sell it, the function of the United States attorney has been transferred to the Attorney General. Smith v. Government of Virgin Islands, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

This section requires public sale by a marshal after notice prescribed by the court, ultimate judicial confirmation of the sale and conveyance of the property to the purchaser by the marshal. Smith v. Government of Virgin Islands, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

The appropriate procedure for the disposition of escheated property is adequately provided for in this section, and should be followed by the United States Attorney. Smith v. Government of Virgin Islands, 240 F. Supp. 809, 1965 U.S. Dist. LEXIS 7484 (D.C.V.I. 1965), aff'd, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

3. Private sale. An Act of the Virgin Islands Legislature authorizing the sale of escheated real property to a named private individual is inconsistent with section 121 et seq. of this title, since it permitted an unlawful alienation of territorial property, and any action taken by the Governor or Commissioner of Property and Procurement pursuant to such act is unlawful. Smith v. Government of Virgin Islands, 240 F. Supp. 809, 1965 U.S. Dist. LEXIS 7484 (D.C.V.I. 1965), aff'd, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

Since no special law may contravene the provisions of existing general law, and since the

general law prevails when it is in conflict with the provisions of a special law, the general escheat law prevails over a special Act disposing of escheated property to a private individual. Smith v. Government of Virgin Islands, 240 F. Supp. 809, 1965 U.S. Dist. LEXIS 7484 (D.C.V.I. 1965), aff'd, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

4. **Vacation of sale.** This section provides for the vacation of a sale if the bids received are disproportionate to the value of such property, and if it appears to the court that on a resale a higher price can be obtained which would exceed the successful bid by at least ten percent, exclusive of the expense of a new sale. Smith v. Government of Virgin Islands, 6 V.I. 136, 375 F.2d 714, 1967 U.S. App. LEXIS 6991 (3d Cir. 1967).

§ 127. Claim to escheated property

Within ten years after judgment in any proceeding had under this chapter, a person not a party or privy to such proceeding may file a petition in the district court showing his claim or right to the property or the proceeds thereof. A copy of such petition shall be served upon the United States attorney at least twenty days before the hearing of the petition, and he shall answer the same. The court thereupon shall try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property or the proceeds thereof, the court shall order the property, if it has not been sold, to be delivered to him; or if it has been sold and the proceeds paid into the Treasury, then it shall order that a copy of the judgment be forwarded to the Commissioner of Finance. All persons who fail to appear and file their petitions at any time within the time limited, by law are forever barred, saving, however, to infants and persons of unsound mind the right to appear and file their petitions at any time within the time limited, or one year after their respective disabilities cease.

HISTORY

Source. 1921 Codes, Title II, ch. 19, § 6.

ANNOTATIONS

1. **Redemption.** While the law of redemption did not apply to escheated property, the Code of Laws did provide a procedure whereby a party in interest could have his claim adjudicated in the District Court within ten years from the date of judgment. 1 V.I.Op.A.G. 133.

§ 128. Unclaimed bank deposits

When the Governor is informed or has reason to believe that any bank, banker, or other banking institution in the Virgin Islands has or holds on deposit or otherwise any fund, funds, or other property of any kind or nature which has escheated to this territory, he shall direct the United States attorney to file in the District Court an information or bill of discovery, with proper interrogatories to be answered by the owner, agent,

or manager of such bank or banking institution, and upon the filing of such information or bill the court shall order and direct, at a time to be designated in the order, that the owner, agent or manager of such bank or banking institution shall, under oath, file an answer to the information and interrogatories, and shall specially answer each and every interrogatory contained in such information or bill. If it appears to the court from such answer that the bank, banker or banking institution has any property in its possession which has escheated or may escheat to this territory, it shall direct the bank, banker, or banking institution forthwith to bring the same into such court, and the court shall proceed to dispose of the property as provided elsewhere in this chapter.

HISTORY

Source. 1921 Codes, Title II, ch. 19, § 8.

PART II. ADMINISTRATION OF ESTATES

Chapter 11. General Provisions

SECTION ANALYSIS

CROSS REFERENCES

Administration in matters relating to guardians, wards, and minors, see section 801 et seq. of this title.

Jurisdiction of Superior Court, see 4 V.I.C. § 76.

Procedure in probate and other fiduciary matters, see Super. Ct. Rs. 190 et seq.

§ 161. Jurisdiction of district court

In addition to the jurisdiction and powers conferred upon it by other provisions of law, the district court has jurisdiction and the power to administer justice in all matters relating to the affairs of decedents, and, upon the return of any process, to try and determine all questions, legal or equitable, arising between any or all of the parties to any proceeding, or between any party and any other person having any claim or interest therein who voluntarily appears in such proceeding, or is brought in by citation, as to any and all matters necessary to be determined in order to make a full, equitable, and complete disposition of the matter by such order or decree as justice requires; and, in the cases and in the manner prescribed by law, and in addition to and without limitation or restriction on the foregoing powers, to—

(1) take proof of wills;

(2) grant and revoke letters testamentary, and of administration;

(3) direct and control the conduct, and settle the accounts, of executors and administrators;

(4) direct the payment of debts and legacies and the distribution of the estates of intestates; and

(5) order the sale and disposal of the real and personal property of deceased persons.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 1.

Jurisdiction of Superior Court. See 4 V.I.C. § 76.

ANNOTATIONS

1. Scope of jurisdiction.
2. Legislative intent.

1. Scope of jurisdiction. It was not beyond the power of the district court of the Virgin Islands to adjudicate a claim for waste against a deceased foreign life tenant with respect to property in the Virgin Islands although the action was one brought by an assignee of the deceased foreign life tenant against Virgin Islands bank as stakeholder of rents derived from the property, wherein the bank interpleaded the foreign executor of deceased and also the claimant for waste, since the district court had complete jurisdiction of the administration of decedent's estate in the Virgin Islands and the proof and allowance of claims against such estate. Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770, 3 V.I. 540, 1955 U.S. App. LEXIS 3563 (3d Cir. 1955).

2. Legislative intent. The legislature, having explicitly given jurisdiction over claims against estates to the District Court, undoubtedly did not intend to vest jurisdiction in the municipal court, in the absence of any clear language to that effect. Chas. H. Steffey, Inc. v. Estate of Savain, 15 V.I. 260, 1978 V.I. LEXIS 12 (Terr. Ct. St. T. and St. J. 1978). (But see, 4 V.I.C. § 76.)

Cited. Cited in Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992); In re Estate of Phillip, 41 V.I. 37, 1999 V.I. LEXIS 13 (Terr. Ct. St. C. 1999); Sewer v. Sewer (In re Sewer), — V.I. —, 208 F. Supp. 2d 557, 2002 U.S. Dist. LEXIS 12496 (D.C.V.I. 2002).

§ 162. Mode of proceeding; pleadings

The mode of proceeding in testamentary or probate matters is in the nature of a suit in equity, and the pleadings and forms thereof shall be as prescribed by rules of the district court.

HISTORY

Source. 1921 Codes, Title III, ch. 71, §§ 2, 3.

CROSS REFERENCES

Procedure in probate and other fiduciary matters, see Rule 21 et seq. of the Local Rules of the District Court of the Virgin Islands.

§ 163. Books to be kept in probate matters

The proceedings in probate matters shall be entered and recorded in the following books—

(1) a register, in which shall be entered a memorandum of all official business transacted by the court appertaining to the estate of each person deceased under the name of such person;

(2) a record of wills, in which shall be recorded all wills proven before the court, with the order of probate thereof, and of all wills proved elsewhere upon which letters of administration are issued by the direction of the court;

(3) a record of the appointment of administrators, whether general, special, or of a partnership, and of executors;

(4) a record of accounting and distribution, in which shall be entered a summary balance sheet of the accounts of administrators and executors, with the orders and decrees relating to the same; a memorandum of executions issued thereon, with a note of satisfaction when satisfied; also orders and decrees relating to the sale of real property and to the distribution of the proceeds thereof, and notices of all money or securities paid or deposited in court as proceeds of such sales or otherwise, and a statement showing the names of creditors, and the debts established and entitled to distribution, the amount to which each person is entitled out of such fund, and the amount actually paid to each person, and when paid; and

(5) an order book, in which shall be entered orders directing the conduct of executors or administrators, orders for publication of notice to creditors; orders in behalf of creditors, directing debts to be paid or allowing an execution to be issued; appraisers and referees; orders relating to the production of a will, to removal of executors or administrators, or to sureties therefor, and generally all other orders not required to be entered in some other book.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 4.

§ 164. Indexes to books

To each of the books referred to in section 163 of this title there shall be attached an index, securely bound in the volume, referring to the entries or records, in alphabetical order, under the name of the person to whose estate or business they relate and naming the page of the book where the entry or record is made.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 5.

§ 165. Costs and witness fees

With respect to matters to which this chapter relates, costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely. Such costs shall not exceed those allowed in the trial of a civil action in the district court. Witness fees and other disbursements similar to those allowed on the trial of a civil action may also be allowed, to be paid in like manner.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 6.

§ 166. Orders, judgments, or decrees for payment of money

With respect to matters to which this chapter relates, orders, judgments, or decrees for the payment of money may be enforced, by execution or otherwise, in the same manner as other orders, judgments, or decrees for the payment of money in the district court.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 7.

§ 167. Administration in summary manner

Estates, wherein the value of the assets is less than three hundred dollars, may be administered in a summary manner, under such general and special rules as may be prescribed by the district court.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 8, as added Ord. Col. C. St. T. and St. J. app. June 25, 1923; Ord. Col. C. St. C. app. Aug. 25, 1923.

CROSS REFERENCES

Procedure for summary administration of estates under $300, see Super. Ct. R. 204.

§ 168. Presumption of death

In case of the absence from the jurisdiction of any person owning property therein, for a period of ten years or more, during which time there has been no knowledge or means of knowledge of his whereabouts afforded by him or obtainable by the exercise of reasonable diligence on the part of the heirs, beneficiaries, or other parties in interest of his estate, such heir, beneficiary or other interested party may institute a proceeding for the

administration of the estate of such absentee owner, on the presumption that the latter has died intestate.

HISTORY

Source. 1921 Code of St. Thomas and St. John, Title III, ch. 71, § 19, as added Ord. Mun. C. St. T. and St. J. app. May 25, 1948 (Bill no. 228), § 1.

Revision note—1957. 1921 Code of St. Thomas and St. John, Title III, ch. 71, § 19, formerly applicable only in the Municipality of St. Thomas and St. John, is herein made applicable throughout the Virgin Islands.

ANNOTATIONS

1. Generally.
2. Burden of proof.
3. Evidence supporting presumption.

1. **Generally.** A presumption of death arises where: (1) a person is absent for at least ten years, (2) those persons with whom he would likely communicate have not heard anything from him, and (3) a reasonably diligent search has been made without obtaining information that he is alive. Rice v. Clements, 26 V.I. 153, 1991 V.I. LEXIS 37 (Terr. Ct. St. C. 1991).

2. **Burden of proof.** An absent or missing person may be proved dead within the ten-year period after which a presumption of death arises as a matter of law; the party petitioning to have the absentee declared dead must overcome the presumption of life and prove death by a preponderance of the evidence. Rice v. Clements, 26 V.I. 153, 1991 V.I. LEXIS 37 (Terr. Ct. St. C. 1991).

3. **Evidence supporting presumption.** Petition to have person declared dead after five-year disappearance was granted where party missed scheduled appointment to undergo elective surgery to have taken place nine days after he was last seen, all his sources of income were left untouched, the record indicated the party was extremely close to his family, none of whom had heard from him, and an extraordinarily diligent search was for the party unavailing. Rice v. Clements, 26 V.I. 153, 1991 V.I. LEXIS 37 (Terr. Ct. St. C. 1991).

Chapter 13. Disposition of Estates Without Administration

SECTION ANALYSIS

CROSS REFERENCES

Procedure for disposition of estates without administration to be in accordance with that provided by this chapter, see Super. Ct. R. 205.

ANNOTATIONS

1. Construction. Estate of foreign decedent was required to institute a second administration in Virgin Islands, since decedent died without a will and thus his estate could not use Territorial Court [now Superior Court] Rule 210 to distribute his property in Territory, but was required to follow regular Virgin Islands probate procedures. In re Estate of DeChabert, 43 V.I. 27, 2000 V.I. LEXIS 14 (2000).

Cited. Cited in In re Estate of Smith, 31 V.I. 3, 1994 V.I. LEXIS 18 (Terr. Ct. St. T. and St. J. 1994).

§ 191. Petition for settlement without administration

Whenever a person dies intestate, leaving no debts, or such debts as his heirs choose to assume and pay, the heirs may present to the court a petition duly verified by two witnesses, which shall state—

(1) the name and residence of the deceased;

(2) the date of his death, supported by death certificate when available and procurable;

(3) the names and capacities of the heirs;

(4) that there are no debts, or that the heirs choose to assume and pay such debts as there may be;

(5) that they accept the estate purely, simply and unconditionally, making the petitioners and the property of decedent responsible for any debts that may be owing by the decedent; and

(6) the proportion due each heir.

The petition shall end with a prayer that the heirs be recognized as the

legal heirs of the deceased and as such be placed in full possession of the decedent's estate, real and personal.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 9, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 192. Inventory to be annexed to petition

An inventory of all property left by the deceased shall be annexed to the petition referred to in section 191 of this title. The inventory shall state the true and fair value of the property at the time of the decedent's death, shall be sworn to by two responsible persons, and shall be the basis for the computation of the inheritance tax to be paid by the estate.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 10, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 193. Presentation of petition to United States attorney

Before presentation of the petition referred to in section 191 of this title to the court for consideration it shall be submitted to the United States attorney who, if satisfied as to the correctness of the valuation as shown by the inventory and sworn to, shall approve the petition in the margin thereof and certify the amount of inheritance tax to be paid to the Territory. If the United States attorney refuses to approve the petition, the petitioners may present it to the court and cause a rule to issue on the United States attorney ordering him to show cause why the inheritance tax should not be fixed and the petition approved.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 11, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 194. Deposit and payment of tax

After publication of notice to creditors once a week for four weeks and upon the approval, by the United States attorney or by judgment on rule, of the petition referred to in section 191 of this title, the amount of the inheritance tax shall be deposited with the clerk of the court and not until then shall the petition be considered by the court and judgment pronounced thereon.

After judgment has been rendered by the court, the clerk of the court shall pay the inheritance tax to the proper fiscal officer for the account of the Territory and file the receipt therefor with the petition and judgment.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 12, as added Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9); Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933 as amended Ord. Mun. C. St. T. and St. J. app. Apr. 28, 1948 (Bill no. 208), § 1.

§ 195. Judgment prima facie proof of title

In the judgment recognizing the heirs and placing them in possession of the estate of the deceased, the real estate shall be described in detail. A registration in the office of the proper recorder of deeds of said judgment, or a certified copy thereof, shall be prima facie proof of title to said property in the heir or heirs therein named.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 13, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 196. Acceptance of estate on behalf of minors

Where all or any of the heirs are minors, acceptance of the estate can only be made for said minors after the filing of an inventory and appraisement, as provided for by chapter 19 of this title, provided that the acceptance by either surviving spouse, by a guardian, or another authorized person or persons on behalf of a minor or minors shall not bind said minors with respect to the debts of the estate beyond their net equity in the assets of the decedent's estate.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 14, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 197. Creditor's lien

Any creditor may obtain and preserve a lien against all property of the decedent by filing for recordation, within 1 year after the decedent's death, in the office of the clerk of the court, a sworn itemized account of his claim and from the date of recordation said claim shall become a lien upon the assets of the estate until such lien is discharged by payment or cancelled by judgment of court in appropriate proceedings.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 15, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

Revision note—1957. Words "within 1 year after the decedent's death" were inserted to place a time limitation upon the filing of creditors' claims against the estate of a decedent.

§ 198. Procedure where decedent left will

If the decedent has left a last will and testament, the legatee or legatees under the will, may, after inventory and appraisement and appointment of executor or administrator, if an administration is unnecessary, apply to the court to be recognized and placed in possession upon strict observance of sections 191, 192, 193, 194 and 195 of this title.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 16, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 199. Service of process upon absent heir or legatee

Any heir or legatee, non-resident of the Virgin Islands, or who shall remove therefrom after having been placed in possession of any of the assets of an estate under this chapter in relation to any claim against said estate is presumed to have consented to be sued in the District Court of the Virgin Islands and service on any such absent heir or legatee shall be sufficient if made upon the clerk of the district court in this territory. The clerk of the court, upon receipt of the summons, is required to forward same promptly by registered mail to the heir or legatee named in said proceedings addressed to his or her last known address; provided that the time for filing the answer shall be sixty (60) days from the date of the service by the marshal on the clerk of the court.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 17, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

§ 200. Prescribed period when transactions voidable by creditor

In the interval between the entry of a judgment placing heirs in possession as provided for in this chapter and 120 days thereafter, any alienation, transfer, assignment, mortgage or encumbrance of the assets of the estate shall be voidable as against any creditor prejudiced thereby, and any such creditor may cause the acts to be declared null as done in fraud of his rights.

HISTORY

Source. 1921 Codes, Title III, ch. 71, § 18, as added Ord. Col. C. St. T. and St. J. app. Mar. 20, 1933; Ord. Mun. C. St. C. app. May 19, 1939 (Bill no. 9).

Chapter 15. Proof of Wills and Appointment of Executors and Administrators

SECTION ANALYSIS

CROSS REFERENCES

Procedure in probate and other fiduciary matters, see Super. Ct. Rs. 190 et seq.
Wills, generally, see section 1 et seq. of this title.

§ 231. Proof of wills

Proof of a will shall be taken—

(1) when the testator, at or immediately before his death, was an inhabitant of the Virgin Islands and leaves assets therein;

(2) when the testator, not being an inhabitant of the Virgin Islands, shall have died in the Virgin Islands leaving assets therein;

(3) when the testator, not being an inhabitant of the Virgin Islands, shall have died out of the Virgin Islands, leaving assets in the Virgin Islands; or

(4) when the testator, not being an inhabitant of the Virgin Islands, shall have died out of the Virgin Islands not leaving assets therein, but where assets thereafter came into the Virgin Islands.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 1.

CROSS REFERENCES

Wills which may be proved, see section 16 of this title.

ANNOTATIONS

1. Jurisdiction.
2. Community property writings.
3. Testamentary intent.
4. Life estates.

1. Jurisdiction. Territorial court [now Superior Court] had jurisdiction to determine whether will of long-time resident of Virgin Islands who died in Florida was valid and, if so, to admit it to probate. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

Will of mother who resided in Virgin Islands for many years but died in Florida met and fulfilled all requisite legal criteria and therefore could be proved in Virgin Islands jurisdiction. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

2. Community property writings. Testamentary writings dealing with community property could not be admitted to probate without administration thereof. In re Estate of Behagen, 1 V.I. 12, 1921 U.S. Dist. LEXIS 804 (D.C.V.I. 1921).

3. Testamentary intent. Courts generally take the view that the intention of the testatrix be ascertained and given full force and effect in regard to devises. 1 V.I.Op.A.G. 221.

4. Life estates. A devise of a life estate in two rooms in a house is interpreted to mean that the devisee is entitled to the use of such rooms, but is not entitled to be paid rental for the use of such rooms. 1 V.I.Op.A.G. 221.

§ 232. Allegations in application

In an application to prove a will or for the appointment of an executor or administrator, the petition shall set forth the facts necessary to give the court jurisdiction, and the names, age, and residence, so far as known of his heirs. In the case of an application for the appointment of an executor or administrator, the application shall also state whether or not the deceased left a will.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 10.

CROSS REFERENCES

Procedure in probate matters, form and contents of petition, citation to heirs at law and next of kin, waiver, will contests, etc., see Super. Ct. Rs. 190 et seq.

§ 233. Issuance of letters testamentary

When a will is proven, letters testamentary shall be issued to the person or persons therein named as executors or to such of them as give notice of their acceptance of the trust and are qualified.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 2.

CROSS REFERENCES

Grant of letters testamentary or of administration; bond; waiver, see Super. Ct. Rs. 192 and 194.

ANNOTATIONS

1. **Determination of qualifications of executors.** Statutes that empower courts to appoint as executors persons named in wills, if they are fit persons, and enumerate grounds of disability vest in the court a discretion to determine the existence of the particular causes of disability enumerated but do not vest the court with discretion to determine generally what are causes of disability. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

Where petitioner applied for letters testamentary, as person nominated in the will of decedent, whether petitioner gave deceased bad professional advice, or failed to give her valuable legal advice to her detriment, was not a sufficient legal ground to deny petition to grant letters testamentary. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

Fact that petitioner applying for letters testamentary, as person nominated in will of decedent, could possibly have a conflicting position by virtue of serving other roles, was not a valid legal ground to deny petition to grant letters testamentary. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

Petitioner was entitled to be granted letters testamentary applied for, as a person nominated in the will of the decedent where petitioner fulfilled enabling qualifications and suffered none of the grounds of disability enumerated in the statute. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

§ 234. Failure of executors to accept or qualify

If all the persons named in a will as executors decline to accept or are disqualified, letters of administration with the will annexed shall be issued to the person to whom the administration would have been granted if there had been no will.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 2.

ANNOTATIONS

1. **Right of widow.** Under section 236 of this title and this section, widow of decedent had primary legal right to letters of administration c.t.a., on his estate, the executor named in the will having declined to accept the trust. In re Estate of Below, 3 V.I. 300, 162 F. Supp. 88, 1958 U.S. Dist. LEXIS 2922 (D.C.V.I. 1958).

§ 235. Qualifications of executors and administrators

(a) The following persons are not qualified to act as executors or administrators: nonresidents of the Virgin Islands, minors, judicial officers of the district court, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor involving moral turpitude: Provided,

however, That the term "nonresident" as used in this section shall not be construed to include a foreign bank which has a branch or branches established in the Virgin Islands, or national banking associations, as those institutions are defined by section 1 of Title 9.

(b) A person named in a will as executor who is a nonresident of the Virgin Islands or a minor is entitled to qualify as executor upon removal of such disability, if he applies therefore within thirty days from the removal of such disability, if otherwise competent.

(c) Notwithstanding the provisions of subsection (a) of this section, a nonresident of the Virgin Islands named in a will as executor may be appointed to act as such executor provided:

(1) he otherwise qualifies under said subsection (a);

(2) he files such bond as may be required and approved by the court; and

(3) he appoints an agent or attorney resident in the Virgin Islands upon whom service of all papers may be made, such appointment to be in writing and filed by the clerk with other papers in such estate.—Amended Oct. 5, 1959, No. 497, § 11, Sess. L. 1959, p. 185; Mar. 10, 1965, No. 1332, Sess. L. 1965, Pt. I, p. 51.

HISTORY

Source. 1921 Codes, Title III, ch. 72, §§ 8 and 26.

Amendments—1965. Added subsection (c).

—1959. Subsec. (a): Added the proviso excepting foreign banks which have branches in the Virgin Islands, and national banking associations, as defined by section 1 of Title 9, from the coverage of the term "nonresident".

ANNOTATIONS

1. **Nonresidents.** All executors must be residents under this section. In re Estate of Vose, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

The term "nonresidents" as used in subsection (b) refers to persons who are not domiciled in the Virgin Islands. In re Estate of Vose, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

Statute disqualifying executors or administrators who are nonresidents of Virgin Islands does not apply to trustees. In re Estate of Vose, 4 V.I. 11, 1959 U.S. Dist. LEXIS 2204 (D.C.V.I. 1959), aff'd, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

2. **Determination of qualifications of executors.** Statutes that empower courts to appoint as executors persons named in wills, if they are fit persons, and enumerate grounds of disability vest in the court a discretion to determine the existence of the particular causes of disability enumerated but do not vest the court with discretion to determine generally what

are causes of disability. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

Where petitioner applied for letters testamentary, as person nominated in the will of decedent, whether petitioner gave deceased bad professional advice, or failed to give her valuable legal advice to her detriment, was not a sufficient legal ground to deny petition to grant letters testamentary. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

Fact that petitioner applying for letters testamentary, as person nominated in will of decedent, could possibly have a conflicting position by virtue of serving other roles, was not a valid legal ground to deny petition to grant letters testamentary. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

Petitioner was entitled to be granted letters testamentary applied for, as a person nominated in the will of the decedent where petitioner fulfilled enabling qualifications and suffered none of the grounds of disability enumerated in the statute. In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

3. Disqualified executors and administrators. Virgin Islands law did not allow non-resident to be appointed administrator of an intestate estate in Territory, and thus court could not consider decedent's widow as a candidate for post of administrator. The parties were therefore given thirty days within which to agree to a candidate, failing which court would appoint member of Virgin Islands bar to administer estate. In re Estate of DeChabert, 43 V.I. 27, 2000 V.I. LEXIS 14 (2000).

Where a person is disqualified to hold the office of executor or administrator, that person may not nominate others to execute the office on his or her behalf. In re Estate of Garvey, 38 V.I. 68, 1997 V.I. LEXIS 22 (Terr. Ct. St. C. 1997).

Where a minor heir has priority in being appointed administrator under 15 V.I.C. Section 235, but is disqualified for want of emancipatory age, such heir may not nominate someone else without priority of appointment to administer the estate on his or her behalf. In re Estate of Garvey, 38 V.I. 68, 1997 V.I. LEXIS 22 (Terr. Ct. St. C. 1997).

Cited. Cited in In re Estate of Vialet, 24 V.I. 16, 1988 V.I. LEXIS 24 (Terr. Ct. St. T. and St. J. 1988).

§ 236. Priority in appointment of administrators

(a) Administration of the estate of an intestate shall be granted and letters thereof issued, to—

(1) the widow or next of kin, or both, in the discretion of the court;

(2) one or more of the principal creditors; or

(3) any other person competent and qualified whom the court may select.

(b) The persons named in the clauses of subsection (a) of this section, if qualified and competent for the trust, shall be entitled to the administration in the order therein named. If those named in clause (1) of such subsection do not apply for the administration within thirty days from the decease of the intestate, they shall be deemed to have renounced their right thereto; but the court in its discretion may direct that a citation issue to them, requiring them within such period to apply for or renounce their right of administration. If the persons named in clause (2) of such subsection do not

make such application within forty days from such decease, they shall be deemed to have renounced their right to the administration.

HISTORY

Source. 1921 Codes, Title III, ch. 72, §§ 3 and 4.

ANNOTATIONS

1. Generally.
2. Notice to remaining heirs.
3. Disqualified administrator.

1. Generally. Priority in the appointment of administrators of an intestate estate is determined by 15 V.I.C.§ 236(b) which lists the widow of the deceased as the first in priority to administer the intestate estate if she is qualified and competent for the trust. In re Estate of Smith, 31 V.I. 3, 1994 V.I. LEXIS 18 (Terr. Ct. St. T. and St. J. 1994).

2. Notice to remaining heirs. Where petitioner, the decedent's son, had not served the remaining heirs with a copy of his petition for appointment as administrator, nor had he provided individual waivers, it was reasonable to conclude that the remaining heirs had no knowledge of this action and, therefore, had no opportunity to file an answer or objection; thus, the petition had to be denied. Petitioner, however, was granted an additional period in which he could serve a copy of his petition or provide individual waivers. In re Estate of Ledee, 37 V.I. 37, 1997 V.I. LEXIS 15 (Terr. Ct. St. T. and St. J. 1997).

3. Disqualified administrator. Where a minor heir has priority in being appointed administrator under this section, but is disqualified for want of emancipatory age, such heir may not nominate someone else without priority of appointment to administer the estate on his or her behalf. In re Estate of Garvey, 38 V.I. 68, 1997 V.I. LEXIS 22 (Terr. Ct. St. C. 1997).

Cited. Cited in Hatchette v. West Indian Co., Ltd., 17 V.I. 549, 1980 U.S. Dist. LEXIS 8945 (1980); Wilson v. Joseph, 28 V.I. 29, 1992 V.I. LEXIS 17 (Terr. Ct. St. C. 1992); Fredella ex rel. Titchener v. Farrelly, 28 V.I. 90, 1993 V.I. LEXIS 3 (Terr. Ct. St. T. and St. J. 1993); Sewer v. Sewer (In re Sewer), — V.I. —, 208 F. Supp. 2d 557, 2002 U.S. Dist. LEXIS 12496 (D.C.V.I. 2002).

§ 237. Priority of husband as administrator

If the deceased was a married woman, the administration of her estate shall in all cases be granted to her husband, if he is qualified and competent for the trust and applies therefor within thirty days from her decease, unless by force of a marriage settlement or otherwise she has made some testamentary disposition of her property which renders it necessary and proper to grant the administration to some other person.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 5.

ANNOTATIONS

1. Equal protection.
2. Notice to remaining heirs.
3. Failure to file within 30 days of death.

1. Equal protection. Because modern roles of men and women in a contemporary marriage no longer justify gender-based discrimination, the court holds that 15 V.I.C. § 237 violates equal protection because it provides that a husband will always be the administrator of his deceased wife's estate and not vice-versa; accordingly, the court expands this section so that the wife of the decedent shall have priority in the administration of the estate of her husband, so long as she is qualified and competent for the trust. In re Estate of Smith, 31 V.I. 3, 1994 V.I. LEXIS 18 (Terr. Ct. St. T. and St. J. 1994).

2. Notice to remaining heirs. Where petitioner, the decedent's son, had not served the remaining heirs with a copy of his petition for appointment as administrator, nor had he provided individual waivers, it was reasonable to conclude that the remaining heirs had no knowledge of this action and, therefore, had no opportunity to file an answer or objection; thus, the petition had to be denied. Petitioner, however, was granted an additional period in which he could serve a copy of his petition or provide individual waivers. In re Estate of Ledee, 37 V.I. 37, 1997 V.I. LEXIS 15 (Terr. Ct. St. T. and St. J. 1997).

3. Failure to file within 30 days of death. Spouse of a decedent generally has priority over all others as a candidate for administrator to an estate; when a widow fails to file her claim within thirty days of her husband's death, however, she loses her priority and from that day forward is on equal footing with any other candidate. In re Estate of DeChabert, 43 V.I. 27, 2000 V.I. LEXIS 14 (2000).

§ 238. Special administrators

When for any reason there is a delay in issuing letters testamentary or of administration, and the property of the deceased is in danger of being lost, injured, or depreciated, the court may appoint a special administrator to take charge of the estate. Such administrator shall qualify in like manner and have the powers and perform the duties of an administrator generally, except that he is not authorized to pay the debts of or otherwise discharge any obligation against the deceased. Upon the issuing of letters testamentary or of administration, the powers of the special administrator cease.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 9.

ANNOTATIONS

1. Scope of authority.
2. Fees and payments.

1. Scope of authority. This statute, which allows courts to combat estate administration delay by appointing special administrators to take charge of estates, does not allow such administrators to include, as part of estate, assets whose ownership is in dispute. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

Where daughter of deceased mother wished court to appoint her Special Administrator of mother's estate, so that she could have power to include money mother loaned to daughter's brother among estate's assets, this statute would not have so empowered her, as it did not apply to assets whose ownership were in dispute. Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

2. Fees and payments. Special personal representative of estate which might be entitled to a reasonable fee for its services had to file an application for allowance thereof with the court. In re Estate of Caron, 23 V.I. 93, 1987 V.I. LEXIS 1 (1987).

Payment by special personal representative of estate expenses not authorized by statute or court order conferring specific powers on representative fell outside its scope of authority and would be disallowed. In re Estate of Caron, 23 V.I. 93, 1987 V.I. LEXIS 1 (1987).

Cited. Cited in In re Estate of Cummings, 21 V.I. 592, 1985 V.I. LEXIS 30 (Terr. Ct. St. T. and St. J. 1985).

§ 239. Bond of executor or administrator

(a) No executor or administrator may act as such until he files with the court an undertaking in a sum to be determined by the court of not less than the probable value of the estate with one or more sufficient sureties, to be approved by the court, to be void upon condition that he shall faithfully perform the duties of his trust according to law. However, when by the terms of the will a testator expressly declares that no bond shall be required of his executor, such executor may act upon taking an oath to faithfully fulfill his trust without filing the undertaking in this section mentioned. In addition, in the discretion of the court an executor may be permitted to act without bond also upon taking an oath to faithfully fulfill his trust without filing the undertaking in this section mentioned. Such executor or administrator shall be criminally and civilly liable as other executors and administrators for any dereliction of duty.

(b) Whenever the penal sum mentioned in the undertaking prescribed in subsection (a) of this section exceeds $2,000, three or more sureties may become severally liable for portions of the sums if the aggregate sum for which such sureties became liable equals the penal sum required in the undertaking. Where the probable value of the estate is not more than $2,000, the court may, if in its opinion the persons interested in the estate will not be injured thereby, authorize the executor or administrator to file his own undertaking without sureties.

(c) Whenever the amount of an executor's or administrator's undertaking is insufficient, or the sureties therein, or either of them, have become nonresidents of this territory, or are likely to or have become insolvent, the executor or administrator shall be required to give a new and sufficient undertaking. The application for such new undertaking may be made by any heir, legatee, devisee, creditor, or other person interested in the estate,

and in the manner prescribed in section 240(b) of this title for the removal of executors and administrators.

(d) Any new undertaking required under subsection (c) of this section, when given and received, shall discharge the sureties in the former undertaking from any liabilities on account of their principal arising from his acts or omissions subsequent thereto. When a new undertaking is ordered, if the executor or administrator fails to comply therewith within five days from the entry thereof, or such further time as the order may prescribe, thenceforward his authority shall cease, and he shall be deemed removed and his letters revoked.—Amended July 7, 1981, No. 4578, Sess. L. 1981, p. 73.

HISTORY

Source. 1921 Codes, Title III, ch. 72, §§ 6, 7, 14, 15.

Amendments—1981. Subsection (a): Inserted "to be determined by the court" following "sum" in the first sentence, substituted "the" for "his" preceding "will" in the second sentence, and added the third sentence.

CROSS REFERENCES

Bond of executor or administrator, recitation of amount in order for probate or administration; waiver, see Super. Ct. Rs. 192 and 194.

§ 240. Revocation of letters

(a) If, after administration has been granted upon an estate, a will of the deceased be found and proved, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued; and if, after a will has been proven and letters testamentary or of administration with the will annexed have been issued thereon, the will is set aside, declared void or inoperative, such letters shall be revoked and letters of administration issued.

(b) Any heir, legatee, devisee, creditor, or other person interested in the estate may apply for the removal of an executor or administrator who has become of unsound mind or been convicted of any felony or a misdemeanor involving moral turpitude, or who has in any way been unfaithful to or neglectful of his trust, to the probable loss of the applicant. The application shall be by petition and upon notice to the executor or administrator, and if the court finds the charge to be true it shall make an order removing the executor or administrator, and revoke his letters.

(c) Whenever it appears probable to the court that any of the causes for removal of an executor or administrator exist or have transpired, as specified in subsection (b) of this section, the court shall cite the executor or administrator to appear and show cause why he should not be removed,

and if he fails to appear or show sufficient cause an order shall be made removing him and revoking his letters; and the court shall exercise a supervisory control over the executor or administrator, to the end that he faithfully and diligently perform the duties of his trust according to law.

(d) If any executor or an administrator becomes a nonresident of this territory, he may be removed and his letters revoked in the manner prescribed in subsection (b) of this section, except that the notice may be given by publication or posting for such time as the court directs.

(e) If a nonresident or minor qualifies as executor upon becoming a resident or reaching majority and if, in the meantime, an administrator with the will annexed has been appointed, his powers and duties cease with the qualification of such executor; but if another executor has qualified and is acting as such they thereby become joint executors.

HISTORY

Source. 1921 Codes, Title III, ch. 72, §§ 8, 11, 12, 13, 18.

CROSS REFERENCES

Removal of executor or administrator, forfeiture of fees, and other penalties, for dilatory administration or failure to file accounts or other papers promptly, see Super. Ct. Rs. 198, 202, and 203.

ANNOTATIONS

1. Generally.
2. Adverse interest or claim.
3. Nonresidence.
4. Person interested.
5. Probable loss.

1. Generally. The Virgin Islands Probate Code prescribes stringent ethical standards of a person holding the trust office of executor or administrator. This stringency stems from the uncompromising statutory language of this section. In re Estate of Christensen, 38 V.I. 137, 1998 V.I. LEXIS 7 (Terr. Ct. St. C. 1998).

Determination of an executor's removal mandates a two-pronged inquiry: 1) whether the executor has in any way been unfaithful to or neglectful of his trust; and if so, 2) whether such unfaithfulness or neglect caused probable loss to the applicant petitioning removal. In re Estate of Christensen, 38 V.I. 137, 1998 V.I. LEXIS 7 (Terr. Ct. St. C. 1998).

Letters of administration having been properly granted, they may only be revoked upon one of statutory grounds provided in subsection (b) of this section. In re Estate of Below, 3 V.I. 300, 162 F. Supp. 88, 1958 U.S. Dist. LEXIS 2922 (D.C.V.I. 1958).

2. Adverse interest or claim. Administrator of estate was required to be removed where he failed to file inventory of estate assets, acted improperly as controlling person of funeral home business which was estate's major asset, and violated the trust of his office with conflicts of interest, utilizing estate's assets for personal use, and commingling estate's cash assets with his own. In re Estate of Buggs, 39 V.I. 152, 1998 V.I. LEXIS 27 (1998).

The mere existence of a possible adverse interest, without more, is not sufficient grounds in the Virgin Islands for a complaint against executor who is also a residuary legatee of testator's

estate. In re Estate of Vose, 4 V.I. 447, 317 F.2d 281, 1963 U.S. App. LEXIS 5365 (3d Cir. 1963).

This section does not make mere existence of adverse interest, without more, ground for removal of administrator, and to justify removal, it must appear that conflict of interest is so substantial and direct as to render it impossible for administrator to administer his trust faithfully or that he has in fact proved unfaithful to his trust. In re Estate of Below, 3 V.I. 300, 162 F. Supp. 88, 1958 U.S. Dist. LEXIS 2922 (D.C.V.I. 1958).

While claim by administrator of personal interest in assets of decedent's estate adverse to claims of others interested in estate may be treated as adequate ground for revocation of his letters of administration, it does not follow that every assertion by administrator of title to property which creditors of heirs assert belongs to estate is ground for his removal, in absence of bad faith on his part. In re Estate of Below, 3 V.I. 300, 162 F. Supp. 88, 1958 U.S. Dist. LEXIS 2922 (D.C.V.I. 1958).

Where, under valid assignment, husband, during his lifetime, transferred, to trustee for benefit of his wife, his shares in corporation, but assignment was unaccompanied by stock certificate because, under stockholders' agreement, another stockholder, later deceased, was to hold all shares until his advances to corporation had been paid, (1) the claim of the widow, who was administratrix of her husband's estate, was solely against corporation and estate of other stockholder for shares assigned to her trustee by decedent husband, or for value for those shares, (2) her husband's estate had no valid claim against her for shares decedent assigned to her during his lifetime, since he then parted with his equitable interest therein, retaining only duty to see that legal title was transferred to his assignee, and (3) widow did not have interest adverse to estate of her husband which would prevent her from faithfully administering her trust as administratrix. In re Estate of Below, 3 V.I. 300, 162 F. Supp. 88, 1958 U.S. Dist. LEXIS 2922 (D.C.V.I. 1958).

3. Nonresidence. A nonresident executor can be removed where he was a nonresident at the time of his appointment, as well as where he ceases to be a nonresident after his appointment. In re Estate of Vose, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

Where executors of decedent's estate intended to make Virgin Islands their residence but still maintained residences in State of New York, where family of one of executors resided and where both continued to practice law, they were not domiciled in Virgin Islands and hence would be removed under statute disqualifying nonresidents. In re Estate of Vose, 4 V.I. 11, 1959 U.S. Dist. LEXIS 2204 (D.C.V.I. 1959), aff'd, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

Executors who were removed for failure to meet domiciliary requirements of statute would nevertheless be entitled to substantial awards for services performed. In re Estate of Vose, 4 V.I. 11, 1959 U.S. Dist. LEXIS 2204 (D.C.V.I. 1959), aff'd, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

4. Person interested. A person who was prosecuting in court in good faith a claim against estate was a "person interested" within meaning of subsection (b) allowing such a person to apply for the removal of an executor. In re Estate of Vose, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

5. Probable loss. The requirement of "probable loss" in subsection (b) must be construed as relating only to the stated ground for removal immediately preceding, viz., unfaithfulness to or neglect of trust. In re Estate of Vose, 4 V.I. 169, 276 F.2d 424, 1960 U.S. App. LEXIS 5088 (3d Cir. 1960).

Cited. Cited in In re Estate of Latalladi, 23 V.I. 353, 1988 V.I. LEXIS 42 (Terr. Ct. St. T. and St. J. 1988); In re Estate of Corbiere, 25 V.I. 8, 1990 V.I. LEXIS 1 (Terr. Ct. St. T. and St. J. 1990); Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

§ 241. Death, resignation or removal of executor or administrator

(a) The court in its discretion, may allow an executor or administrator to resign when it appears that the executor or administrator is not in default in any matter connected with the duties of his trust. The executor or administrator shall pay the cost of the proceeding, and, if the application is allowed, he shall surrender his letters to be cancelled, and his powers as such shall cease from that time forward.

(b) Whenever an executor or administrator dies, resigns, or is removed, if there is a coexecutor or coadministrator, he shall thenceforward exercise the powers and perform the duties of the trust; and if all the executors or administrators die, resign, or are removed, administration of the estate remaining unadministered shall be granted to those next entitled, if they are competent and qualified.

(c) The surviving or remaining executor or administrator, or the new administrator, as the case may be, is entitled to the exclusive administration of the estate, and for that purpose may maintain any necessary and proper action or proceeding on account thereof against the executor or administrator who has ceased to act, or against his sureties or representatives.

HISTORY

Source. 1921 Codes, Title III, ch. 72, §§ 16, 17, 27.

ANNOTATIONS

1. Resignation. Court would not permit person who was executor of will and trustee of testamentary trust to resign where beneficiaries of trust alleged he owed the estate money, that he wrongfully desired to charge the estate for decedent's burial, and that they wished to join with him in an agreement to terminate the trust and distribute the assets to the beneficiaries, an action court could not order but trustee and beneficiaries could legally carry out. In re Estate of Padgett, 14 V.I. 285, 1978 V.I. LEXIS 38 (Terr. Ct. St. T. & St. J. 1978).

Chapter 17. Administration of Partnership Property

SECTION ANALYSIS

§ 271. Inventory and appraisal of partnership property

The executor or administrator of a deceased person who was a member of a partnership shall include in the inventory of the estate, in a separate schedule, the whole of the property of the partnership; and the appraisers shall estimate the value thereof and also the value of the deceased person's individual interest in the partnership property after the payment or satisfaction of all the debts and liabilities of the partnership.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 19.

§ 272. Administration by surviving partner

After the inventory referred to in section 271 of this title is taken the partnership property shall be in the custody and control of the executor or administrator for the purpose of administration, unless the surviving partner shall, within five days from the filing of the inventory, or such further time as the court may allow, apply for the administration thereof and give the undertaking therefor hereinafter prescribed.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 20.

§ 273. Bond of partnership administrator

The undertaking of the administrator of a partnership shall be in a sum not less than the value of the partnership property and shall be given in the same manner and be to the same effect as the undertaking of a general administrator.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 22.

§ 274. Powers and duties of partnership administrator

If the surviving partner apply therefor, as provided in section 272 of this title, he is entitled to the administration of the partnership estate if he has the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the court may allow. In the exercise of his powers and the performance of his duties the administrator of the partnership is subject to the same limitations and liabilities and control and jurisdiction of the court as a general administrator.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 21.

§ 275. Administration by other than surviving partner

In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator. Before entering upon the duties of the administration, the executor or general administrator shall give an additional undertaking in the value of the partnership property.

HISTORY

Source. 1921 Codes, Title III, ch. 72, § 23.

§ 276. Duties of surviving partner

(a) Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof devolves upon the executor or administrator, the survivor shall deliver or transfer to him on demand all the property of the partnership, including all books, papers, and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

(b) Any surviving partner who refuses or neglects to comply with the requirements of subsection (a) of this section may be cited to appear before

the court and unless he shows cause to the contrary the court shall require him to comply with such subsection in the particular complained of.

HISTORY

Source. 1921 Codes, Title III, ch. 72, §§ 24 and 25.

Chapter 19. Inventory and Appraisal

SECTION ANALYSIS

§ 311. Right to possession of property

The executor or administrator is entitled to the possession and control of the property of the deceased both real and personal and to receive the rents and profits thereof until the administration is completed, or the same is surrendered to the heirs or devisees by order of the court; but where such property, or any portion thereof, is in the possession of a third person, by virtue of a valid subsisting lease or bailment, the possession and control of the executor or administrator is subordinate to the right of the lessee or bailee. During the time the property is in the possession or control of the executor or administrator, he shall keep the same in repair and preserve it from loss or decay as far as possible.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 9.

ANNOTATIONS

Cited. Cited in Machover v. Estate of Machover, 28 V.I. 7, 1992 V.I. LEXIS 16 (1992).

§ 312. Filing of inventory

An executor or administrator shall within one month from the date of his appointment, or such further time as the court may allow, make and file with the clerk of the court an inventory, verified by his oath, of all the real and personal property of the deceased which comes to his possession or knowledge.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 1.

CROSS REFERENCES

Failure to file inventory or account, Super. Ct. R. 198.
Procedure for inventory and appraisal, Super. Ct. R. 195.

ANNOTATIONS

1. Failure to file. Administrator of estate was required to be removed where he failed to file inventory of estate assets, acted improperly as controlling person of funeral home business which was estate's major asset, and violated the trust of his office with conflicts of interest, utilizing estate's assets for personal use, and commingling estate's cash assets with his own. In re Estate of Buggs, 39 V.I. 152, 1998 V.I. LEXIS 27 (1998).

Cited. Cited in In re Estate of Moolenaar, 24 V.I. 234, 1989 V.I. LEXIS 41 (Terr. Ct. St. T. and St. J. 1989).

§ 313. Contents of inventory

The inventory referred to in section 312 of this title shall contain an account of all money belonging to the deceased, or a statement that none has come to the possession or knowledge of the executor or administrator. It shall also contain a statement of all debts due the deceased, the written evidence thereof, and the security therefor, if any exists, specifying the name of each debtor, the date of each written evidence of debt, the security therefor, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum appearing then to be due thereon.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 2.

CROSS REFERENCES

Inventory and appraisal, procedure for, see Super. Ct. R. 195.

ANNOTATIONS

Cited. Cited in In re Estate of Moolenaar, 24 V.I. 234, 1989 V.I. LEXIS 41 (Terr. Ct. St. T. and St. J. 1989).

§ 314. Appraisal of property

(a) Before the inventory referred to in section 312 of this title is filed, the property therein specified which is in this territory shall be appraised at its true cash value by two disinterested and competent persons, who shall be appointed by the court.

(b) Before making the appraisement, the appraisers shall each make and subscribe an affidavit, to be filed with the inventory, to the effect that he will honestly and impartially appraise the property which is exhibited to him according to the best of his knowledge and ability.

(c) The appraisers shall appraise each article of property separately and set down the value thereof in dollars and cents opposite the entry of the article in the inventory. Money, of whatever nature, that is a legal tender is to be appraised at its nominal value; but debts of all descriptions or kinds are to be appraised at that sum which, in the judgment of the appraisers, may be realized from them by due process of law. When the appraisement is completed, the inventory shall be signed by the appraisers.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 3, as amended Ord. Col. C. St. C. app. May 27, 1927; Ord. Mun. C. St. T. and St. J. app. Mar. 23, 1948 (Bill no. 211); Title III, ch. 73, §§ 4, 5.

CROSS REFERENCES

Inventory and appraisal, procedure for, see Super. Ct. R. 195.

ANNOTATIONS

Cited. Cited in In re Estate of Moolenaar, 24 V.I. 234, 1989 V.I. LEXIS 41 (Terr. Ct. St. T. and St. J. 1989).

§ 315. Inventory of claims of testator against executor

The naming of any one as executor in a will shall not operate to discharge such executor from any claim which the testator had against him, but the claim shall be included in the inventory. If the person so named afterwards takes upon himself the administration of the estate, he shall be liable for such sum as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 6.

§ 316. Discharge or bequest of debt in will

The discharge or bequest in a will of any claim of the testator against a person named as executor therein, or against any other person, shall, as against the creditors of the deceased, be invalid. Such claim shall be included in the inventory, and for all purposes of administration is to be deemed and treated as a specific legacy of that amount.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 7.

§ 317. Newly discovered property

If, after the filing of the inventory, property not mentioned therein shall come to the knowledge or possession of the executor or administrator, he shall immediately make an inventory thereof and cause the same to be appraised in the manner prescribed in this chapter and file the same with the clerk of the court.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 8.

§ 318. Concealing, secreting or disposing of property

(a) Whenever it appears probable from the affidavit of an executor or administrator, or of an heir or other person interested in the estate, that any person has concealed or in any way secreted or disposed of any property of the estate, or any writing relating or pertaining thereto, or that such person has knowledge of any such property or writing being so concealed, secreted or disposed of, and refuses to disclose the same to the executor or administrator, the court upon the application of such executor or administrator, may cite such person to appear and answer under oath concerning the matter charged.

(b) Such examination may be oral or upon written interrogatories filed by the applicant, but in either case the answers of the person cited shall be reduced to writing and subscribed by him and filed.

(c) If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished for a contempt or may at once be committed, by the warrant of the judge, to jail, there to remain in close custody until he submits to the order of the court.

HISTORY

Source. 1921 Codes, Title III, ch. 73, §§ 10, 11, 12.

ANNOTATIONS

Cited. Cited in In re Estate of Pitterson, 40 V.I. 13, 1998 V.I. LEXIS 29 (Terr. Ct. St. C. 1998).

§ 319. Examination of persons entrusted with property

The court, upon the application of the executor or administrator, may cite any person who has been intrusted with any of the property of the deceased to appear and answer concerning the same when it appears probable that such person refuses or neglects to render to the executor or administrator a true account thereof. The application shall be made and the proceeding conducted in a manner prescribed in section 318 of this title.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 13.

§ 320. Embezzlement of decedent's property

If any person, before administration is granted, embezzles, aliens, or in any way converts to his own use any of the property of a deceased person, he shall be liable to the executor or administrator in double the amount of damages which may be assessed.

HISTORY

Source. 1921 Codes, Title III, ch. 73, § 14.

Chapter 21. Support of Widow and Minor Children

SECTION ANALYSIS

CROSS REFERENCES

Procedure for order for support of widow and minor children, see Super. Ct. R. 196.

§ 351. Possession before inventory

Until administration of the estate has been granted and the inventory filed, the widow and minor children of the deceased are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the deceased. They are also entitled to have a reasonable provision allowed for their support during such period, to be allowed by the court.

HISTORY

Source. 1921 Codes, Title III, ch. 74, § 1.

§ 352. Property set apart after inventory

Upon the filing of the inventory, the court shall make an order setting apart for the widow or minor children of the deceased, if any, all the property of the estate by law exempt from execution. The property thus set apart, if there be a widow, is her property, to be used or expended by her in the maintenance of herself and minor children, if any; or if there be no widow, it is the property of the minor child or, if more than one, of the minor children, in equal shares, to be used and expended in the nurture and education of such child or children by the guardian thereof as the law directs.

HISTORY

Source. 1921 Codes, Title III, ch. 74, § 2.

§ 353. Right to additional allowance

If the property set apart as provided in section 352 of this title is insufficient for the support of the widow and minor children, according to

their circumstances and condition in life, for one year after the filing of the inventory, the court may order that the executor or administrator pay to such widow, if any, and if not, then to the guardian of such minor children, an amount sufficient for that purpose.

HISTORY

Source. 1921 Codes, Title III, ch. 74, § 3.

ANNOTATIONS

1. Duration of support. Arguably the mention of one year in 5 V.I.C. § 353 was intended to limit spousal support to a maximum of one year; however, when reading the chapter as a whole and considering the purpose of spousal support, another interpretation of the provision is that the one year refers to a period during which the court may sua sponte order or amend spousal support and not an end date beyond which a surviving spouse is left empty-handed. In re Estate of George, 51 V.I. 43, 2009 V.I. LEXIS 1 (Feb. 20, 2009).

§ 354. Estates insufficient for family support

If, from the inventory of an intestate's estate, who died leaving a widow or minor children, it appears that the value of the estate does not exceed property exempt from execution, upon the filing of the inventory the court shall make an order providing that the whole of the estate, after the payment of funeral expenses and expenses of administration, be set apart for such widow or minor children in like manner, and with like effect as in case of property exempt from execution. There shall be no further proceeding in the administration of such estate unless further property is discovered.

HISTORY

Source. 1921 Codes, Title III, ch. 74, § 4.

§ 355. Status of estate in absence of widow or children

If an intestate leaves neither widow nor minor children, all the property of the estate is assets in the hands of the administrator, for the payment of funeral expenses, expenses of administration, payment of the debts of the deceased, or distribution according to law.

HISTORY

Source. 1921 Codes, Title III, ch. 74, § 5.

§ 356. Rights of widow as to dwelling house and sustenance

A widow may remain in the dwelling house of her husband one year after his death without being chargeable with the rent therefor, and shall have reasonable sustenance out of the estate for one year.

HISTORY

Source. 1921 Codes, Title II, ch. 11, § 15.

Revision note—1957. This section was part of the chapter on dower which is set out in note under section 83 of this title.

ANNOTATIONS

1. Amount and duration of support. Court has the authority to craft spousal support orders in amount and duration that last through final distribution of a decedent's estate. In re Estate of George, 51 V.I. 43, 2009 V.I. LEXIS 1 (Feb. 20, 2009).

Chapter 23. Claims and Charges Against the Estate

Subchapter I. Claims Against the Estate

SECTION ANALYSIS

Subchapter II. Payment of Claims and Charges

Subchapter III. Application by Heir, Devisee, or Legatee for Possession and Distribution

Subchapter I. Claims Against the Estate

ANNOTATIONS

1. Actions in negligence. Where living quarters were made uninhabitable due to negligence of now deceased water supplier hired by tenant, and where landlord was not liable under respondeat superior, negligent entrustment or contract theories, tenant's remedy, if any, lay in filing claim against supplier's estate. Wilson v. Joseph, 28 V.I. 29, 1992 V.I. LEXIS 17 (Terr. Ct. St. C. 1992).

Cited. Cited in Sebastian v. Estate of Fredericks, 22 V.I. 78, 1986 V.I. LEXIS 16 (Terr. Ct. St. T. and St. J. 1986).

§ 391. Publication of notice of administration

Every executor or administrator shall, immediately after his appointment, publish a notice thereof in some newspaper published in this territory, as may be designated by the court, as often as once a week for four successive weeks, and oftener if the court so directs. The executor or administrator shall also post a notice in at least three public places, to be designated by the court in its order, one of which shall be at or immediately adjacent to the post office nearest the residence of the decedent at the time of his death. Such notice shall require all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of the notice, to the executor or administrator, at a place within this territory therein specified.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 1.

ANNOTATIONS

1. Waste claims. A claim against deceased life tenant for waste should have been presented to the administrator of the estate of the life tenant and if rejected, litigated in the district court in a proceeding against the administrator. Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770, 3 V.I. 540, 1955 U.S. App. LEXIS 3563 (3d Cir. 1955).

Cited. Cited in In re Estate of Vialet, 24 V.I. 16, 1988 V.I. LEXIS 24 (Terr. Ct. St. T. and St. J. 1988).

§ 392. Time for presentment of claims

Before the expiration of the six months mentioned in section 391 of this title, a copy of the notice as published, with the proper proof of publication, shall be filed with the court. A claim not presented within six months after the first publication of the notice is not barred, but it shall not be paid until the claims presented within that period have been satisfied, and if the claim is not then due, or if contingent, it shall nevertheless be presented as any other claim. Until the administration has been completed, a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 2.

ANNOTATIONS

1. Laches.
2. Statute of limitations.

1. Laches. A petitioner who sought recognition as heir of decedent and award of share of decedent's estate was not guilty of laches in bringing her claim four and one-half years after the death of the decedent. In re Estate of Creque, 4 V.I. 568, 230 F. Supp. 849, 1964 U.S. Dist. LEXIS 7004 (D.C.V.I. 1964).

2. Statute of limitations. Local probate laws do not abrogate Fed. R. Civ. P. 8(c), although 15 V.I.C. §§ 392 and 395 do specifically mention that claims against an estate can be barred by the statute of limitations; 15 V.I.C. § 392 states that until the administration has been completed, a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid; 15 V.I.C. § 395 states that no claim shall be allowed by the executor or administrator or the district court which is barred by the statute of limitations, therefore those provisions are not interpreted to mean that the statute of limitations defense cannot be waived on a claim against an estate. In re Estate of Sewer, 46 V.I. 260, 332 F. Supp. 2d 817, 2004 U.S. Dist. LEXIS 17119 (D.C.V.I. Aug. 23, 2004).

§ 393. Verification of claim

Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant, or some one on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due; that no payments have been made thereon, except as stated; and that there is no just counterclaim to the same, to the knowledge of the affiant. When it appears or is alleged that there is any written evidence of such claim the same may be demanded by the executor or administrator, or he may demand that its nonproduction be accounted for.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 3.

ANNOTATIONS

1. Generally.
2. Purpose.

1. Generally. The presentation and the verification of a claim is the initial procedural step a creditor should follow in the settlement of estates so that the legal representative or fiduciary can act completely after knowing what is claimed. Chas. H. Steffey, Inc. v. Estate of Savain, 15 V.I. 260, 1978 V.I. LEXIS 12 (Terr. Ct. St. T. and St. J. 1978).

2. Purpose. The purpose of requiring proof of claim as a condition precedent to approval or rejection of claims by the executor or administrator, and court determination of claims refused by the executor or administrator, is to properly inform the fiduciary as to all the pertinent facts relating to the claim. Chas. H. Steffey, Inc. v. Estate of Savain, 15 V.I. 260, 1978 V.I. LEXIS 12 (Terr. Ct. St. T. and St. J. 1978).

§ 394. Approval and rejection of claims

When a claim is presented to the executor or administrator, as prescribed in section 393 of this title, if he is satisfied that the claim thus presented is just, he shall indorse upon it the words "Examined and approved", with the date thereof, and sign the same officially, and shall pay such claim in due course of administration. If he is not so satisfied he shall indorse thereon the words "Examined and rejected", with the date thereof, and sign the same officially. Every executor or administrator shall keep a list of all demands legally exhibited against the estate of the testator or intestate, and shall every three months file with the court a statement of all such claims as have been presented, and whether the same have been allowed or rejected by him.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 4.

ANNOTATIONS

Cited. Cited in In re Estate of Moolenaar, 24 V.I. 234, 1989 V.I. LEXIS 41 (Terr. Ct. St. T. and St. J. 1989).

§ 395. Court determination of claims

If any executor or administrator refuses to allow any claim or demand against the deceased after it has been exhibited to him in accordance with the provisions of this subchapter, the claimant may present his claim to the court or the judge thereof for allowance, giving the executor or administrator thirty days' notice of such application to the court. The district court shall hear and determine in a summary manner all demands against any estate in accordance with the provisions of this chapter, and which have been so rejected by the executor or administrator, and shall cause a concise entry of the order of allowance or rejection to be made on the record. The order shall have the force and effect of a judgment, from which an appeal may be taken as in ordinary cases. No claim which has been rejected by the executor or administrator as aforesaid shall be allowed by the court, except upon some competent or satisfactory evidence other than the testimony of the claimant. No claim shall be allowed by the executor or administrator or the district court which is barred by the statute of limitations.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 4.

ANNOTATIONS

0.5. Construction. To maintain action involving a claim rejected by an estate's executor or administrator, a claimant need only provide some form of competent or satisfactory evidence other than his or her own testimony. It is then the Court's duty to weigh evidence presented and determine whether or not to allow the claim. In re Estate of McConnell, 42 V.I. 43, 2000 V.I. LEXIS 2 (Terr. Ct. St. C. 2000).

1. Waste claims. A claim against deceased life tenant for waste should have been presented to the administrator of the estate of the life tenant and if rejected, litigated in the district court in a proceeding against the administrator. Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770, 3 V.I. 540, 1955 U.S. App. LEXIS 3563 (3d Cir. 1955).

2. Foreign claims. It was improper for district court of Virgin Islands to grant bank account held by Virgin Islands bank to foreign administrator of deceased life tenant of property situated in the Virgin Islands, and it should have awarded the account to an ancillary administrator, for protection of local creditors of and claimants against the estate. Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770, 3 V.I. 540, 1955 U.S. App. LEXIS 3563 (3d Cir. 1955).

3. Testimony of claimant. Court was unable to validate claim for compensation for services rendered to decedent prior to his death, where testimony came from claimant alone and was merely an educated guess as to value of alleged services. In re Estate of Pitterson, 40 V.I. 13, 1998 V.I. LEXIS 29 (Terr. Ct. St. C. 1998).

The personal testimony of a claimant against estate of decedent was incompetent under Code of Laws of the Municipality of St. Thomas and St. John, Title III, ch. 75, § 4, under which no claim could be allowed "except upon some competent or satisfactory evidence other than the testimony of the claimant." Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770, 3 V.I. 540, 1955 U.S. App. LEXIS 3563 (3d Cir. 1955).

4. Services for deceased. In proceeding on claim by brother against the estate of his deceased sister, although the existence of the relationship of brother and sister was not per se sufficient to warrant the presumption of gratuitous services on the part of one, unless they created the family relationship by living together, the evidence was clear that the services performed by each were for mutual benefit. In re Estate of Joseph, 3 V.I. 207, 141 F. Supp. 865, 1956 U.S. Dist. LEXIS 3395 (D.C.V.I. 1956).

5. Implied contract. In proceeding on claim against estate, evidence was insufficient to establish an implied contract under which the deceased sister had agreed to pay for room and board furnished by plaintiff brother. In re Estate of Joseph, 3 V.I. 207, 141 F. Supp. 865, 1956 U.S. Dist. LEXIS 3395 (D.C.V.I. 1956).

6. Laches. In proceeding on claim, brother's failure to assert his claim until after his sister's death weighed heavily against him. In re Estate of Joseph, 3 V.I. 207, 141 F. Supp. 865, 1956 U.S. Dist. LEXIS 3395 (D.C.V.I. 1956).

7. Evidence. Claim against estate, denied by administratrix, would be denied by the court where there was no competent or satisfactory evidence, other than claimants' testimony, supporting allowance of the claim. In re Estate of Dennis, 11 V.I. 18, 1974 U.S. Dist. LEXIS

6234 (D.C.V.I. 1974).

Claim against estate not corroborated by other evidence would be denied. In re Estate of Erikson, 11 V.I. 30, 1974 U.S. Dist. LEXIS 5911 (D.C.V.I. 1974).

There should be some corroboration of parol evidence against the estate of a dead man. In re Estate of Joseph, 3 V.I. 207, 141 F. Supp. 865, 1956 U.S. Dist. LEXIS 3395 (D.C.V.I. 1956).

8. **Statutes of limitations.** Local probate laws do not abrogate Fed. R. Civ. P. 8(c), although 15 V.I.C. §§ 392 and 395 do specifically mention that claims against an estate can be barred by the statute of limitations; 15 V.I.C. § 392 states that until the administration has been completed, a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid; 15 V.I.C. § 395 states that no claim shall be allowed by the executor or administrator or the district court which is barred by the statute of limitations, therefore those provisions are not interpreted to mean that the statute of limitations defense cannot be waived on a claim against an estate. In re Estate of Sewer, 46 V.I. 260, 332 F. Supp. 2d 817, 2004 U.S. Dist. LEXIS 17119 (D.C.V.I. Aug. 23, 2004).

Decedent's breach of agreement to compensate claimant for amounts paid by claimant on her behalf could have occurred no earlier than last date that funds were provided for her benefit, and thus claimant's action for reimbursement was timely filed. In re Estate of McConnell, 42 V.I. 43, 2000 V.I. LEXIS 2 (Terr. Ct. St. C. 2000).

Where decedent had been in undisputed and adverse possession of superficiary house for over 50 years, and claimant had never questioned the possession of her ownership therein and had taken no action to question or adjudicate her ownership, claimant was estopped from doing so by subd. (1)(A) of section 31 of Title 5. In re Estate of Wright, 4 V.I. 291, 192 F. Supp. 812, 1961 U.S. Dist. LEXIS 5757 (D.C.V.I. 1961).

9. **Burden of proof.** Burden in probate action arising from a rejected creditor's claim rests solely with claimant, who must provide Court with necessary evidence to prove her claim. In re Estate of McConnell, 42 V.I. 43, 2000 V.I. LEXIS 2 (Terr. Ct. St. C. 2000).

Cited. Cited in In re Estate of Moolenaar, 24 V.I. 234, 1989 V.I. LEXIS 41 (Terr. Ct. St. T. and St. J. 1989).

§ 396. Effect of judgment allowing claim

The effect of a judgment against an executor or administrator on account of a claim against the estate of his testator or intestate, is only to establish the claim as if it had been allowed by him, so as to require it to be satisfied in due course of administration, unless it appears that the complaint alleged assets in his hands applicable to the satisfaction of such claim and that such allegation was admitted or found to be true, in which case the judgment may be enforced against the executor or administrator personally.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 5.

§ 397. Claim established by judgment

A claim established by judgment against the deceased in his lifetime need not be verified by affidavit, but it is sufficient to present a certified copy of the judgment to the executor or administrator for allowance or

rejection, as in other cases. This section does not prevent an execution from being issued upon such judgment as elsewhere provided in this Code.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 6.

§ 398. Executor or administrator as creditor

If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly verified, may be presented to the court for allowance or rejection. The allowance of the claim by the court does not preclude a creditor, heir, or other person interested in the estate in any action or proceeding between such executor or administrator and such creditor, heir or other person.

HISTORY

Source. 1921 Codes, Title III, ch. 75, § 7.

Subchapter II. Payment of Claims and Charges

§ 421. Preferences in payment of claims and charges

(a) The charges and claims against the estate which have been presented and allowed, or presented and disallowed but subsequently established by judgment, within the first three months after the date of the notice of appointment of the executor or administrator, shall be paid in the order set forth below. Those presented and allowed or established in like manner with each succeeding period of three months thereafter during the continuance of the administration shall be paid in the same manner.

(1) Funeral charges.

(2) Taxes of whatever nature.

(3) Expenses of last sickness.

(4) Debts preferred by the law.

(5) Debts which at the death of the deceased were a lien upon his property or any right or interest therein according to the priority of their several liens.

(6) Debts due employees of decedent for wages earned within the ninety days immediately preceding the death of the decedent.

(7) All other claims against the estate.

(b) The preference given by item (5) in subsection (a) of this section shall extend only to the proceeds of the property upon which the lien exists and as to such proceeds such debts are to be preferred to any of the classes mentioned in such subsection other than the taxes upon such property.

(c) The executor or administrator may retain in his hands in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration.

HISTORY

Source. 1921 Codes, Title III, ch. 78, §§ 1, 2, 6.

§ 422. Debt established by judgment against deceased in lifetime

If a debt has been established by judgment against the deceased in his lifetime, the judgment, if the proceeds of the personal property are not sufficient to satisfy it, may, in the discretion of the court, be either satisfied from the proceeds of the sale of the property by the executor or administrator upon which it is a lien, or enforced by execution against such property. The sale by the executor or administrator discharges the property from the lien of the judgment but the lien attaches to the proceeds thereof, after deduction of the expenses of sale.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 3.

§ 423. Payment when estate insufficient

Except as specifically provided in sections 421 and 422 of this title, if the estate is insufficient to pay all the claims and charges of any one class, payable within any period of three months during the administration as provided in section 421 (a) of this title, each creditor of such class shall be paid in proportion to the amount of his claim, and not otherwise.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 4.

§ 424. Funeral charges

The executor named in the will, or if there is none, or if he fails to act, then the husband, widow, or next of kin, in the order named, may incur funeral charges on account of the estate in the burial of the deceased before administration of the estate is granted, and the burial of the deceased may be in a manner and at a cost according to his circumstances and condition in life. No funeral charges except those necessary to give the deceased a plain and decent burial, shall be allowed out of the estate where the assets are not sufficient to satisfy all other claims against it, including the legacies and devises, if any.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 5.

§ 425. Status of debts that have not matured

A debt due and payable is not entitled to preference over one of the same class not due if the latter is presented within the same period. A debt not due, whether contingent or absolute, upon being presented shall, if absolute, be satisfied by the payment of such sum as the court may prescribe by order to be equal to its present value, and if contingent, by the payment into court for the benefit of the creditor, subject to the contingency, of a sum, to be ascertained in like manner, equal to its present value.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 7.

§ 426. Liability of executor or administrator after payment ordered

When, upon the filing of a quarterly account, an order is made determining and prescribing the amount of assets applicable to the claims then presented, as provided in section 563 of this title, the executor or administrator is thereafter personally liable to each creditor included in the order for such amount.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 8.

§ 427. Payment of legacies and distribution of proceeds of sale

If all the charges and claims shall have been satisfied upon the first distribution of the assets or as soon thereafter as they may be, the court shall direct the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 9.

§ 428. Distribution of surplus proceeds from sale of land

Except as provided in section 41 of this title, the real property of the deceased is the property of those to whom it descends by law or is devised by will, subject to the possession of the executor or administrator, and to be applied to the satisfaction of claims against the estate, as by this chapter

provided. Upon the settlement of the estate and the termination of the administration thereof so much of such real property as remains unsold or unappropriated is discharged from such possession and liability without any order therefor. But if there is any surplus of the proceeds of sale of such real property or any part thereof, the court shall order and direct a distribution of such surplus among those who would have been entitled to the land if the same had not been sold.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 10.

Revision note—1957. The exception in this section was added to conform the section with section 41 of this title whereby real property not specifically devised may be appropriated to satisfy general legacies.

§ 429. Mortgages and other charges on real property inherited or devised

Where real property, subject to a mortgage executed by any ancestor or testator, or subject to any other charge, including a lien for unpaid purchase money, descends to a distributee, or passes to a devisee, such distributee or devisee must satisfy and discharge the mortgage or other charge out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage or other charge be otherwise paid.

HISTORY

Revision note—1957. Suggested by former New York Real Property Law § 250 (repealed by L. 1965, ch. 952, eff. Sept. 1, 1965).

CROSS REFERENCES

Redemption and sale of mortgaged property, see sections 522 and 523 of this title.

ANNOTATIONS

1. Ongoing expenses. Where decedent's will and testament directed that all gifts of property were to be "net" to their respective recipients, estate was required to pay maintenance fees, taxes, and other ongoing expenses of devised condominiums until close of probate, but would not be responsible for such charges accruing after probate was closed. In re Estate of Paraliticci, 42 V.I. 71, 2000 V.I. LEXIS 5 (Terr. Ct. St. C. 2000).

§ 430. Real property taxes

Notwithstanding any other law to the contrary, no interest or penalty shall accrue on real property taxes during the time that the real property

for which the taxes are owed is involved in probate proceedings.—Added May 29, 1998, No. 6235, § 2, Sess. L. 1998, p. 354.

Subchapter III. Application by Heir, Devisee, or Legatee for Possession and Distribution

§ 451. When application may be made

At any time after the filing of the first quarterly account, any heir, devisee, or legatee may apply to the court by petition for an order that he have the possession and rents and profits of the portion of the real property to which he may be entitled and that payment be made to him of his legacy or distributive share of the personal property of such estate, as the case may be.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 11.

ANNOTATIONS

1. Order directing payment of legacy.
2. Partial distribution.
3. Distribution to legal owner.
4. Rents and profits.

1. Order directing payment of legacy. Where at time legatee petitioned District Court to compel executor to pay legacy of $50,000 the financial condition of the estate was not sufficiently developed to permit a firm judgment but on appeal from order denying relief it was agreed by all parties that at least $37,500 could be paid without danger, judgment would be vacated and proceedings remanded for entry of order directing executor to pay $37,500 plus interest and balance of legacy plus interest on legatee's filing bond fulfilling the requirements of section 453 of this title unless executor feels bond is unnecessary. In re Estate of Thomas, 6 V.I. 450, 391 F.2d 242, 1968 U.S. App. LEXIS 7720 (3d Cir. 1968).

2. Partial distribution. On motion by heirs at law and testamentary heirs of decedent for partial distribution, court exercised its discretion in ruling that posting of bond would not be required, and accordingly ordered partial distribution of estate. In re Estate of Vialet, 24 V.I. 38, 1988 V.I. LEXIS 39 (Terr. Ct. St. T. and St. J. 1988).

3. Distribution to legal owner. Where decedent made a will in 1984 and another in 1989 and both wills devised the same property in fee to petitioner, pendency of action to have the 1989 will declared null and void could not preclude granting petitioner the right to take possession of, and the rents and profits accruing from, the property, since whichever way the will contest action was decided, petitioner would still be the legal owner of the property. In re Estate of Corbiere, 25 V.I. 58, 1990 V.I. LEXIS 11 (Terr. Ct. St. T. and St. J. 1990).

4. Rents and profits. Where property was devised to petitioner, the rents and profits issuing therefrom, subject to maintenance expenses, were also devised to petitioner. In re Estate of Corbiere, 25 V.I. 58, 1990 V.I. LEXIS 11 (Terr. Ct. St. T. and St. J. 1990).

§ 452. Notice of application

Notice of the application referred to in section 451 of this title shall be given to the executor or administrator thirty days before the time at which it is made.

HISTORY

Source. 1921 Codes, Title III, ch. 78, § 12.

ANNOTATIONS

Cited. Cited in In re Estate of Corbiere, 25 V.I. 58, 1990 V.I. LEXIS 11 (Terr. Ct. St. T. and St. J. 1990).

§ 453. Bond by applicant

(a) If, upon the hearing of the application referred to in section 451 of this title, it appears that the estate is but little in debt, the court may, in its discretion, grant the petition or some part thereof upon the condition that the applicant file with the court within a time in the order specified, an undertaking, with one or more sufficient sureties, for the benefit of whom it may concern, in sum double the value of such real property, legacy, or distributive share, to be void upon the condition that such heir, legatee, or devisee will pay, when required, his portion toward satisfying any claim against the estate.

(b) The sureties in such undertaking shall have the same qualifications as sureties in bail upon arrest, and shall justify in like manner. The costs of the proceeding shall be paid by the applicant.

HISTORY

Source. 1921 Codes, Title III, ch. 78, §§ 12 and 13.

ANNOTATIONS

1. **Undue prejudice.** Statutory requirement that applicant for partial distribution of estate prior to final adjudication file with the court an undertaking as a precondition to the granting of the petition is properly made only if the court finds that the estate is in debt to the extent that the creditors of the estate and payment of the expenses of administration will be unduly prejudiced; this requirement is properly made only in the exercise of the sound discretion of the court. In re Estate of Corbiere, 25 V.I. 58, 1990 V.I. LEXIS 11 (Terr. Ct. St. T. and St. J. 1990).

§ 454. Decree for satisfaction of claim

(a) If, after the giving of the undertaking referred to in section 453 of this title, it becomes necessary, in order to satisfy any claim against the estate, to require the payment of all or any part of the sum herein specified,

the executor or administrator shall apply by petition to the court for a decree to that effect. Notice of the application shall be given to the party filing undertaking twenty days before the time at which the application is made.

(b) If, upon the hearing, it appears necessary and proper that such payment referred to in subsection (a) of this section should be made, the court shall decree accordingly, specifying therein the amount to be paid and within what time. If the amount is not paid within the time specified, the decree may be enforced against such party and the sureties in the undertaking by execution, in the same manner as a judgment in the district court.

HISTORY

Source. 1921 Codes, Title III, ch. 78, §§ 14 and 15.

Chapter 25. Sale of Property by Executors or Administrators

Subchapter I. General Provisions

SECTION ANALYSIS

Subchapter II. Purchase Contracts, Mortgages, and Transactions to Defraud Creditors

Subchapter I. General Provisions

ANNOTATIONS

Cited. Cited in In re Estate of Latalladi, 23 V.I. 353, 1988 V.I. LEXIS 42 (Terr. Ct. St. T. and St. J. 1988).

§ 491. Sale by order of court

No sale of the property of a decedent's estate is valid unless made by order of the district court, as in this chapter prescribed, or unless otherwise authorized by law or the decedent's will. The application for an order of sale shall be the petition of the executor or administrator and in case of real property a citation to the heirs and others interested in such property.

HISTORY

Source. 1921 Codes, Title III, ch. 76, § 1.

Revision note—1957. Words "or unless authorized by law or the decedent's will" were substituted for "unless herein otherwise provided", on advice of the Code Advisory Committee.

CROSS REFERENCES

Statutory power to sell decedent's realty, see section 5 of this title.

ANNOTATIONS

1. Co-executors, sale by.
2. Solvent estate, property of.
3. Generally.

1. Co-executors, sale by. Where there is more than one executor, and the will confers upon the executors discretionary power to sell any real or personal property, it is a general and well established rule of law that such a power cannot be exercised by less than all of the executors who have qualified and are engaged in the administration of the estate. In re Estate of LaBeet, 1 V.I. 394, 1937 U.S. Dist. LEXIS 1104 (D.C.V.I. 1937).

2. Solvent estate, property of. Apart from the power of sale contained in the will, the only other power to sell real property during the course of administration of an estate was the power granted by the 1921 Code; and such Code contained no provision for sale of real property where the estate was solvent; contained cash adequate for all purposes of administration, and was ready for final settlement. In re Estate of LaBeet, 1 V.I. 394, 1937 U.S. Dist. LEXIS 1104 (D.C.V.I. 1937).

3. Generally. Under statute in the Virgin Islands executor has power to sell decedent's real estate without leave of court. Johnson v. Childs, 7 V.I. 8, 407 F.2d 395, 1969 U.S. App. LEXIS 8824 (3d Cir. 1969).

The requirement of this section for court approval of an executor's sale is only in cases where such sale is not "otherwise authorized by law or the decedent's will." Johnson v. Childs, 6 V.I. 354, 1968 U.S. Dist. LEXIS 12829 (D.C.V.I. 1968).

This section and section 5 of this title are not inconsistent, but rather complement each other. Johnson v. Childs, 6 V.I. 354, 1968 U.S. Dist. LEXIS 12829 (D.C.V.I. 1968).

§ 492. Sale of property to pay charges, expenses and claims

(a) Upon the filing of the inventory the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate, and for the purposes of distribution. The court shall grant such order if, in its judgment, it is for the best interest of the estate, and shall direct and prescribe the terms of sale upon which the property shall be sold, whether for cash or on credit.

(b) If any articles of personal property have been specially bequeathed, they are to be exempt from the operation of the order of sale so long as any

property of the estate not specially devised or bequeathed remains unsold or appropriated to the purpose specified in subsection (a) of this section.

(c) When a testator has specially bequeathed any specific article of personal property, or given any legacy by will, and there is not sufficient personal property, besides such specific article or the value of such legacy, to pay the funeral charges, expenses of administration, and claims against the estate, the executor or administrator shall obtain an order to sell the real property sufficient to make up the delinquency, in the manner provided in this chapter.

(d) When the proceeds of the sale of personal property have been exhausted, and the charges, expenses, and claims specified in subsection (a) of this section, have not all been satisfied, the executor or administrator shall sell the real property of the estate, or so much thereof as may be necessary for that purpose. If any of such real property has been specially devised, it shall be exempt from the operation of the order of sale in the same manner as personal property specially bequeathed.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 2, 4, 5, 14.

ANNOTATIONS

1. Generally. It is the duty of the personal representative to pay all the claims against the estate and the expenses of administration of the estate from the available assets of the estate, first from the personal assets, and where these are insufficient, from so much of the realty as is necessary. In re Estate of Lataladi, 23 V.I. 353, 1988 V.I. LEXIS 42 (Terr. Ct. St. T. and St. J. 1988).

Cited. Cited in In re Estate of Vialet, 24 V.I. 16, 1988 V.I. LEXIS 24 (Terr. Ct. St. T. and St. J. 1988); Wenner v. Government of the Virgin Islands, 29 V.I. 158, 1993 U.S. Dist. LEXIS 19935 (D.C.V.I. 1993).

§ 493. Status of devised or bequeathed property

The property, real and personal, given by the will to any devisee or legatee, is liable for the payment of the funeral charges, expenses of administration, and of claims against the estate. If there is more than one devisee or legatee, such liability is in proportion to the value or amount of the several devises and legacies, except that specific devises and legacies shall be exempt from such liability if such appears to have been the intention of the testator and there is other sufficient property to satisfy the charges, expenses, and claims.

HISTORY

Source. 1921 Codes, Title III, ch. 76, § 15.

§ 494. Manner of sale of personal property

(a) Upon issuance by the court of the order prescribed in section 492 (a) of this title, the executor or administrator shall sell such personal property from time to time for the purpose specified in such section 492, and as often and as much thereof as may be necessary. Such sale shall be conducted in the same manner as a sale of personal property on execution, unless otherwise provided in this chapter.

(b) If, upon the application for an order of sale, or upon a subsequent application for that purpose, it appears to the court that it would be for the interest of the estate, it may order that the executor or administrator may sell all the personal property of the estate or any article thereof at private sale.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 3, 4.

§ 495. Petition for order of sale of real property

(a) The petition for an order of sale of real property shall state the amount of the sales of personal property, the charges, expenses, and claims still unsatisfied, so far as the same can be ascertained, a description of the real property of the estate, the condition and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages, and residence of the devisees, if any, and of the heirs of the deceased, so far as known.

(b) Upon the filing of the petition a citation shall issue to the devisees and heirs therein mentioned and to all others unknown, if any such there be, to appear at a time therein mentioned, not less than thirty days after the service of such citation, to show cause, if any exist, why an order of sale should not be made as in the petition prayed for.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 6, 7.

§ 496. Service of citation

Upon the heirs or devisees known and resident within the Virgin Islands the citation referred to in section 495 (b) of this title shall be served and returned as a summons, and upon an heir or devisee unknown or non-resident it may be served by publication or posting, or both, for not less than four weeks, or for such further time as the court may prescribe. When service is had by posting, the citation shall be posted at not less than three

public places within this territory, one of which shall be the post office nearest the place where the decedent resided at the time of his death. When service of the citation is made by publication or posting, there shall be given with it a brief description of the property described in the petition.

HISTORY

Source. 1921 Codes, Title III, ch. 76, § 8.

§ 497. Order of sale of real property

If, upon the hearing pursuant to sections 495 and 496 of this title, the court finds that it is necessary that the real property, or any portion thereof, should be sold it shall make the order accordingly, and prescribe the terms thereof, whether of cash or credit, or both. If such property can not be divided without probable injury and loss to the estate it may order that the property, or any specific lot or portion thereof, shall be sold wholly, whether otherwise necessary or not.

HISTORY

Source. 1921 Codes, Title III, ch. 76, § 9.

§ 498. Manner of sale of real property

Upon the order of sale being made under section 497 of this title, the executor or administrator shall sell the property therein specified upon the terms directed and in the manner herein otherwise provided. Such sale shall be made in the same manner as like property is sold on execution. The court may, if thought best, order the property to be sold on the premises. When the sale is upon credit, the executor or administrator shall take the note of the purchaser for the purchase money, or such part thereof as is not required to be in cash, with a mortgage upon the property to secure the payment thereof.

HISTORY

Source. 1921 Codes, Title III, ch. 76, § 10.

§ 499. Court review of sale

(a) Within ten days after the sale of real property under section 499 of this title the executor or administrator shall make a return of his proceedings concerning the sale. Upon the return any of the persons cited to appear on the application for the order of sale may file his objections to the confirmation of the sale.

(b) Upon the hearing the court shall confirm the sale and order that the executor or administrator make a conveyance to the purchaser, unless it appears that there were irregularities in the sale, or that the sum bid for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the court shall make an order vacating the sale and directing that the property be resold. Upon the second sale, the property, or any specific portion or lot thereof, ordered to be resold shall be sold as if no previous sale had taken place. In case no objections are made to the confirmation of the sale as provided in subsection (a) of this section, the court shall nevertheless examine the proceedings concerning the sale, and, if it appear proper, may make the order of resale provided for in this subsection in the same manner and with like effect as if objections had been filed thereto. When a resale of real estate is ordered, the court may, in its discretion, order the resale to be made either by public auction or by private sale. When the court orders a private sale the highest or best bidder at the auction shall be notified by the administrator in writing.

HISTORY

Source. 1921 Code of St. Thomas and St. John, Title III, ch. 76, §§ 11, 12; the 1921 Code of St. Croix, Title III, ch. 76, §§ 11, 12, as amended Ord. Col. C. St. C. app. May 27, 1927.

ANNOTATIONS

1. Inadequacy of price. Mere inadequacy of price taken alone is not sufficient to invalidate a sale of property by the executors or administrators of an estate. In re Estate of Brady, 1 V.I. 44, 1924 U.S. Dist. LEXIS 934 (D.C.V.I. 1924).

§ 500. Conveyance of real property by order

(a) A conveyance executed by an executor or administrator shall set forth the date of the order directing the sale, and the book, number thereof, and page containing the same, and the date of the order confirming the sale and directing the conveyance, and the book, number thereof, and page containing the same, and the title of the court making such orders, and shall operate to convey all the estate, right, and interest of the testator or intestate in the premises at the time of his death.

(b) The order of confirmation of sale is conclusive as to the regularity of the sale and no further. All purchases of the property of the estate by an executor or administrator, however, made, whether directly or indirectly, are prohibited and if made are void.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 13, 24.

§ 501. Confirmation of conveyances of real property; action to quiet title; limitation on actions by heirs

When any real estate has been heretofore or shall be hereafter sold by any executor or administrator under or by virtue of an order of the district court and the sale shall have been approved by the district court and the purchaser shall have paid the purchase money for the same, and the sale shall have been made in good faith, in order to provide for payment of the claims against the estate, and the executor or administrator shall have failed or neglected to make or execute any deed conveying such real estate to such purchaser, or if from mistake or omission in the deed or defect in its execution the same shall be inoperative, and the period of five years shall have elapsed after the making of such sale, then in such case all such sales shall be, and are confirmed and approved, notwithstanding any irregularities or informalities in the proceedings prior to the sale. When such facts shall be made to appear in any action to quiet title to such real property against the heirs or their assigns of the deceased person whose property shall have been thus sold, then the court shall make its decree quieting such title and compelling and ordering conveyances of the same to be made to such purchaser, his heirs, or assigns, as if a valid contract to convey the real property had been made by such deceased person in his lifetime. No action shall be maintained by such heirs, or their heirs or assigns, to dispossess and such purchaser, his heirs or assigns, after the expiration of five years from any such sale.

HISTORY

Source. 1921 Codes, Title II, ch. 15, § 36.

Subchapter II. Purchase Contracts, Mortgages, and Transactions to Defraud Creditors

§ 521. Sale of real property purchase contract

(a) If the deceased was, at the time of his death, a party to a contract for the purchase of real property, his interest in the real property by virtue of the contract may be sold in the same manner as if the contract had been executed in the lifetime of the deceased, by a conveyance to him of such property according to the legal effect and terms of the contract.

(b) If there are any payments due, or to become due, on such contract, to the vendor of the deceased, sale is made subject thereto. Before the sale

can be confirmed or the contract assigned to the purchaser, the purchaser shall execute an undertaking, with one or more sureties, in an amount not less than double the value of all the payments then due or to become due, for the benefit of whom it may concern, to be void upon the condition that the purchaser will make all such payments according to the terms of the contract, and indemnify the executor or administrator or others whom it may concern against all damages, costs, and expenses by reason of any covenant or agreement contained in such contract.

(c) The order of confirmation of the sale shall direct the executor or administrator to make an assignment of the contract to the purchaser, which assignment shall vest in the purchaser, his heirs and assigns, all the estate, right, and interest of the deceased at the time of his death in such real property and give to the purchaser the same rights and remedies against the vendor thereof as the deceased would have had or been entitled to if living.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 16, 17, 18.

§ 522. Redemption of mortgaged property

(a) If the deceased left any property, real or personal, under mortgage, and did not devise or provide for the redemption of the same by will, the court, upon the application of the executor or administrator, or the application of an heir or creditor or other person interested in the estate, may order the executor or administrator to redeem the property out of the proceeds of the other personal property, if it appear that the redemption would be for the interest of the estate, and not prejudicial to creditors.

(b) If the debt secured by the mortgage is not due at the time of the making of the order for redemption, the party to whom it is payable shall be entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 19, 23.

CROSS REFERENCES

Mortgages, liens, etc., on personal and real property inherited or devised, see sections 12 and 429 of this title.

§ 523. Sale of mortgaged property

(a) If, upon application, the redemption referred to in section 522 of this title is deemed inexpedient or not proper, the court shall order the

mortgaged property to be sold in like manner and with like effect as is provided in other cases of the sale of real property by this chapter. The conveyance to the purchaser shall operate to convey to him all the estate, right, and interest which the deceased would have had in the property had not the same been mortgaged by him.

(b) Ten days before making an order for the application of the proceeds of such sale, the mortgagee or other person to whom the debt which is secured by such mortgage is payable shall be cited to appear and show the amount of his debt, and make his objections, if any, to the report of the expenses of the proceeding and sale as claimed by the executor or administrator. Thereupon the court shall order that the proceeds of the sale be first applied to the payment of the proper expenses of the proceeding and sale, and secondly, to the satisfaction of such debt, and the residue, if any, in due course of administration.

(c) If the debt secured by the mortgage is not due at the time of the making of the order for application of the proceeds of sale, the party to whom it is payable shall be entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 20, 21, 23.

§ 524. Foreclosed mortgages

Sections 523 and 524 of this title shall not be construed to apply to a mortgage which has been foreclosed, or upon which a suit has been commenced for foreclosure before the application for the order of redemption or sale is made, nor to any other lien arising upon judgment or decree given against the deceased in his lifetime.

HISTORY

Source. 1921 Codes, Title III, ch. 76, § 22.

§ 525. Transactions to delay, hinder or defraud creditors

(a) Whenever the assets of the estate are insufficient to satisfy the funeral charges, expenses of administration, and claims against the estate, and the deceased in his lifetime has made or suffered any conveyance, transfer, or sale of any property, real or personal, or any right or interest therein, with intent to delay, hinder, or defraud creditors, or when such conveyance, transfer, or sale has been so made or suffered that the same is void in law as against creditors, or when the deceased in his lifetime has suffered, consented or procured any judgment or decree to be given against

him with such intent or in such manner as to be likewise void, the executor or administrator shall make application by petition to the court for leave to commence and prosecute to final judgment or decree the necessary and proper actions or proceedings to have the conveyance, transfer, sale, or judgment declared void, and the property affected thereby discharged from the effect thereof.

(b) If upon the application it appears to the court that the assets are insufficient for the purposes specified in the subsection (a) of this section, and that it is probable that the conveyance, transfer, or judgment was made, suffered, consented to, or procured with the intent or in the manner specified in such subsection, it shall make the order directing the proceedings to be commenced and prosecuted as to any or all of the matters alleged in the petition and necessary to supply the deficiency in the assets.

(c) The property recovered by means of any proceeding in pursuance of subsections (a) and (b) of this section shall be sold and appropriated to supply the deficiency mentioned in subsection (a) of this section in the same manner as other like property. The right to or interest in the surplus, if any, remains as if such proceeding had not been allowed or commenced.

HISTORY

Source. 1921 Codes, Title III, ch. 76, §§ 25, 26, 27.

Chapter 27. Accounts of Executors and Administrators

SECTION ANALYSIS

§ 561. Frequency and content of accounts

An executor or administrator shall, within three months from the date of the notice of his appointment, and every three months thereafter until the administration is completed and he is discharged from his trust, render an account, verified by his own oath, and file the same with the court. The account shall show the amount of the money received and expended by him, from whom received and to whom paid, with the proper vouchers for such payments, the amount of the claims presented against the estate and allowed or disallowed and the name of the claimants of each, and any other matter necessary to show the condition of the affairs thereof.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 1.

CROSS REFERENCES

Quarterly accounts of executors and administrators, procedure, form, and contents, see Super. Ct. R. 197.

§ 562. Court order to appear and account

An executor or administrator who fails to file an account, as required in section 561 of this title, may be required by a citation, or ordered by the court to appear and do so, either upon the application of an heir or creditor, or other person interested in the estate, or without it. If the executor or administrator refuses or neglects to appear when cited, or to file the account as required, he may be punished as for a contempt, or by warrant of the court be committed to jail until he consents to do so.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 2.

CROSS REFERENCES

Failure to file inventory or account, see Super. Ct. R. 198.

§ 563. Determination of sufficiency of estate

Within thirty days after the filing of the first quarterly account pursuant to section 561 of this title, and at each quarterly account thereafter, the court shall ascertain and determine if the estate is sufficient, after payment of funeral charges and expenses of administration, to satisfy the claims allowed by the executor or administrator, within the first three months or any succeeding period of three months thereafter, after the date of the notice of his appointment. If sufficient, it shall order payment of such claims. If the estate is insufficient for that purpose, it shall ascertain what per centum of such claims it is sufficient to satisfy, and order and direct accordingly.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 3.

§ 564. Filing of final account

(a) When the estate is fully administered the executor or administrator shall file his final account. Such account shall be verified and shall contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for such payments, and amount of money and property, if any remaining unexpended or unappropriated. Upon the filing of the final account, the court shall make an order directing notice thereof to be given in the same manner as the notice of an appointment of an executor or administrator, and appoint a day not less than thirty days subsequent thereto for the hearing of objections to such final account and the settlement thereof.

(b) Before the time appointed for the hearing and settlement of a final account the executor or administrator shall file with the court a copy of the notice thereof, with the proper proof of its publication or posting as directed. An executor or administrator who fails to file his final account as provided in subsection (a) of this section may be proceeded against in like manner and with like effect as provided in section 562 of this title in case of failure to file a quarterly account.

HISTORY

Source. 1921 Codes, Title III, ch. 77, §§ 4, 12.

CROSS REFERENCES

Failure to file inventory or account, see Super. Ct. R. 198.
Final account, notice, and hearings, see Super. Ct. R. 199 and 200.

ANNOTATIONS

1. Vouchers or receipts. No credit claimed in an executor's or administrator's final accounting will be allowed unless payment showing entitlement to same is proved by submission of supporting vouchers or in some other manner approved by the court. In re Estate of Caron, 23 V.I. 93, 1987 V.I. LEXIS 1 (1987).

Where special personal representative of estate disbursed almost $ 650,000 during its special executorship but presented no vouchers or receipts to the court justifying the claimed expenditures, court did not have power to discharge the representative. In re Estate of Caron, 23 V.I. 93, 1987 V.I. LEXIS 1 (1987).

§ 565. Objections to final account

An heir, creditor, or other person interested in the estate may, on or before the day appointed for the hearing and settlement referred to in section 564 of this title, file his objections thereto, or to any particular item thereof, specifying the particulars of his objection. No creditor shall be allowed to object to such account whose claim has been satisfied as allowed by the executor or administrator or established by judgment.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 5.

CROSS REFERENCES

Final account, notice, and hearing, see Super. Ct. R. 199 and 200.

§ 566. Allowance or disallowance of final account

Upon the hearing referred to in section 564 of this title, the court shall give a decree allowing or disallowing the final account, either in whole or in part, as may be just and right. The decree in any other action or proceeding between the parties interested or their representatives is primary evidence of the correctness of the account as thereby allowed and settled.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 6.

CROSS REFERENCES

Final account, see Super. Ct. R. 199.
Notice and hearing, see Super. Ct. R. 200.
Adjudication and distribution, see Super. Ct. R. 201.
Discharge of executor or administrator, see Super. Ct. R. 202.

ANNOTATIONS

1. Status of estate. An estate has no legal existence after it is settled. 1 V.I.Op.A.G. 39.

§ 567. Liability of executor or administrator

(a) An executor or administrator is chargeable in his account with all the property of the estate which may come into his possession at the value of the appraisement contained in the inventory, except as in this chapter otherwise provided.

(b) An executor or administrator shall not make profit by the increase in value of the property of the estate or suffer loss for the decrease in value or the destruction thereof without his fault. If any of the property of the estate sells for more than its appraised value he shall account for the excess, and if any such property sells for less than its appraised value he shall not be responsible for the loss, unless occasioned by his fault. He shall not be accountable for the debts due the estate if it appears that they remain uncollected without his fault. He shall not purchase any claim against the estate which he represents, and if he satisfies any such claim for less than its nominal value he is only entitled to charge in his account the sum actually paid.

HISTORY

Source. 1921 Codes, Title III, ch. 77, §§ 7, 8.

ANNOTATIONS

1. Generally.
2. Waiver of debt.

1. Generally. As to how far an executor must proceed in an effort to collect possible assets of an estate, the duty is not an obligation to sue but only to ascertain whether there was a fair chance to realize something by suit. In re Estate of Nash, 5 V.I. 382, 255 F. Supp. 270, 1966 U.S. Dist. LEXIS 6596 (D.C.V.I. 1966).

2. Waiver of debt. An administratrix c.t.a. is entitled to release a liability to the estate if that transaction, the release, was bona fide and there was sufficient consideration. In re Estate of Nash, 5 V.I. 382, 255 F. Supp. 270, 1966 U.S. Dist. LEXIS 6596 (D.C.V.I. 1966).

Where administratrix c.t.a. executed a waiver of debt owed the estate and it appeared there was consideration for the waiver and it was a bona fide transaction, it further appearing that upon reasonable investigation that debt was uncollectible and a suit to collect the debt would

be unsuccessful, the court approved the waiver. In re Estate of Nash, 5 V.I. 382, 255 F. Supp. 270, 1966 U.S. Dist. LEXIS 6596 (D.C.V.I. 1966).

§ 568. Expenses of executor

An executor or administrator shall be allowed in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 9.

CROSS REFERENCES

Executor or administrator who is Bar member may be allowed fee for employment of attorney only on order of court, see Super. Ct. R. 203(a).

Forfeiture of fee of executors or administrators who are dilatory in administration, see Super. Ct. R. 203(b).

§ 569. Compensation of executors and administrators

(a) Executors and administrators shall be allowed such compensation for their services as the court considers just, except that, when the deceased by his will, has made special provision for the compensation of his executor, such executor is not entitled to any other compensation for his services unless he shall within ten days after his appointment subscribe and file with the court a written declaration renouncing the compensation provided by the will.

(b) Notwithstanding a provision in the will for the compensation of an executor, if the estate is insufficient to satisfy the claims against it, the court shall reduce such compensation, so far as may be necessary to satisfy such claims, to an amount equal to that which the executor would have been entitled to if no such provision had been made.

HISTORY

Source. 1921 Codes, Title III, ch. 77, §§ 9, 10.

CROSS REFERENCES

Forfeiture of fees of executor or administrator for dilatory administration or failure to file accounts or other papers, see Super. Ct. R. 203(b).

ANNOTATIONS

1. Prior law.
2. Lien for services.
3. Application for allowance.

1. Prior law. Under Title III, c. 77, § 11 of the 1921 Code, the executor or administrator of an estate was entitled to a commission for accounting for bank deposits held by the deceased in banks in Denmark and Sweden. In re Estate of Nilsson, 1 V.I. 173, 1928 U.S. Dist. LEXIS 914 (D.C.V.I. 1928).

2. Lien for services. Court has no authority in settling an estate to rule that the counsel for the administrator has a lien upon the real property of the estate for services he rendered on behalf of the estate. In re Estate of Samuel, 2 V.I. 387, 1945 U.S. Dist. LEXIS 1351 (D.C.V.I. 1945).

3. Application for allowance. Special personal representative of estate which might be entitled to a reasonable fee for its services had to file an application for allowance thereof with the court. In re Estate of Caron, 23 V.I. 93, 1987 V.I. LEXIS 1 (1987).

Cited. Cited in In re Estate of Lilienfeld, 22 V.I. 131, 1986 V.I. LEXIS 9 (Terr. Ct. St. T. and St. J. 1986).

§ 570. Compounding of debts

Whenever a debtor of a deceased person is unable to pay all his debts, an executor or administrator, by an order of the court, may compound with him and give him a discharge upon receiving a full and just proportion of his effects. If such compounding is procured or produced by the fraudulent representations or conduct of the debtor, such payment shall only operate to discharge a like amount of the debt.

HISTORY

Source. 1921 Codes, Title III, ch. 77, § 13.

Chapter 29. Actions by or Against Executors, Administrators, Legatees, Heirs and Devisees

Subchapter I. Actions by or Against Executors and Administrators

SECTION ANALYSIS

Subchapter II. Actions of an Equitable Nature

Subchapter I. Actions by or Against Executors and Administrators

§ 601. Survival of actions

Subject to the provisions of sections 76 and 77 of Title 5, causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued, or, after his death, against his personal representatives.

HISTORY

Source. 1921 Codes, Title III, ch. 36, § 2.

Revision note—1957. Former restrictions on survival of actions were replaced by the above provisions to conform with modern trends in law as suggested by the laws of California and New York.

ANNOTATIONS

1. **Foreign representatives.** Although the statutory law of the Virgin Islands was silent as to whether a foreign executor or administrator could sue or be sued in the district court, the district court had jurisdiction to admit a foreign executor as a party to litigation involving property within its jurisdiction. Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770, 3 V.I. 540, 1955 U.S. App. LEXIS 3563 (3d Cir. 1955).

§ 602. Actions against several executors or administrators

In action against several executors or administrators, they shall be considered as one person, representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the summons is served only on part of them, in the same manner and with the like effect as if served on all, except as provided in section 603 of this title.

HISTORY

Source. 1921 Codes, Title III, ch. 36, § 4.

§ 603. Effect of judgment given for want of answer

When a judgment is given against an executor or administrator for want of an answer, such judgment is not to be deemed evidence of assets in his hands unless it appears that the complaint alleged assets and that the summons was served upon him.

HISTORY

Source. 1921 Codes, Title III, ch. 36, § 5.

§ 604. Defenses of executors and administrators

In an action against executors or administrators in which the fact of their having administered the estate of their testator or intestate or any part thereof is put in issue and the inventory of the property of the deceased returned by them is given in evidence the same may be contradicted or avoided by evidence that—

(1) any property has been omitted in such inventory or was not returned therein at its full value or that since the return thereof such property has increased in value; or

(2) such property has perished or been lost without the fault of the executors or administrators or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value.

In such an action, the defendants can not be charged for any things in action specified in their inventory unless it appears that they have been collected or with due diligence might have been.

HISTORY

Source. 1921 Codes, Title III, ch. 36, § 6.

§ 605. Liability of executor of his own wrong

No person is liable to an action as executor of his own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received and for all injury caused by his interference with the estate of the deceased.

HISTORY

Source. 1921 Codes, Title III, ch. 36, § 7.

§ 606. Commencement of action against executor or administrator

(a) An action may be commenced against an executor or administrator at any time after the expiration of twelve months from the granting of letters testamentary or of administration and until the final settlement of the estate and discharge of such executor or administrator from the trust, and not otherwise.

(b) An action against an executor or administrator shall not be commenced until the claim of the plaintiff has been duly presented to such executor or administrator and by him disallowed. If such claim is presented after the expiration of the period of six months mentioned in sections 391 and 392 of this title, the executor or administrator in an action therefor shall only be liable to the extent of the assets in his hands at the time the summons is served upon him.

HISTORY

Source. 1921 Codes, Title III, ch. 36, §§ 8, 9.

ANNOTATIONS

1. **Procedure.** Compliance with 15 V.I.C. § 606(b) is mandatory; therefore, where a creditor sued a debtor and an estate for foreclosure of two notes that were secured by certain real

property without first presenting this claim to the estate administrator as required by subsection (b), the creditor's lawsuit was dismissed. Oat v. Sewer Enters., 46 V.I. 286, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 17750 (D.C.V.I. Aug. 30, 2004).

§ 607. Right of arrest and attachment as applied to executors and administrators

In an action against an executor or administrator as such, the provisional remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator such remedies shall be allowed for the same causes and in like manner and with like effect as in actions generally.

HISTORY

Source. 1921 Codes, Title III, ch. 36, § 10.

Subchapter II. Actions of an Equitable Nature

§ 641. Actions of equitable nature by or against executors and administrators

The provisions of subchapter I of this chapter, excepting section 601 of this title, shall apply to actions of an equitable nature by and against executors and administrators, except as in this subchapter otherwise or specially provided. All causes of action of an equitable nature by one person against another, however arising, survive to the personal representatives of the former and against the person representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action of an equitable nature thereon against the party against whom the cause of action accrued, or after his death against the personal representatives.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 1.

§ 642. Action by creditor against next of kin

(a) The next of kin of a deceased person are liable to an action by a creditor of the estate to recover the distributive shares received out of such estate, or to so much thereof as may be necessary to satisfy his debt. The action may be against all the next of kin jointly or against any one or more of them severally.

(b) In such an action the plaintiff may recover the value of all the assets received by all the defendants in the action, if necessary to satisfy the debt.

The amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each. No allowance or deduction shall be made from such amount on account of there being other next of kin to whom assets have also been delivered.

(c) Any one of the next of kin against whom a recovery is had pursuant to subsection (b) of this section may maintain an action against all the other next of kin of the deceased person to whom any such assets have been delivered jointly, or against any of them separately for a just and equal contribution.

HISTORY

Source. 1921 Codes, Title III, ch. 43, §§ 2, 3, 4.

§ 643. Action by creditor against legatees

Legatees are liable to an action by a creditor of the testator to recover the value of any legacy received by them. The action may be maintained against all the legatees jointly or against any one or more of them severally. In such an action the plaintiff shall not recover unless he shows that—

(1) no assets were delivered by the executor or administrator of the testator to his next of kin; or,

(2) the value of such assets has been recovered by some other creditor; or,

(3) such assets are not sufficient to satisfy the demand of the plaintiff.

In the case referred to in clause (3) of this section, he shall recover only the deficiency. The whole amount which the plaintiff shall recover shall be apportioned among all the legatees of the testator in proportion to the value of their legacies, respectively, and only that proportion shall be recovered of each legatee.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 5.

§ 644. Recovery in action against several next of kin or legatees

(a) In an action against several next of kin or legatees jointly for assets delivered to them, if a recovery is had against such next of kin or legatees, the cost of the action shall be apportioned among the several defendants in proportion to the amount recovered against each of them.

(b) A decree against several next of kin or legatees shall be satisfied as to any one of them by the payment or satisfaction of the amount recovered against such defendant.

HISTORY

Source. 1921 Codes, Title III, ch. 43, §§ 6, 7.

§ 645. Action by creditor against heirs and devisees

Heirs and devisees are liable to an action by a creditor of a deceased person to recover the debt of their ancestor or testator to the extent of the value of any real property inherited by or devised to them. If such action is against the heirs, all the heirs who are liable shall be made parties to the action.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 8.

§ 646. Liability of heirs

(a) Heirs are not liable for the debt of their ancestor or creditor unless it appears that the personal assets of the deceased were insufficient to discharge it, or that after due proceedings the creditor has been unable to collect the debt from the personal representatives of the deceased, or from his next of kin or legatees. If the personal assets were sufficient to pay a part of the debt, or in case a part thereof shall have been collected, the heirs of such deceased person are liable for the residue.

(b) Subsection (a) of this section shall not affect the liability of heirs for a debt of their ancestors where such debt was by his will expressly charged exclusively on the real properties descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended before resorting to the personal property.

HISTORY

Source. 1921 Codes, Title III, ch. 43, §§ 9, 10.

§ 647. Liability of devisee

(a) A devisee shall not be liable to the creditor of his testator unless it appears that the personal assets of the testator and the real property descended to his heirs were insufficient to discharge the debt, or unless it appears that after due proceedings the creditor has been unable to recover the debt, or any part thereof from the personal representatives of the testator or from his next of kin, legatees, or heirs.

(b) In either of the cases specified in subsection (a) of this section, the amount of the deficiency of the personal assets, and of the real property descended to satisfy the debt of the plaintiff, or the amount which such

plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees, and heirs, may be recovered of the devisees of such testator, to the extent of the value of the real property devised to them respectively.

(c) Subsections (a) and (b) of this section shall not affect the liability of devisees for a debt of their testator where such debt was by his will expressly charged exclusively upon the real property devised, or by the terms of the will made payable by the devisee, or out of the real property devised, before resorting to the personal property or to any other real property descended or devised.

HISTORY

Source. 1921 Codes, Title III, ch. 43, §§ 15, 16 and 17.

§ 648. Liability of next of kin, legatees, heirs and devisees

In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as provided in this subchapter, they shall be liable therefor without other priority or preference than such ancestors would have been. The word "debt", as used in this subchapter, shall be construed to include all claims for the payment of money which survive against the personal representatives of the deceased, as provided in section 641 of this title.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 11.

§ 649. Enforcement of judgment against heir or devisee

A judgment against an heir or devisee on account of the debt of his ancestor or testator may be enforced by execution against the real property shown to have descended to their heir or devisee, and not otherwise. Such judgment shall have preference as a lien on such real property to any judgment or decree obtained against such heir or devisee on account of a debt or demand due in his own right.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 12.

§ 650. Status of real property aliened by heir or devisee

When it appears in an action provided for in section 645 of this title that before the commencement thereof the heir or devisee has aliened the real property descended to him, or any part thereof, he shall be personally liable

for the value of the property so aliened, and a judgment may be given against him therefor, to be enforced by execution, as if the judgment were for his own debt. No real property aliened in good faith and for a valuable consideration by an heir or devisee before action commenced against him is liable to an execution for the debt of his ancestor or testator, or in any manner affected by the judgment therefor against such heir or devisee.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 13.

§ 651. Apportionment of debt among several heirs or legatees

In an action against several heirs jointly or several devisees jointly, the amount which the plaintiff recovers must be apportioned among all the heirs of the ancestor or devisees of the testator in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each heir or devisee.

HISTORY

Source. 1921 Codes, Title III, ch. 43, § 14.

VIRGIN ISLANDS CODE

ANNOTATED

Title 14 through Title 16

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TITLE FIFTEEN

Virgin Islands Uniform Probate and Fiduciary Relations Code

ARTICLE ANALYSIS

Article IV. Foreign Personal Representatives; Ancillary Administration [Repealed.]

Part 1. [Repealed]

PART ANALYSIS

Part 2. [Repealed]

Part 3. [Repealed]

Part 4. [Repealed]

Part 1. Definitions [Repealed.]

§ 4-101. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Part 2. Powers of Foreign Personal Representatives [Repealed.]

§§ 4-201 — 4-207. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Part 3. Jurisdiction Over Foreign Representatives [Repealed.]

§§ 4-301 — 4-303. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Part 4. Judgments and Personal Representatives [Repealed.]

§ 4-401. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Article V. Protection of Persons Under Disability and Their Property [Repealed.]

Part 1. [Repealed]

PART ANALYSIS

Part 2. [Repealed]

Part 3. [Repealed]

Part 4. [Repealed]

Part 5. [Repealed]

Part 6. [Repealed]

Part 7. [Repealed]

Part 8. [Repealed]

Part 1. General Provisions [Repealed.]

§§ 5-101 — 5-117. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Part 2. Guardianship of Minor [Repealed.]

§§ 5-201 — 5-210. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 3. Guardianship of Incapacitated Person [Repealed.]

§§ 5-301 — 5-318. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 4. Protection of Property of Protected Person [Repealed.]

§§ 5-401 — 5-433. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 5. Virgin Islands Uniform Power of Attorney Act [Repealed.]

§§ 5-501 — 5-523. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 6. Authority [Repealed.]

§§ 5-601 — 5-617. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 7. Statutory Form Power of Attorney Form Provisions [Repealed.]

§§ 5-701 — 5-702. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 8. Miscellaneous Provisions [Repealed.]

§§ 5-801 — 5-803. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Article VI. Nonprobate Transfers on Death [Repealed.]

Part 1. [Repealed]

PART ANALYSIS

6-101—6-102. [Repealed]

Part 2. [Repealed]

Subpart 1. [Repealed]

PART ANALYSIS

6-201—6-206. [Repealed]

Subpart 2. [Repealed]

6-211—6-216. [Repealed]

Subpart 3. [Repealed]

6-221—6-227. [Repealed]

Part 3. [Repealed]

6-301—6-311. [Repealed]

Part 1. Provisions Relating to Effect of Death [Repealed.]

§§ 6-101 — 6-102. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 2. Multiple-Person Accounts [Repealed.]

SUBPART 1. DEFINITIONS AND GENERAL PROVISIONS [REPEALED.]

§§ 6-201 — 6-206. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

SUBPART 2. OWNERSHIP AS BETWEEN PARTIES AND OTHERS [REPEALED.]

§§ 6-211 — 6-216. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

SUBPART 3. PROTECTION OF FINANCIAL INSTITUTIONS [REPEALED.]

§§ 6-221 — 6-227. **Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —**

Part 3. Virgin Islands Uniform TOD Security Registration Act [Repealed.]

§§ 6-301 — 6-311. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Article X. Virgin Islands Uniform Custodial Trust Act [Repealed.]

Part 1. [Repealed]

PART ANALYSIS

10-101—10-118. [Repealed]

Part 2. [Repealed]

10-201—10-203. [Repealed]

Part 1. Specific Provisions [Repealed.]

§§ 10-101 — 10-118. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

Part 2. General Provisions [Repealed.]

§§ 10-201 — 10-203. Repealed. Aug. 22, 2012, No. 7356, § 2, Sess. L. 2012, p. —

TITLE SIXTEEN

Domestic Relations

Chapter 2. Remedies for Domestic Violence

§ 91. Definitions

ANNOTATIONS

2. Domestic violence. There was sufficient evidence to support convictions for assault in the third degree, in connection with domestic violence, and unlawful use of a dangerous weapon during the commission of a crime of violence when the victim testified that defendant held a kitchen knife to her throat and told her to drink bleach or he would cut her; that after noticing she had not signed a check to him properly, he put the knife to her left breast and stated, "I'm serious. I ain't playing with you give me the correct signature. I know your signature"; and that defendant grabbed her by her arm, walked her to her front door with the knife to her throat, and told her to get rid of her brother who had arrived to drive her to work. Francis v. People of the Virgin Islands, 57 V.I. 201, 2012 V.I. Supreme LEXIS 58 (2012).

There was sufficient evidence to support a conviction for assault in the third degree, in connection with domestic violence, as the victim testified that defendant placed three plastic bags over her head so that she could not breathe, one by one after she successfully poked a hole in each; that she momentarily blacked out after the second bag was placed over her head; and that she was unable to poke a hole in the third bag due to weakness but that defendant removed that bag after noticing that she was limp. Francis v. People of the Virgin Islands, 57 V.I. 201, 2012 V.I. Supreme LEXIS 58 (2012).

There was sufficient evidence to support defendant's conviction of aggravated rape in the first degree, in connection with domestic violence, when the victim testified that defendant choked her, slapped her, forced her to drink cleaning agents, and put a knife to her chest and neck all before inserting a broomstick into her vagina. The absence of physical evidence to corroborate the victim's testimony did not render her testimony insufficient to sustain her conviction; semen samples neither identified nor excluded defendant; and a jury could find that the broomstick was a deadly weapon. Francis v. People of the Virgin Islands, 57 V.I. 201, 2012 V.I. Supreme LEXIS 58 (2012).

There was sufficient evidence to support defendant's conviction of assault in the third degree, in connection with domestic violence, when the victim testified that defendant forced her to drink household cleaners by clutching her hair, pulling her head backwards, and pouring a cup of the cleaner into her mouth; when the victim testified that she ingested as little of the cleaning agents as possible and attempted to let most of the liquid drain out of her mouth discreetly; and when the victim's lips were swollen and she had chemical burns both on her lips and chin. Although there were no fingerprints or DNA evidence proving that defendant held the cleaning bottles, a forensic technician testified that rough surfaces with grooves, like the bottle here, made it more difficult to obtain fingerprints. Francis v. People of the Virgin Islands, 57 V.I. 201, 2012 V.I. Supreme LEXIS 58 (2012).