The Exciting World of Probate Practice

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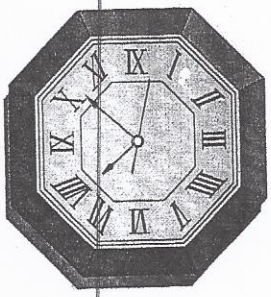

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THE EXCITING WORLD OF PROBATE PRACTICE

INTRODUCTION

" For where a testament is, there must also of necessity be the death of the testator. For a testament is of force after men are dead: otherwise it is of no strength at all while the testator liveth" – **Hebrews 9: 16-17**.

1. I first read the above quotation almost twenty years ago while attending the Fortis institute but my memory was recently refreshed by a final-year student at the Norman Manley Law School who handed the words to me on a piece of paper, respectfully contending that the excerpt was the substratum for the law of succession. Whether or not this is indeed the ***fons et origo***, there is no doubt that the law of succession (or "probate practice and procedure" if one prefers) is a fascinating and indispensable part of the law.

2. Several years ago one of my law tutors encouraged me to develop a probate practice as "there will always be work!" "Cold" though it might have seemed then, she was correct as the law regarding "dead lef" is indeed thriving business.

PROBATE PRACTICE

3. What is "Probate Practice?" For purposes of expediency, the expression "Probate Practice" will be used to refer to that aspect of a legal practice which concerns itself with the law of succession.

4. What is the Law of Succession? It is that area of law which deals with the transmission of property owned by, or vested in, an individual ("the deceased") at the date of his death to other individuals whether pursuant to the terms of the deceased's Will (**testate succession**) or via the laws of intestacy (**intestate succession**).

5. It would be remiss of me not to make the point that probate practice also governs partial testacy (or, depending on your palate, partial intestacy) which is, of course, a hybrid of the two types of succession mentioned in the previous note.

6. In this paper I hope to highlight several of the more frequent, interesting and/or necessary aspects of the three "types" of succession.

I also plan to consider, succinctly, some estate planning ideas which, of necessity, will involve "***inter vivos***" matters, and to make recommendations (**"The Way Forward"**) for changes or improvements to the law.

7. Enough said on introductory matters, please be good enough to follow me, my charming and erudite friends, into the fascinating and "live" world of Probate Practice.

WILLS

8. A Will, in its simplest definition, is a written document by which the author or writer provides for the administration, apportionment and/or distribution of property owned by him (his "estate") at the date of his death. Wills are governed by the Wills Act, an 1840 statute which is based on its "parent" United Kingdom statute, a few years older.

9. I decided to spend a short time on Wills, not to insult anyone's intelligence but merely because I have been amazed, during my relatively short stint in practice, at the number of mistakes by legal practitioners and the many instances of misconceptions held by many who should really know better. Two instances which come to mind are:

   a) an attorney-at- law much senior to me expressing surprise that marriage revokes a Will (***vide*** the clear wording of section 13); and
   b) another (very) senior attorney-at-law (trained as a solicitor!) who opined that one witness was sufficient to make the Will valid as long as he/she was a Justice of the Peace.

Section 6 of the Wills Act provides as follows:

*"No Will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person, in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and subscribe the Will in (**the**) presence of the testator, but no form of attestation shall be necessary…"*

The above quotation makes it eminently clear that at least two witnesses are necessary ere the Will is valid.

Several germane cases are:

- **Re Finn** (1935) 105 LJP 36;
- **Re Chalcraft's Goods** [1948] P. 222 (Willmer, J)
- **Re Colling** [1972] 3 All E.R. 729 (Ungoed-Thomas, J), and
- **Re Groffeman** [1969] 2 All E.R. 108 (Sir Jocelyn Simon, P)

10. The following sections of the Wills Act are of particular importance:
    a) S.5: One has to be eighteen years and over to make a valid Will (***au contraire***, one can be "under-aged" and still be a valid witness);
    b) S. 10: Gifts to attesting witnesses, their spouses or anyone claiming under such witness or spouse are null and void. **See also** the well-known case of **Ross v. Caunters [1980] 3 All E.R. 580, [1979] 3 W.L.R. 605 (Megarry, V.C.)**;
    c) S. 15: Provision re revoking a Will;
    d) S. 16: Provision re amending a Will;
    e) S. 19: Will is ambulatory and speaks from the testator's death. This is reminiscent of the quotation (**in note one supra**) from Hebrews, and
    f) S. 28: Preserves gifts to children who die leaving issue, living at the testator's death. This provision is similar to S. 4(5)(1)(i) of the Intestates Estates and Property Charges Act except that the latter deals with intestacy.

11. For completeness I should state that where there's a Will ... there's often a codicil which is also a testamentary document by the testator but made subsequent to the Will and which may confirm, change, or revoke the Will.

    It is not uncommon for someone to die leaving several Wills and/or codicils but as Lord Robertson said in **Douglas-Menzies v. Umphelby [1908] AC 224 (at p. 223)**, they amount to one "expression of his testamentary wishes."

12. Of course, apart from the (physical) formalities the necessary mental element, or ***animus testandi***, must be present: The testator (being 18 years or over) must:
    a) have the (testamentary) capacity to make a Will;
    b) know and approve of the contents of the Will, and
    c) have made the Will free from fear, undue influence or fraud.

    See **Banks v. Goodfellow (1870) LR5 QB 549 (Cockburn, C.J. at 565)**

13. **THE WAY FORWARD**

a) Section 6 of the Wills Act is forty-two (42) unbroken lines long. This ought to be paragraphed or simplified ***a la*** analogous provisions in Bermuda and Barbados (The Succession Act Cap. 249).

b) Section 7 (**dealing with privileged Wills**) of the Act is to be widened to make provision for other members of the security forces, and

c) Section 6 is to be amended by introducing a provision similar to that done in the United Kingdom by S. 1 of the Wills Act, 1968 after the controversial decision in **Re Bravda [1968] 1 WLR 479, [1968] 2 All E.R. 217 (Willmer & Russell, LJJ)** regarding superfluous attestations. It is interesting to compare the decision in **Bravda** with Lord Penzance's decision in **In the Goods of Sharman [1869] L.R. 1 P & D 661** where, unlike in **Bravda**, a "superfluous witness" did not lose the gift.

PROBATE APPLICATION

14. Having made and left a valid Will, after the death of the testator the Will has to be probated before effect can be given to its terms. The following is a suggested step-by-step synopsis of the procedure necessary to obtain the grant of representation from the Supreme Court where most applications are filed.

a) Peruse the Will to ascertain if valid.

b) Make at least one copy of the Will for your file. **NB**: Please do not punch or staple the Will or change its condition in any way.

c) Confirm the testator's full and/or proper name. Check the name on Will/Codicil with name on Birth Certificate (if relevant), Passport (if one exists), Burial Order (Death Certificate) and all documents of ownership or title.

If the name on the Will (**Joe Thomas Edison**) is different, for example, from that on a Certificate of Title (**Joseph Thomas Edison**), the probate application should "***ex abundanti***" be "in the estate of Joe Thomas Edison also known as Joseph Thomas Edison".

d) Confirm the deceased's occupation, last fixed place of abode, date of death and place of death.

e) Get details of the estate – personalty and realty and expenses, the last being relevant to the preparation of the Affidavit of Value and the Revenue Affidavit. Obtain formal valuations, especially in respect of land, as this can save time when dealing with the Stamp Commissioner's Department at a later date.

f) Obtain full and/or proper name(s), addresses, occupations and proof of identification of executors and attesting witnesses.

g) Prepare the documents to be filed in the registry. These documents usually are:

(i) Oath of Executor(s);

(ii) Affidavit of Attesting Witness;

(iii) Inventory (plus **Kalamazoo -**"K"**-** Copy);

(iv) Declaration of Counting of Inventory;

(v) Will Bond (personalty plus double gross annual value of realty);

(vi) Affidavit in Proof of Death (if Death Certificate is not available, one may swear an Affidavit attesting to the funeral service, seeing the body interred and exhibiting the funeral programme). Where the application is by a trust company the proof required is the same and no mere averment to the death of the deceased by an officer of the company is sufficient. ***Vide* practice direction by E.B. Allen, Registrar (4/10/71);**

(vii) Affidavit of Value;

(viii) Probate (plus -**"K"**- Copy);

(ix) Declaration of Counting Probate (including the Will/Codicil);

(x) Affidavit of Delay (if three or more years have passed between the deceased's death and the filing of the application for the Grant), and

(xi) Affidavit of Plight, condition and finding (if necessary). Also very necessary are the signing or identification clauses to be put on the original Will, that is, the "markings" to be signed by the executors and attesting witnesses. Use the same Justice of Peace or Notary Public who witnessed Oath and Affidavit of Attesting Witness. **See page 30A of Appendix**

h) Keep an extra, completed copy of every document (with "fresh signatures") filed not just for your office file but for the Supreme Court in the event that the original set is **"lost"** in the registry. In such an event, concessions might have to be made by the officials in the registry regarding the "lost" original Will.

i) Have the germane signed documents stamped.

j) Submit the application (all the relevant documents, including the original "marked" Will) via covering letter and have official in the registry sign and date (**signature plus full name**) a copy of the said letter to acknowledge receipt of same. **NB**: The new suit number should be noted on the letter as well.

k) On your legal clerk's return to the (your) office insert the application suit number in the documents on your office file and put a follow-up

day in your diary to remind your staff to check on progress of the application.

l) Monitor (pester?!) officials in the registry and collect the grant of probate when same is ready for upstamping.

m) Double-check the Supreme Court official's calculations ere upstamping the grant in the amount indicated thereon. See the Stamp Duty Act and related provisions.

n) After collecting and upstamping the grant, re-submit same to the Supreme Court Registry along with the required number of copies of the grant you wish to be certified (for bank, Registrar of Titles, etc.). Please note that certified copies have to be stamped. **See page 30B of Appendix for wording of certification.**

o) Advertise for creditors in daily newspaper or gazette. **See page 31 of Appendix. See section 22 of the Trustees, Attorneys and Executors (Accounts and General) Act.** This protects the executors against future claims by creditors.

p) Complete Revenue Affidavit and submit same to the Stamp Commissioner.

q) (If not yet done), collect property belonging to the estate, pay transfer tax and obtain official proof of same, pay other debts and expenses

r) If land is involved, prepare application for registration on transmission or assent to devise.

s) Distribute the estate pursuant to the terms of the Will and pay executor's commission which, if the Will is silent as to remuneration, will be the same as that payable to the Administrator-General pursuant to the Administrator-General's Act.

t) File accounts – see section 6 of the Trustees, Attorneys and Executors (Accounts and General) Act.

u) Take a holiday and thaw out brain/nerves.

15. Practitioners, officers/officials in the respective registries should be fully "***au fait***" with the germane statutes and practice directions including provisions of the Stamp Duty Act, the Transfer Tax Act, the General Rules and Orders of the Supreme Court (Part III – Probate and Administration) and the Non-Contentious Probate Rules (NCPR) 1987 (U.K.).

16. There are many applications for probate filed in the Resident Magistrate's Courts. These applications are permissible in this jurisdiction assuming:

a) the deceased died in the particular parish, and

b) the value of the estate does not exceed One Million Five Hundred Thousand Dollars ($1,500,000) ***Vide*** **section 108** of the Judicature

(Resident Magistrates) Act. (**NB**: raised from $15,000 to $500,000 and now $1.5M). Sections 109 to 129 are instructive regarding the procedure in the Resident Magistrate's Court.

17. The procedure is similar to that adumbrated above save for a few differences including:
    a) the fact that the documents are addressed to the Clerk of the Courts, and
    b) several copies of the Will and probate are generally filed ***"ad initio"***.

18. In relation to submitting the Revenue Affidavit to the Stamp Commissioner the following documents should accompany same:
    a) A copy of the grant (plus Will where relevant);
    b) Copy Inventory;
    c) Death Certificate (or Burial Order);
    d) Copy of Certificates of Title where relevant;
    e) Proof of liabilities (for example, in respect of funeral expenses, loans and mortgages);
    f) Valuations of property in the estate (for example, land). The relevant value of course is at the date of the deceased's death, and
    g) Share Certificates where relevant. Indeed the Stamp Commissioner also requires the filing of Financial Statements (at the date of death of the deceased or dated at the end of the accounting year before the date of death) in respect of shares held in privately owned companies.

19. Only one Revenue Affidavit per estate is to be filed.

20. It should also be noted that only property that the deceased was legally competent to dispose of at the date of death need be declared in the Revenue Affidavit, which is a declaration and must be witnessed by the appropriate person and fully/properly completed.

21. Under Section 6(2) of the 1903 Real Property Representative Act a devisee is entitled to take the executor to court any time after the expiration of a year from the death of the deceased in order to have the interest in land conveyed or transferred to him.

    It should be noted also that interest on transfer tax payable on death is not calculated or payable until one year after the death of the deceased. In other words, although the tax is payable at the date of death, the interest thereon is

waived for a year. This seems to acknowledge, deferentially, the above "executor's year".

THE WAY FORWARD

22. The Application for the grant should be simplified principally by the reduction of the number of documents to be filed. For instance, there should be no requirement for the filing of any declarations of counting. Further, the Inventory and Affidavit of Value could be incorporated into the Oath.

23. The process could be further shortened so that the probate need not be upstamped (with stamp duty) before the grant is issued or signed, but (stamped) at the time when the transfer tax is being paid.

24. The costs or fees regarding certified copies of the grant could be waived ("if wishes where horses beggars would ride") or, alternatively, be included in a one-off fee to be paid ***ab* initio in *lieu*** of the stamping of individual documents.

Please note the Practice Directions at pages 345 to 349 of Harrisons' Law Notes & Materials.

INTESTACY

25. Intestacy describes the situation where the deceased died without leaving a Will (***a la*** the well-travelled example of estate Robert Nesta Marley, dec'd) or, alternatively, where the deceased left a Will but it does not dispose of his property at all. This is "total intestacy".

26. "Partial Intestacy" (or conversely "partial testacy") speaks to the instance where the deceased left a Will which disposes of only a part of his property and estate.

27. Whenever any kind of intestacy occurs, the estate affected is distributed pursuant to the laws of intestacy; in other words, as provided in sections 3 and 4 of the Intestates' Estates and Property Charges Act **(IEPCA)**.

28. The Administrator-General's Act and the IEPCA, along with the General Rules and Orders of the Supreme Court, govern applications for a grant of Letters of Administration. Of course, such a grant must be obtained before property passing on intestacy can be distributed.

29. The procedure to obtain the grant is similar to that stated above in respect of probate except that there are some major differences.

30. One key difference is that the applicant(s) for the grant have to complete and file a form of particulars with the Administrator-General in order to obtain that statutory official's "consent" to proceed.

31. **The general rule is that** the right to apply for a grant follows the right to property. In other words, only persons entitled to benefit on intestacy can approach the court to be appointed administrators.

32. In comparison with the probate application, several different documents are filed when seeking a grant of letters of administration:
    a) An Oath of Administrator (c.f. Oath of Executor) is filed;
    b) An Administration Bond (double personalty plus double gross annual value of realty) c.f. Will bond;
    c) Surety, and
    d) Consent of beneficiaries.

33. Section 18 of the Administrator-General's Act states that no Oath, Declaration of Value or Bond is necessary when the Administrator-General gets a grant.

    Interestingly, the Administrator-General (at least on occasion) swears an Oath of Administrator in spite of the above provision.

34. When the Administrator-General applies for a grant, no consent is necessary from any beneficiary.

35. The IEPCA, originally a 1937 statute, underwent revolutionary surgery in 1988 with the major amendment being the creation or recognition of the common law spouse. Section 2(1)(d) of the Act defines "spouse" as follows:

    "i) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and

    ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death."

36. Section 2(2) further provides that:

> ***"Where for the purposes of this Act a person who is a single woman or a single man may be regarded as a spouse of an intestate then, as respects such intestate, only one such person shall be so regarded."***

37. It is abundantly clear that if an intestate had a harem and lived with, for example, six different women, for the required statutory period then (as in "Highlander") there can be only one.

38. Any such surviving spouse must obtain a Court Order acknowledging her/him as such. **See pages 32-38 of Appendix**. Interestingly, there is no provision in the statute requiring this but the Administrator-General will not consent to, or sanction, an application by such an individual unless there is such judicial recognition.

39. It should also be noted that beneficiaries on intestacy have to prove paternity (by way of a Court Order) if the deceased's particulars are not entered on their Birth Certificate as their father. **See Order at page 37 of Appendix.**

40. Of course, since 1976 the Status of Children Act confers upon children born out of wedlock certain rights, including the right to benefit from an intestate's estate.

41. Legal Officers, practitioners and students should pay special attention to he entitlement of each class of beneficiary on intestacy. ***Vide*** s. 4(1) of the Act with particular emphasis on the Table of Distribution (Items 1 to 5) which was introduced as part of the landmark amendments in 1988.

42. Please note that the "old" Table of Distribution is still applicable for the estate of intestates who died prior to the amendments coming into force.

43. In 1999 the Administrator-General's Act was amended in several respects. In my respectful opinion, one particularly useful introduction is S. 53A which allows the Administrator-General, who incidentally is appointed by the Governor-General, to administer estates "not exceeding One Hundred Thousand Dollars ($100,000) or such higher amount as the Minister may by order prescribe", without a grant of Letters of Administration as if he/she had obtained such a grant.

44. Section 13A also introduced another amendment which, in effect, gives the Administrator-General the right to give written notice to adult beneficiaries of their rights in relation to disagreement among themselves as to which of them should apply for a grant.

THE WAY FORWARD

45. Amend the IEPCA so that "issue" will include children "***en ventre sa mere***".

46. Amend section 13A of the Administrator-General's Act so that the Administrator-General will have the power to decide the beneficiary or beneficiaries who should apply for the grant if there is a dispute.

47. Establish more guidelines for ascertaining or selecting the common law "spouse" where, on the facts, more than one person seems to have equal claim.

48. Expand the categories of "other eligible relatives" **(Item 4 of S. 4(1) of the IEPCA)** to include other relatives (such as "cousins") before the estate escheats or passes "***bona vacantia***" to the Crown.

LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

49. Grants of Letters of Administration with the Will annexed are made in respect of Wills and/or codicils where no executor was appointed therein or where prevailing circumstances make it impossible for the executed appointed to obtain a grant. The grant may also be obtained (more particularly) where:

a) the court exercises its discretion and "passes over" or removes an executor **(see pages 39-44 of Appendix regarding Citation Proceedings)**.

b) The executor appointed is out of the jurisdiction and a grant is to be made to his duly appointed agent/attorney.

c) The executor has predeceased the testator or has survived the testator and died without proving the Will, or

d) The executor has renounced **(see Executors' Renunciation Act)**.

50. The documents and procedure relevant to the probate application are also pertinent except that:

a) an Oath of Administrator (with Will annexed) is filed (c.f. Oath of Executor);
b) The Will is "marked" by an administrator not an executor;
c) An Administration Bond is required (c.f. Will Bond); and
d) A form of particulars for Administrator-General is required to be filed with the Administrator-General to obtain the necessary consent before applying for the grant.

51. It is instructive to consider in greater detail section 12 of the IEPCA which provides:

> ***"Notwithstanding anything contained in the Administrator-General's Act, or any enactment amending or substituted for the same, where the residuary estate of the intestate does not exceed One Thousand Dollars, or where it exceeds that sum and a minor is entitled to a share thereof, of where a testator does not appoint an executor or where the executor has died before the testator or renounces, it shall be the duty of the Administrator-General to apply for Letters of Administration to the estate and, unless the Court is satisfied that it would be for the benefit of the estate that Letters of Administration ought to be granted to some other person, Letters of Administration to such estate shall be granted to the Administrator-General."***

52. Interestingly, in spite of the mandatory wording of the just-quoted section (*"It shall be the duty ..."*) in practice as long as there are no minors the Administrator-General usually consents to one or more of the adult beneficiaries applying for the grant. The words "unless the court is satisfied" suggests that a court order is necessary (unless the actual grant is considered to be such order).

53. If for whatever reason, the Administrator-General is not applying for the grant the right to a grant is usually as follows:
a) The executor (if one had been appointed and he had renounced only probate);
b) Any residuary legatee or devisee holding in trust for any other person;
c) Any residuary legatee or devisee for life;
d) The ultimate residuary legatee or devisee;
e) Any specific legatee or devisee or any creditor; and
f) Any legatee or devisee, whether residuary or specific, entitled on the happening of any contingency, or any person having no interest under

the Will of the deceased who would have been entitled if the deceased had died wholly intestate.

54. Where the applicant is not the executor, the Oath of Administrator should properly "clear off" (account for the absence of the executors) by exhibiting Death Certificate, Deed of Renunciation or the Power of Attorney.

55. The Deed of Renunciation and the Power of Attorney should be stamped and recorded at the Island Record Office before either is exhibited to the Oath.

THE WAY FORWARD

56. Suggestions similar to those made in relation to the probate application **(supra)**.

RE-SEALING

57. Resealing describes the procedure whereby a grant of representation issued by a Court (Registry) from a commonwealth (or colonial) jurisdiction is sealed with the seal of the local court and rendered as effective as if, originally, the grant had been obtained locally.

58. The governing statute is the **Probates (Re-Sealing) Act** buttressed by **Rules under the Act** and rules to be found in the General Rules and Orders of the Supreme Court (Part III – Probate and Administration).

59. The application was traditionally made to a judge in chambers but he Registrar of the Supreme Court can hear the application if it is unopposed. ***Vide*** the **Judicature (Supreme Court) Additional Powers of Registrar Act**.

60. In order to proceed a certified copy of the "foreign" grant (and all the relevant documents to which it relates) should be obtained. Details of the estate in the local jurisdiction should also be ascertained.

61. Notice of the Application is to be given by advertising in the gazette or daily newspaper. After the sealed notice is advertised, proof of this is effected in the form of an Affidavit of Advertising. It should be noted that, ideally, the entire page ("tear sheet") of the newspaper ad should be exhibited for the avoidance of doubt.

62. The documents to be filed are similar to those filed in respect of a standard probate application except that a few are excluded, such as the Affidavit in Proof of Death and the Affidavit of Attesting Witness. A surety might be required **(see Rule 4)**.

63. It must be reiterated that re-sealing is a commonwealth concept and does not extend to non-commonwealth nations. A grant, therefore, from the U.S.A. cannot be re-sealed in Jamaica.

64. The Oath must give details of the deceased's domicile. If the deceased was not domiciled in the jurisdiction from which the grant came, the seal of the court (in the local jurisdiction) must not be affixed "unless the grant is such as would have been made by the Supreme Court of Judicature of Jamaica". **(see Rule 8)**

65. After the foreign grant has been sealed in the local jurisdiction a copy (of the re-sealed grant) should be sent to the Registrar of the Court whence the grant originally came.

66. One should always carefully check for provisions in statutes or treaties between the respective countries, especially in respect of double-taxation relief.

LEAVE TO PROVE COPY WILL

67. There are occasions when, for whatever reasons, the original Will is not available. It might have been destroyed by accident or gone missing without any evidence or proof that the testator destroyed same "***animo revocandi***". Where the original Will is lost or destroyed while the testator is alive without being revoked, or is missing after his death, the court can still grant probate of the Will but it will only issue a "limited grant" after a preliminary application is made via summons or motion for leave to admit to probate the Will as contained in a duplicate, a photocopy, or completed draft (for example, an unsigned copy saved on hard drive) a reconstruction or other evidence.

68. The grant is said to be limited and the Order granting the permission to proceed with, for example, the photocopy, will usually state that the grant be issued or made "until the original or a more authentic copy be proved". **(see pages 45-48 of Appendix).**

69. If per chance the original Will is found or produced then the limited grant is called in and an application for probate of the original Will should be filed.

70. The application may be brought pursuant to Section 532 of the Judicature (Civil Procedure Code) Act which provides as follows:

> ***"The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought, as creditor, devisee, legatee, next-of-kin or heir-at-law, of a deceased person, or as "cestui que" trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an origination summons, returnable in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters:-***
>
> ***a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin, or heir-at-law, or "cestui que' trust;***
>
> ***b) the ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others;***
>
> ***c) the furnishing of any particular accounts by the executors or administrators, or trustees, and the vouching (when necessary) of such accounts;***
>
> ***d) the payment into court of any money in the hands of the executors or administrators, or trustees;***
>
> ***e) directing the executors or administrators, or trustees, to do or abstain from doing any particular act in their character as such executors or administrators, or trustees;***
>
> ***f) the approval or any sale, purchase, compromise, or other transaction;***
>
> ***g) the determination of any question arising in the administration of the estate or trust."***

71. The following evidence must be given in the supporting affidavit(s) to obviate an order dismissing the application:

a) Proof that there was actually a Will in the first place. An affidavit by one of the attesting witnesses (or by someone who was present when

the Will was executed and attested but who was not a formal witness) is ideal;

b) That the duplicate, draft or photocopy was compared with the original and found to be correct;

c) (If there is a photocopy of the Will) who made the photocopy and when;

d) The validity of the Will at the death of the testator. In other words, that the testator had not revoked the Will;

e) Where the Will was last seen and the person(s) who last had possession of the Will. This is very important because if the Will was last seen in the possession of the testator and is subsequently missing, then the presumption is that it was revoekd "***animo revocandi***";

f) Details of the circumstances in which the Will was lost or destroyed;

g) Efforts made to locate the Will;

h) Whether the persons who are "***sui juris***", and likely to be prejudiced by the Court's leave to proceed, consent to the application; and

i) Belief in the non-revocation of the Will.

72. If the preliminary application is successful, after the Order is perfected the application for probate may proceed as adumbrated (**supra**). It should be noted that an attested copy of the Order should be filed with the usual documents.

73. Where persons "***sui juris***" who are prejudiced oppose the application, then it is usual for the Will to be propounded in a probate action or proved in solemn form.

74. Sir William Douglas, C.J. delivering the judgment in the High Court of Barbados in **Re Sargeant (1975) 27 WIR 40** underscored the fact that presumptions can be rebutted and ruled that on the facts the presumption of destruction ***animo revocandi*** was negatived.

Also very useful is **Sugden v. Lord St. Leonard's [1876] 1 PD 154; (1886) 11 AC 469; [1874-80] All E.R. Rep. 21, Sattar v. Dass (1991) 44 WIR 257, Apted [1899] p. 272, Appiah v. Hookumchand (1972) 18 WIR 244 (Guy, C.A.) (criminal standard), Re Yelland (1975) 119 Sol Jo 562 (civil standard).**

THE WAY FORWARD

75. Specific rules should be laid down regarding this procedure in Jamaica.

LEAVE TO SWEAR DEATH

76. Before an application can be made for a grant of representation it must be established that the testator (or "intestate") had died. There are times when this is not possible because of the absence of the deceased's body, for example if he had disappeared over the Bermuda Triangle, in Bosnia-Herzegovina or such other "interesting" place. The usual affidavit in proof of death cannot be filed and in order to proceed (especially if a number of years have passed since the individual was last seen), the applicant for the grant of representation must obtain the Court's leave to swear to the death of the particular individual.

77. This, like the application to admit a copy Will to probate, is a preliminary application which is usually made by "***ex parte***" summons supported by affidavit. Indeed, S. 532 of the Judicature (Civil Procedure Code) Act provides a statutory basis for bringing such an application. It should be noted that in Jamaica there is no reference to the practice and/or procedure to be employed and that the practice in the United Kingdom is tailored to meet the local circumstances.

78. The application is likely to succeed if there is evidence from which the death may be presumed to have occurred. The Court does not presume that the individual has died but merely gives leave to swear to the death.

79. The chances of success are increased if the individual has not been seen or heard of for seven (7) years but this is not conclusive as the court will look at the circumstances or evidence "***in toto***".

Where the individual has disappeared in circumstances which obviously point to his death (for example, gone down with the Titanic or missing after the World Trade Center terrorist attack) or where family and/or friends with whom he would have reasonably been expected to communicate have not heard from him in a long time, it is very likely that the Court will make the order.

There is a plethora of authorities including **In the Goods of Jackson (1902) 87 LT 747, Chard v. Chard [1956] P. 259, In the Goods of H.T. Barber**

[1886] P. 78, and **In the Estate of Long-Sutton [1912] P. 97** (no leave where testator found drowned).

80. The affidavit in support of the application should contain, ***inter alia***,:

a) Proof of the deceased's existence and/or age (Birth Certificate to be exhibited);
b) Circumstances of the individual's disappearance;
c) Details of searches made to find him;
d) Advertisements (to be exhibited);
e) Copy airline ticket (if person allegedly died in plane crash) and proof that he was on board;
f) Particulars and value of the estate;
g) Details of bank (or other) accounts and the last time they were accessed by him/her;
h) Belief that the individual is dead;
i) Exhibited Will (if one);
j) (If no Will) details of beneficiaries on intestacy;
k) Whether the individuals ("**sui juris**") prejudiced by the application object to same;
l) Whether any letters have been received from the individual or if there has been any other contact since the date of his disappearance, and
m) Details of Life Insurance Policies (exhibit same).

81. To strengthen the chances of success, the application should, if possible, be supported by an affidavit from an independent individual (for example, an investigating police officer).

82. Where the Order is made, the application for Probate or Letters of Administration can proceed in the normal fashion. An "attested" copy of the perfected order should accompany the usual documents.

83. If the "deceased" surfaces (or is resurrected!!!) he should apply to the Court for a rescission of the Order and a revocation of any grant obtained.

THE WAY FORWARD

84. Specific rules regarding the procedure should be passed. The authorities could also consider passing legislation similar to that in other countries (for example, a Presumption of Death Act).

FAMILY PROVISION

85. The general principle in law developed and duly honed over the years is that an individual is free to dispose of his property as he wishes. He could leave everything to the "puss" if he desires. In other words, he is said to have (full) testamentary freedom.

86. In several countries in the English-speaking Caribbean, legislation has been enacted placing "restrictions" and/or limitations on this testamentary freedom. These countries include Barbados (The Succession Act, Cap. 249), Belize (The Wills Ordinance, Cap. 165) and of course Jamaica in the form of The Inheritance (Provision for Family and Dependants Act) 1993. **(hereinafter called "The Inheritance Act")**.

The general principle introduced by the germane legislation is that certain individuals (dependants) are allowed to apply to the Court for "reasonable financial provision" – see Section 4(1) of the Inheritance Act.

87. Interestingly, apart from being based on policy the statute has been influenced, at least partially, by the Inheritance Family Provision Act, 1938 (U.K.) which was subsequently amended by the Intestates' Estates Act, 1952 and ultimately repealed and replaced by The Inheritance (Provisions for Family and Dependants) Act, 1975 (U.K.).

Although the title of the Jamaican legislation is similar to that of its 1975 U.K. counterpart it is not identical to it. Consequently, one should be cognizant of any subtle nuances or differences and exercise due caution, if any English cases are being relied on to construe provisions in the local Act or to resolve issues.

88. Under the relatively fledgling legislation, particular individuals may apply to the court on the basis that the deceased, via his Will or on intestacy or by a combination of both, failed to make reasonable financial provision for the applicant.

PERSONS WHO MAY APPLY

Under Section 4(2), the persons with ***locus standi*** are:

a) a wife/husband;
b) a child;
c) a parent of the deceased who was being maintained by him/her or was legally entitled to be maintained;

d) a former wife/husband who was being maintained or who was entitled under an existing court order or an agreement between the parties to be maintained by the deceased immediately before his death); and
e) a single man or woman who lived with the deceased for five (5) years immediately preceding the deceased's death.

The ***locus standi*** point is very important. See, for example, the decision of the Court of Appeal of Trinidad & Tobago (where "family provision" legislation also exists) in **BNS Trust Co. of W.I. Limited v. Maillard (1985) 38 WIR 272.**

It should also be noted that a "child" includes a minor under eighteen years, an adopted child and a child of the family (consistent with the **Matrimonial Causes Act**).

89. The application should be filed within six (6) months of the grant of representation being taken out; see Section 5 of the Inheritance Act. If the application is not made within the stipulated period then the leave of the court has to be sought in order to bring same. The guidelines for the court to consider in determining whether to grant leave were considered in **Re Salmon, Coard v. National Westminster Bank Limited [1981] Ch. 167; [1980] 3 All E.R. 532.** Sir Robert Megarry V.C. recognised that the following were very important:
    a) the Judge's discretion was unfettered but must be exercised judicially;
    b) the onus was on the applicant to justify that the order should be granted. In other words, a case had to be made for making an exception to the rule;
    c) the speed at which the applicant acted and the circumstances in which he sought the Court's leave after the time limit had expired;
    d) whether or not negotiations between/among interested parties had commenced within the time limit;
    e) whether or not the estate had been distributed;
    f) whether the refusal to extend the time would leave the applicant without redress against anybody, and
    g) the relative strength of the applicant's case (***vide*** **Re Dennis [1981] 2 All E.R. 140** in this regard). He must at the very least have an arguable case.

90. The supporting affidavit in respect of the substantive application (to be brought by Originating Summons) should contain, ***inter alia***, the following:

a) full particulars of the value of the estate (with the necessary exhibits, for example copy of titles where relevant);
b) the persons or classes of persons beneficially interested in the estate giving names, addresses and their respective interests, status (whether minors or ill);
c) relationships of applicant to the deceased, or alternatively, the basis on which the application is brought;
d) details of the personal representatives (if any), if they are not making the application and any grant of representation (exhibit);
e) the means of the applicant(s);
f) the means of beneficiaries;
g) particulars of any proceedings, previous, current or expected, which are pertinent to the estate, and
h) a copy of the Will (if any).

See pages 49-56 of the Appendix.

91. In the Jamaican case, **In the Estate E. Chin, dec'd (E. 78 of 1999) (Unrep.)** McCalla, J in March 2000 upheld the "***in limine***" submission made by the applicant's attorneys-at-law and ruled that the "final property tax assessment" in respect of the estate had to be obtained before the substantive action could be heard. This, of course, is relevant to determining the (net) value of the estate.

92. Depending on the exigency of the situation, interim relief can be obtained pending the resolution of the substantive matter. **Again**, in **Chin's** case, ***supra***, Harrison, J. in 2000 made an order for the payment of a monthly sum for the maintenance of the infant applicant pending the completion of the case. See S. 6(1) of the Inheritance Act for an idea of the types of Orders the court can make.

93. It is important to note that the new law did not impose on the testator a duty to make provision for his dependants, it only gave the court the right to intervene if it thought that the dispositions which were made were unwarranted and/or inadequate. This has been the approach taken by the courts in a number of cases; for example, note the court's stance in **Re Brownbridge (1942) 193 LT Journal 185.**

OBJECTIVE TEST

94. The courts must look at the matter objectively in determining whether reasonable financial provision has been made. In other words an objective

test must be adopted. In coming to its decision the court can consider a number of factors, including:

a) the applicant's age, employment status and standard of living, **Re Inns [1947] Ch. 576 (Wynn-Parry, J)**;
b) any moral obligation the deceased had to the applicant **Thompson v. Roach & Roach (1968) 13 WIR 297 (CA, T & T)**;
c) the conduct of the applicant towards the deceased;
d) any provision made by the deceased for the applicant while the deceased was alive;
e) (regarding a child) the way in which the child was, or is expected to be, educated or trained and the liability of any other person to maintain the child (***vide*** S. 7(2) of the Inheritance Act); and
f) any other matter which, in the circumstances of the case, the court may consider relevant.

Vaisey, J. in a famous Practice Note [1945] WN 210, stated that no suggestion of the testator's sanity should be raised. Indeed, that is relevant only in a probate action.

95. The objective test has been emphatically confirmed in a number of cases. In **Re Goodwin dec'd [1968] 3 All E.R. 12**, Megarry, J. stressed that the question was objective not subjective, regard being had to the situation at the testator's (intestate's) death and also to subsequent supervening events.

In that case the court in awarding the applicant (the plaintiff's second wife and widow) £8 weekly, stated that the question was whether the Will made reasonable provision for the applicant not whether it was unreasonable for the testator not to have made larger provision for her.

Very instructive is the English Court of Appeal's decision in **Re Moody [1992] 2 All E.R. 524** which put to rest any contention that the test should be subjective. ***Vide*** also **Re Shanahan dec'd [1973] Fam. 1 (Lord Simon of Glaisdale), Chamroo v. Rookmin and Satnarine (1968) 13 WIR 470 (CA, T & T), Lewis v. Baker (1966) 10 WIR 122 (Wooding, C.J.).** In the unreported Jamaican case **In Re L. Stewart dec'd suit no. E. 308 of 1998,** Ellis, J. in October 1998 awarded two-fifths of the deceased's estate to the infant applicant where no provision had been made by the deceased.

96. If an applicant dies before the hearing/trial of the matter the claim ceases to exist. **Re Whytte [1986] Fam. 64 c.f.** claims which can be maintained under the Law Reform (Miscellaneous Provisions) Act.

REGISTRATION

97. The law provides for the registration of any court order made upon any application brought; such orders should be endorsed on any grant of representation.

98. The statute should be perused, assimilated, thoroughly digested and duly utilised as, in my respectful opinion it is a revolutionary piece of legislation which, from at least a social-engineering perspective, has tremendous potential in ensuring that justice is dispensed.

THE WAY FORWARD

99. Emphasis should be placed on developing the jurisprudence regarding the statute. In this regard, a body of local case law would be ideal. The provisions of the statute should, therefore, be tested as often and as vigorously as possible without encouraging senseless litigation.

CHILDREN/ISSUE

100. "Child" normally means immediate descendants and not grandchildren or remoter issue unless the deceased/testator meant to include such children.

Vide **Mellows: The Law of Succession** (5th edn.) p. para. 11:29 (citing, for example, **Loring v. Thomas** (1861) 1 Drew & Sm 497.

101. An unborn child (child ***en ventre sa mere***) is numbered among "children" born at a particular date if this is beneficial to that child to be so numbered or included. See, for example, **Villar v. Gilbey** [1907] AC 139; **Elliot v. Joicey** [1935] AC 209 and **Re Stern's Will Trusts** [1962] Ch. 732.

"Issue", on the other hand, refers to descendants **IN EVERY DEGREE**. See **Edyvean v. Archer** [1903] AC 379 and **Re Hipwell** [1945] 2 All E.R. 476.

102. A child (***en ventre sa mere***) is included in the description of "issue" for the purpose of taking under a Will only if that was clearly the testator's intention. The reason is that such a child is not perceived as "living" for the purposes of the Wills Act. **Tristram and Coote's Probate Practice** (27th edn.) p. 167. In the UK, unlike Jamaica, this situation was addressed by an amendment to the Wills Act by the Administration of Justice Act, 1982.

For the purposes of intestacy, such a child usually will not take unless there is distinct statutory provision (for example, as in Belize or the UK pursuant to the respective Administration of Estates Act). As stated above, the Intestates' Estates and Property Charges Act makes no provision for such a child and ***arguendo*** such a child cannot take unless the principles enunciated in ***Villar, Elliott*** *and* ***Re Stern's*** in para. 2 (**supra**) can be applied. This position is radically differenct from the provisions of **The Inheritance (Provision for Family and Dependants) Act** where parliament made provision for the unborn child.

Having regard to the requirements for adoption, it is doubtful that an unborn child can benefit from the provisions of the germane adoption legislation (for example, in Jamaica, section 17 of the Adoption (Children of) Act.

Interestingly, the "status" of the unborn child is usually an issue (no pun intended!!). Where there is no Status of Children legislation, "child" and/or "issue" will still refer only to "legitimate" children or issue. **Dickinson v. North Eastern Railway Co.** (1863) 9 L.T. 299 and **Re Brodie** [1967] Ch. 818.

"DE BONIS NON" GRANTS"

103. I have decided to say a few words about the captioned subject due to the large number of queries from practitioners (at the public and private bar) and students.

A grant "***de bonis non administratis***" (commonly called a "DBN" Grant) is a second or subsequent grant which is usually issued or made where the personal representative (be it administrator or executor) who had obtained a grant, died leaving part of the estate unadministered and there is no representative to step into the breach pursuant to the chain of representation.

The (new) administrator is given power to complete the administration of the estate.

104. The DBN grant can be made whether or not there is a Will. If there was a Will and Probate or Letters of Administration with the Will annexed had been obtained, then the new (DBN) Grant will be one of administration "***cum testamento et de bonis non administratis***". If there was no Will, it will simply be administration ***de bonis non administratis***.

105. In order to obtain a DBN grant the applicant must satisfy the court that:

a) a prior grant was made;

b) there is no personal representative directly or via the "chain" to wind up the estate, and

c) part of the estate is unadministered.

The procedure is similar to that of obtaining the "normal" grant except that the Oath will refer to details of the earlier grant, the passing of the original grantee and will "clear off" anyone who has any prior right to a grant.
If a Will is involved, a certified copy is to be obtained, "marked" and duly acknowledged in the Oath, as the original Will would have been dealt with as part of the first grant.

106. The chain of representation is a legal device which facilitates the transmission of the office of one executor to another, as an exception to the general rule that an executor cannot assign his office because it is one of personal trust. See **In the Estate of Skinner [1958] 1 WLR 1043**. The principle states that the office of a sole or last surviving proving executor passes to his executor who proves his Will. To give a simple example, If "A" left a Will making "B" his executor and "B" in turn makes a Will naming "C" as his executor, if "A" dies and "B" gets probate of "A's" Will, then "B" dies (before completing the winding-up of "A's" estate) and "C" gets probate of "B's" Will, then "C" is executor of "A's" estate by representation. The concomitant privileges and responsibilities have to be borne by "C".

107. It should be noted that "C" cannot accept responsibility for "B's" estate and renounce office as executor by representation of "A's". It is both/all or nothing. ***Vide* In the Goods of Perry** (1840) 163 E.R. 540 and **Brooke v. Haymes** (1868) L.R. 6 Eq. 25.

BREAKING OF CHAIN

108. The "chain" is "broken" in the following instances:

a) Intestacy;

b) Failure of the testator to appoint an executor; (***stricto sensu***, it would not even start!);

c) Failure of the (first) executor ("A") to appoint an executor in his Will, and

d) Failure of any of the executors to obtain probate.

109. The DBN grant should be distinguished from other second or subsequent grants such as a "Cessate" Grant (for example, after a principal (an executor) decides to assume the reins from an agent who has obtained Letters of

Administration with the Will annexed via a Power of Attorney) or Double Probate, where the second of two executors decides to take out "his" own grant after the other executor had earlier obtained one.

THE WAY FORWARD

110. The germane rules should be amended to elaborate on the practice and procedure and to provide forms or precedents as guides.

COURT RULES REGARDING PRACTICE AND PROCEDURE (INCLUDING CONTENTIOUS PROBATE MATTERS)

111. There is a woeful dearth of rules to assist legal practitioners and litigants in respect of "administrative" applications to the Court and contentious probate matters.

An examination of the Judicature (Civil Procedure Code) Act reveals that apart from Sections 26 and 532, to name a couple, there is not much guidance, in consequence whereof unduly heavy reliance is placed on Section 686 of the Code to invoke germane English Rules. This is an untenable state of affairs.

THE WAY FORWARD

112. The enactment of new and comprehensive rules (with accompanying forms) such as those couched in Part 68 of the (new) Code which deals with "Contentious Probate Proceedings". Rule 68.1(2) of the new rules defines a "probate claim" as:

> *"A claim for for the grant of probate of the will, or Letters of Administration of the estate, of a dead person or for the revocation of such a grant or for an order pronouncing for or against the validity of an alleged Will, not being a claim which is non-contentious or common form probate business ..."*

113. The (Contentious) Probate Proceedings would be begun by the issuance of a fixed date claim form (replacing the Writ of Summons) which would state, ***inter alia***:

"The nature of the interest of the claimant and of the defendant in the estate of the dead person to which the claim relates." **Rule 68.2(2)**

114. The new Rules, via rule 68.5, make much better and/or clearer provision regarding the requirement of filing an affidavit of testamentary scripts. As the Writ of Summons would now be extinct, the new Rules would (hopefully) finally rid us of the amazing requirement of filing an affidavit in verification of the endorsement to the Writ of Summons prior to the filing of the Writ of Summons (see Section 26 of the CPC).

115. Rule 68.4 provides for the lodgment of a grant in proceedings to revoke the grant within seven (7) days after the issue of the claim. This provision renders redundant the requirement for a citation to bring in the grant.

ADMINISTRATION CLAIMS

116. More detailed provisions are required to buttress or replace the "overburdened" Section 532 of the CPC. Part 67 of the proposed (new) rules which speak to "Administration Claims" comes to the rescue. The draft provisions cover, ***inter alia***, the "determination of any question arising in the administration of the estate of a dead person" **(Rule 67.4(2)(a)** and provides for various relief including an order:

"a) Requiring an executor, administrator or trustee to furnish and verify accounts;

b) Directing a person to do or abstain from doing a particular act in the capacity as executor, administrator or trustee; and

c) Approving any sale, purchase, compromise or other transaction by a person in the capacity as executor, administrator or trustee." **(Rule 67.4(3)**

DONATIO MORTIS CAUSA

117. A ***donatio mortis causa*** (DMC) is a gift made by the deceased during his lifetime (an "***inter vivos***" act) which is made in contemplation of the donor's death: that is, he is "***in extremis***" or "***in articulo mortis***". The gift is conditional upon the donor's death and becomes absolute upon its occurrence. The Jamaican case **Samms v. Wong et al** SCCA # 104 of 1996 (23/3/98) is instructive. See also **Hewitt v. Kaye** (1868) LR 6 Eq. 198, **Re Beak's Estate** (1872) LR 13 Eq. 489, **Rolls v. Pearce** [1897] 7 Ch. D 730

and **Re Beaumont** [1902] 1 Ch. 889 and **Wilkes v. Allington** [1931] 2 Ch. 104.

118. The donor's recovery from illness or his subsequent revocation of the gift (for example, resuming possession of a chattel) will defeat it. The gift of a cheque is not valid as a DMC as the proceeds can only be obtained in the donor's lifetime, and is revoked by his death. See **Tate v. Hilbert** (1793) 2 Ves Jun 111 and **Re Beaumont (supra).**

Finally, a DMC resembles a normal legacy in being subject to the relevant tax laws and to the deceased's debts but it is different in that it takes effect without any permission from the deceased's executor and/or without any grant of representation being necessary.

ESTATE PLANNING TIPS

119. Estate Planning **("EP")** can be described as the planning or organizing of an individual's business, financial, personal and/or general affairs so that upon his death his estate will, among other things:
   a) not be in disarray;
   b) will pass to those persons whom he wants to benefit therefrom, and
   c) will be protected or sheltered as much as possible against tax and debt burdens.

120. The following are some palpable but very important "tips":
   a) Make a Will. This immediately puts someone in charge of the estate (the executor) upon your death (c.f. intestacy, where bedlam reigns as no one is in charge until a court order/grant is obtained).
   b) Appoint executors and attesting witnesses younger than testator and preferably persons with business acumen.
   c) Make an inventory of all assets and liabilities and place supporting documents, titles, account passbooks, share certificates (or a photocopy of same) with said list (which should be updated accordingly).
   d) Have a power of attorney done (deceased could be incapacitated for a while before dying).
   e) Give a copy of Will and other documents to attorney-at-law (or other trustworthy person!) to keep.
   f) Make provision for the payment of funeral expenses, transfer tax and other debts (purchase insurance).
   g) Create joint tenancies re bank accounts and other properties.

h) Nominate individuals to benefit under insurance policies or re interest in co-operatives/societies.

i) Purchase property (especially land) in the name of limited liability company and leave small number of total shares to beneficiary.

j) Establish trusts (including half-secret or fully secret) and have trustees sign declarations acknowledging true state of affairs.

THE WAY FORWARD

"Tomorrow to fresh woods and pastures new"

- John Milton (1608-74)

IAN G. WILKINSON
JUNE 16, 2002

308

30A

sence of each other have hereunto subscribed our names as Witnesses.

WITNESS: lw

ADDRESS: 22 Jo. Camp Road P.O.Box 80?? C.S.O. Kingston

OCCUPATION: Minister of Religion J.P. Kingston

WITNESS:

ADDRESS: Alpha Boys School P.O.Box 80 C.S.O. 26 South Camp Rd.

OCCUPATION: Administrator

Exd M.B

"A"

This is the paper writing mentioned and referred to in the Oath of Executors of JOHN BOBBIT and MARY BOBBIT dated the 31st day of December 1993 as being thereunto annexed containing the true and original Will and Testament of late of 15 Ashbury Avenue, Kingston 3 in the parish of Saint Andrew, Retired Nurse, deceased and marked with the letter "A" for identification sworn to on the 31st day of December 1993 by us JOHN BOBBIT and MARY BOBBIT before me:-

Mavis E. Meame

JUSTICE OF THE PEACE FOR THE PARISH OF:- St. Thomas

JOHN BOBBIT

Mavis E. Meame

JUSTICE OF THE PEACE FOR THE PARISH OF:- St. Thomas

MARY BOBBIT

"A"

This is the last Will and Testament of LYANNE BOBBIT late of 15 Ashbury Avenue, Kingston 3 in the parish of Saint Andrew, Retired Nurse, deceased mentioned and referred to in the Affidavit of Attesting Witness of KYNDA FAASE dated the 31st day of December 1993 as being thereunto annexed bearing date the 1st day of September, 1985 and marked with the letter "A" for identification sworn ton by me KYNDA FAASE on the 31st day of December 1993 before me:-

Mavis E. Meame

JUSTICE OF THE PEACE FOR THE PARISH OF:- St. Thomas

KYNDA FAASE

40E

30B

I, C. A. BERNARD, Dep, Registrar of the Supreme Court of Judicature of Jamaica DO HEREBY CERTIFY that the foregoing pages are a true copy of the original Probate and Copy Will in the Estate of EDITH IVY ESTHER STAREGE-BOLTON, late of 15 Ashbury Avenue, Kingston 3, St. Andrew, Retired Nurse, Deceased, granted by the Supreme Court of Jamaica on the 8th day of June, 1994 and recorded in Probate Binder No. 139 Folio 470.

Dated the 16th day of AUGUST 1994.

C A Bernard

Dep REGISTRAR

ADS.

Kingston 19 Post Office in the parish of Saint Andrew, Student, deceased, Intestate.

ALL PERSONS having claims against the estate of the above-named deceased who died on the 1st day of September, 1992 are required to send particulars of their claims duly authenticated to CLARENCE TAYLOR AND BEVERLEY TAYLOR, the duly qualified Administrators of the estate in care of her Attorney-at-Law, IAN G. WILKINSON, 10 Swallowfield Road, Kingston 5 in the parish of Saint Andrew on or before the expiration of six (6) weeks of this Notice, after which date the assets of the estate will be distributed.

Dated the 22nd day of July, 1994.

IAN G. WILKINSON
ATTORNEY-AT-LAW
FOR THE ADMINISTRATORS.

PURSUANT TO THE TRUSTEES, ATTORNEYS & EXECUTORS (ACCOUNT & GENERAL) ACT

IN THE ESTATE OF EDITH IVY ESTHER STAREGE BOLTON, late of 15 Ashbury Avenue, Kingston 3, in the parish of Saint Andrew, Retired Nurse, deceased, testate.

ALL PERSONS having claims against the estate of the above-named deceased who died on the 20th day of October, 1987 are required to send particulars of their claims duly authenticated to DAVID STAREGE AND DAWN GENEVIEVE AZAN, the duly qualified Executors of the estate in care of their Attorney-at-Law, IAN G. WILKINSON, 10 Swallowfield Road, Kingston 5 in the parish of Saint Andrew on or before the expiration of six (6) weeks of this Notice, after which date the assets of the estate will be distributed.

Dated the 22nd day of July, 1994.

IAN G. WILKINSON
ATTORNEY-AT-LAW
FOR THE EXECUTORS.

PURSUANT TO THE TRUSTEES, ATTORNEYS & EXECUTORS (ACCOUNTS & GENERAL) ACT

IN THE ESTATE of SUMMER LLOYD McLEOD late of Four Paths in the Parish of Clarendon, Chief Land Surveyor, deceased, testate.

ALL PERSONS having claims against the estate of the above-named deceased who died on the 13th day of April 1987, are required to send particulars of their claims duly authenticated to the Administrator, c/o Messrs. CRAFTON S. MILLER & CO., 1A Duke Street, Kingston, Attorneys-at-Law, on or before the expiration of

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Pursuant to the Trustees Attorneys and Executors (Accounts and General) Law

IN THE ESTATE of EDWARD ALEXANDER GORDON, late of 48 West Street, Port Antonio, in the parish of Portland, Businessman, deceased, testate

ALL PERSONS having claims against the estate of the above named deceased who died on the 30th day of July, One Thousand Nine Hundred and Eighty-eight are required to send particulars of their claims duly authenticated to MERRICK COUSLEY, the Executor, whose postal address is care of Messrs Clinton Hart & Co., of 58 Duke Street, Kingston on or before the 12th day of September, One Thousand Nine Hundred and Ninety-four after which date the assets of the estate of the deceased will be distributed.

Dated this 18th day of July, 1994

CLINTON HART & CO.
of 58 Duke Street,
Kingston
Attorneys-at-Law for and on behalf of the Executor.

Pursuant to the Trustees Attorneys and Executors (Accounts and General) Law

IN THE ESTATE of BEATRICE BARTLEY, late of Davyton Postal Agency, Bellair District, in the parish of Manchester, Housewife, deceased, testate.

ALL PERSONS having claims against the estate of the above named deceased who died on the 16th of October, One Thousand Nine Hundred and Eighty-four are required to send particulars of their claims duly authenticated to WILBERT BAILEY, Executor of the estate, whose postal address in care of Messrs Clinton Hart & Co., of 58 Duke Street, Kingston on or before the 12th day of September, One Thousand Nine Hundred and Ninety-four after which date the assets of the estate of deceased will be distributed.

Dated this 18th day of July 1994

CLINTON HART & CO.
of 58 Duke Street,
Kingston
Attorneys-at-Law for and on behalf of the Administrators.

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73. GENERAL NOTICES

This is to notify the public that I, Denese Davy (nee Brown) am no longer cohabiting with my husband QC Anthony Davy as man and wife by reason of unresolved matrimonial differences and I do not intend to accept responsibility for any debts

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I do not intend to accept responsibility for any debts she may hereafter incur.
Byron Thomas
Heathfield District
Heathfield P.A.
Manchester

This is to notify the public that I, Horace Wright, am no

(Continued in next column)

longer cohabiting with my wife, Althea Wright, as man and wife by reason of unresolved matrimonial differences and I do not intend to accept responsibility for any debts she may hereafter incur.
Sgd: Horace Wright
Burnt Savannah
St. Elizabeth.

JAMAICA PUBLIC SERVICE CO. LTD.

INVITATION TO PREQUALIFY JPS/INTER-AMERICAN DEVELOPMENT BANK LOAN CONTRACT 738/OC-JA

NOTICE TO SUPPLIERS/ERECTORS OF MAJOR DISTRIBUTION SUBSTATIONS JAMAICA PUBLIC SERVICE COMPANY, LIMITED KINGSTON, JAMAICA

JPS PRIVATE SECTOR ENERGY DEVELOPMENT PROGRAMME

Jamaica Public Service Company, Limited (JPSCo.) has received a Loan from the Inter-American Development Bank (IDB) in various currencies towards the cost of the Private Sector Energy Development Programme in Jamaica and it is intended that part of the proceeds of this loan will be applied to eligible payments under a contract for the supply and erection of a 25 MVA 69/24kV Distribution Substation. Financing will be subjected to the provisions of Loan Contract 738/OC-JA.

JPSCo. now invites interested organizations, from Member Countries of the IDB to Prequalify for the supply of Substation equipment and materials and erection of the works to be performed on the 25 MVA 69/24kV distribution Substation.

The supply/erection to be performed will include the following general specifications.

- Steel Structures
- Two (2) 69kV Line Bays complete
- One (1) 69kV Transformer Circuit Breaker Bay complete
- One (1) 69kV Voltage Transformer complete
- One (1) 33/25 MVA 69/24kV Transformer complete with facilities for connection to the 69kV and 24kV bus bars
- One (1) 24kV Transformer Circuit Breaker Bay complete
- Three (3) 24kV Distribution Line Bays complete
- Protection and Metering Equipment
- Auxiliary Equipment
- Grounding System
- Construction of Relay Building
- Outdoor lighting for Substation
- Civil Works Equipment and Structure Foundations

Swallowfield Road, Kingston 5 for and on behalf of the Applicants/Executors herein.

32

"EX PARTE"
ORIGINATING SUMMONS UNDER THE INTESTATES' ESTATES AND PROPERTY CHARGES ACT

P. NO. 461 of 1995

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

IN THE MATTER of the Intestates' Estates and Property Charges Act.

A N D

IN THE MATTER of the estate of JOHN DOE , late of 313 Spanish Town Road, Kingston 11 Post Office in the parish of Saint Andrew, Welder, deceased, intestate.

A N D

IN THE MATTER of an application by JANE DOE to be declared a spouse under Section 2 of the Intestates' Estates and Property Charges Act.

A N D

IN THE MATTER of the Status of Children Act.

A N D

IN THE MATTER of an application by JANE DOE for declaration of paternity regarding JEAN DOE, JANET DOE, JIM DOE and JAMES DOE.

LET ALL PARTIES concerned attend before a Judge or the Master in Chambers at the Supreme Court, Public Buildings, East Block, King Street, Kingston on the day of 1995 at 10.00 o'clock in the forenoon, or so soon thereafter as Counsel may be heard, on the hearing of an application on the part of JANE DOE for the following:-

(1) A Declaration that the applicant, JANE DOE , is the surviving "spouse" of the deceased, JOHN DOE pursuant to the Intestates' Estates and Property Charges Act;

(2) A Declaration that the said deceased, is/was the putative and/or lawful father of the following children:-

(a) JEAN DOE, born on the 31st day of August, 1985;

(b) JANET DOE, born on the 13th day of December, 1986;

(c) JIM DOE, born on the 5th day of February, 1989 and,

(d) JAMES DOE, born on the 26th day of September, 1991.

(3) Further, or in the alternative an order directing the Registrar of Births, Deaths, and Marriages to amend the respective birth certificates of the said children by entering the particulars of the deceased thereon;

(4) Liberty to apply;

(5) There be no order as to costs and,

(6) Such further and/or other relief as may be just.

Dated the 19th day of APRIL 1995.

IAN G. WILKINSON

ATTORNEY-AT-LAW FOR THE APPLICANT

N. B. THIS SUMMONS IS NOT TO BE SERVED ON ANYONE

FILED by IAN G. WILKINSON, of 10 Swallowfield Road, Kingston 5, Attorney-at-Law for and on behalf of the above-named Applicant whose address for service is that of her said Attorney-at-Law.

4. That our common-law union ended on the 17th day of October, 1992 when the deceased died, intestate, as a result of a motor vehicle accident which occurred along Spanish Town Road in the parish of Saint Andrew. I exhibit hereto a copy of the relevant Post-mortem Examination Report, dated the 22nd day of October, 1992, marked "AD 1" for identification.

5. That to the best of my knowledge, information and belief the deceased was never married at any time during his life. Further, during our relationship I do verily believe that I was the deceased's only common-law spouse.

6. That during my 9-year relationship with the deceased, we lived at 313 Spanish Town Road, Kingston 11 Post Office in the parish of Saint Andrew from 1983 to his death and I bore him four (4) children, namely:-

(a) JEAN DOE , born on August 31, 1985;

(b) JANET DOE , born on December 13, 1986;

(c) JIM DOE , born on February 5, 1989 and,

(d) JAMES DOE , born on September 26, 1991.

I exhibit hereto a copy of the relevant Birth Certificate for each child marked "AD 2", "AD 3", "AD 4" and "AD 5", respectively, for identification.

7. That the deceased's name was not endorsed nor registered on the Birth Certificates for the said children as he did not accompany me on each occasion that I went to have each child's birth registered. Further, after the birth of the children was registered neither the deceased nor I pursued having the deceased's name placed on the children's Birth Certificates as we did not realize how important it was to have this done.

8. That I intend to apply to this Honourable Court for Letters of Administration for the deceased's estate so that I can sue, under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act, on behalf of myself and the said children, to recover compensation for the deceased's unfortunate death.

9. That in the circumstances I respectfully pray that this Honourable Court will grant me the relief(s) sought in the Originating Summons filed herein.

SWORN to by the said)
)
at 10 SWALLOWFIELD ROAD) ----------
in the parish of ST. ANDREW) JANE DOE
on the 19th day of APRIL)
1995 before me:-

Mavis R. Hoame
JUSTICE OF THE PEACE FOR THE
PARISH OF:- St. Thomas

FILED by IAN G. WILKINSON, Attorney-at-Law, of 10 Swallowfield Road, Kingston 5 for and on behalf of the Applicant herein whose address for service is that of her said Attorney-at-law.

37

"ATTESTED" COPY

ORDER ON ORIGINATING SUMMONS UNDER THE INTESTATES' ESTATES AND PROPERTY CHARGES ACT

P. NO. 461 of 1995

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

IN THE MATTER of the Intestates' Estates and Property Charges Act.

A N D

IN THE MATTER of the estate of JOHN DOE late of 313 Spanish Town Road, Kingston 11 Post Office in the parish of Saint Andrew, Welder, deceased, intestate.

A N D

IN THE MATTER of an application by JANE DOE to be declared a spouse under Section 2 of the Intestates' Estates and Property Charges Act.

A N D

IN THE MATTER of the Status of Children Act.

A N D

IN THE MATTER of an application by JANE DOE for declaration of paternity regarding JEAN DOE, JANET DOE, JIM DOE, and JAMES DOE

IN CHAMBERS
BEFORE THE HONOURABLE MISS JUSTICE BECKFORD (AG.)
THE 24TH DAY OF MAY, 1995.

UPON the "Ex-Parte" Originating Summons Under the Intestates' Estate and Property Charges Act herein dated the 19th day of April, 1995, coming on for hearing this day AND UPON hearing MR. IAN G. WILKINSON, Attorney-at-Law for the Applicant, IT IS HEREBY ORDERED THAT:-

(1) The applicant, JANE DOE , is the surviving "spouse" of the deceased JOHN DOE , pursuant to the Intestates' Estates and Property Charges Act;

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(2) The said deceased, JOHN , is/was the putative and/or lawful father of the following children:-

(a) JEAN DOE , born on the 31st day of August, 1985;

(b) JANET DOE , born on the 13th day of December, 1986;

(c) JIM DOE born on the 5th day of February, 1989 and,

(d) JAMES DOE born on the 26th day of September, 1991 and,

(3) The Registrar of Births, Deaths, and Marriages amend the respective birth certificates of the said children by entering the particulars of the deceased thereon.

BY THE COURT

Sgd [illegible]

R E G I S T R A R

TRUE COPY

[illegible]

REGISTRAR

FILED by IAN G. WILKINSON, of 10 Swallowfield Road, Kingston 5, Attorney-at-Law for and on behalf of the above-named Applicant whose address for service is that of her said Attorney-at-Law.

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CITATION TO ACCEPT OR REFUSE PROBATE

P. No. 1384 of 1997

FILED
19 DEC 1997
SUPREME COURT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

IN THE MATTER of the estate of JAMES FORBES late of 12 1/2 Swaby's Crescent, Villa Road, Mandeville, in the parish of Manchester, deceased, testate.

Elizabeth the Second, by the grace of God, of the United Kingdon of Great Britain and Northern Ireland and of Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of Faith:

TO: ORLANDO BROWN
Mandeville
Manchester

WHEREAS it appears by an Affidavit of EVA FORBES of 9 Vilma Avenue, Kingston 20 Post Office, in the parish of Saint Andrew, Civil Servant, sworn to on the 16th day of December, 1997, that JAMES FORBES late of 12 1/2 Swaby's Crescent, Villa Road, Mandeville in the parish of Manchester, died on the 25th day of July, 1994 at Gray's Hill Road, Mandeville in the parish of Manchester, having made and duly executed his last Will and Testament dated the 27th day of May, 1994 and thereof appointed ORLANDO BROWN and JOSEPH HALL mentioned and referred to in the deceased's said last Will and Testament, as his Executors therein.

AND WHEREAS the said JOSEPH HALL renounced his executorship on the 5th day of February, 1996.

AND WHEREAS it further appears by the said Affidavit that the said EVA FORBES is the lawful daughter of the said deceased and one of the persons entitled to share in the estate of the said deceased.

Now this is to command you, the said ORLANDO BROWN, that within **EIGHT (8) DAYS** after the service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of the Probate and Administration Division of the Supreme Court of Judicature of Jamaica, King Street, Kingston and accept or refuse Probate of the said last Will and Testament, or show cause why Letters of Administration, with the said Will annexed, of all the estate which by law

devolves to and vests in the personal representative of the said deceased, should not be granted to the said EVA FORBES

AND TAKE NOTICE that, in default of your so appearing and accepting and extracting probate of the said last Will and Testament, our said Court will proceed to grant Letters of Administration, with the said Will annexed, of the said estate to the said EVA FORBES , your absence notwithstanding.

DATED the day of 1997.

.....
REGISTRAR

EXTRACTED by **IAN G. WILKINSON** Attorney-at-Law of No. 10 Swallowfield Road, Kingston 5 for and on behalf of the Applicant herein whose address for service is that of her said Attorney-at-Law.

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"EX PARTE" SUMMONS TO REMOVE EXECUTOR

SUPREME COURT PROBATE 23 OCT 2001 CIVIL REGISTRY

P. NO. 1384 OF 1997

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

IN THE MATTER of the estate of GOANE TOO SUNE late of 12 ½ Swaby's Crescent, Villa Road, Mandeville in the parish of Manchester, deceased, testate.

LET ALL PARTIES CONCERNED ATTEND before a Judge in Chambers at the Supreme Court of Judicature of Jamaica, Supreme Court Building, Public Building East, King Street Kingston, on the day of , 2001 at in the noon or as soon thereafter as counsel may be heard on the hearing of an application by WEEPIN TOO LONGE for:-

1. An Order that NEGE LIGENT of Mandeville in the parish of Manchester be removed as Executor of the estate of GOANE TOO SUNE ;
2. A declaration that WEEPIN TOO LONGE of 9 Vilma Avenue, Kingston 20 Post Office in the parish of Saint Andrew be permitted to apply for Letters of Administration with Will Annexed of the estate of GOANE TOO SUNE ;
3. Liberty to apply;
4. There be no order as to costs and,
5. Such further and/or other relief as may be just.

Dated the 22nd day of October, 2001

IAN G. WILKINSON & COMPANY

Per: _____

ATTORNEYS-AT-LAW FOR THE APPLICANT

N.B.:- **TAKE NOTICE** that this Summons is not intended to be served on anyone.

TO: The Registrar
Supreme Court
King Street
Kingston

FILED by **IAN G. WILKINSON & COMPANY**, Attorneys-at-Law of No. 10 Swallowfield Road, Kingston 5, for and on behalf of the Applicant herein.

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AFFIDAVIT OF WEEPIN TOO LONGE
IN SUPPORT OF "EX PARTE" SUMMONS
TO REMOVE EXECUTOR

P. NO. 1384 OF 1997

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

IN THE MATTER of the estate of JOANE TOO SUNE **, late of 12 ½ Swaby's Crescent, Villa Road, Mandeville in the parish of Manchester, deceased, testate.**

I, WEEPIN TOO LONGE duly sworn make oath and say as follows:-

1. That I reside and have my true place of abode and postal address at 9 Vilma Avenue, Kingston 20 Post Office in the parish of Saint Andrew and I am a Civil Servant and the Applicant herein.

2. That I crave the leave of this Honourable Court to refer to and rely on the Affidavit of Weepin Too Longe to lead Citation to Accept or Refuse Probate sworn on the 16th day of December, 1997 and filed herein.

3. That on or about the 12th day of April, 2001, Citation to Accept or Refuse Probate was served on the Respondent, Mr Nege LIGENT I exhibit hereto marked "WTL -1" for identification a copy of the said Citation to Accept or Refuse Probate.

4. That I have been advised by my Attorneys-at-Law, Ian G. Wilkinson & Company (hereinafter referred to as "my Attorneys") that no Appearance has been entered on behalf of the said Nege Ligent nor has any affidavit been filed by him or on his behalf.

5. That I crave the leave of this Honourable Court to refer to the Affidavit of Service sworn by Ian Pitter on the 10th day of May, 2001.

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6. That in the circumstances I respectfully pray that this Honourable Court shall grant the relief sought in the Ex-Parte Summons filed herein.

SWORN at 24 Church Street)
this 22nd day of October, 2001)
in the parish of Kingston) .....
before me:) WEEPIN TOO LONGE

JUSTICE OF THE PEACE
FOR THE PARISH OF:-

D. TAYLOR-FRANCIS
JUSTICE OF THE PEACE
24 CHURCH STREET

FILED by **IAN G. WILKINSON & COMPANY** Attorneys-at-Law, of No. 10 Swallowfield Road, Kingston 5 for and on behalf of the Applicant herein.