

FEDERATION OF MALAYA

No. 5 OF 1956

THE CIVIL LAW ORDINANCE, 1956

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SUPERSEDED BY ACT 67.

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FEDERATION OF MALAYA

No. 5 OF 1956

THE CIVIL LAW ORDINANCE, 1956

Their Highnesses the Rulers of the
Malay States assent hereto

I assent

Rulers'
Seal

Public Seal
of the
Federation

Witnesses to the affixing of the Rulers' Seal:

T. ALAM SHAH,
(IN JAWI)
Sultan of Selangor

D. C. MACGILLIVRAY,
High Commissioner

31st March, 1956

ISMAIL,
Sultan of Trengganu

31st March, 1956

An Ordinance to consolidate and amend the law relating to the Civil Law to be administered in the Federation of Malaya.

[7th April, 1956.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART I

INTRODUCTORY

Short title. 1. This Ordinance may be cited as the Civil Law Ordinance, 1956.

Interpretation. 2. In this Ordinance unless the context otherwise requires—

“Court” means any court of the Federation of competent jurisdiction, and includes any Judge thereof whether sitting in court or in chambers;

“executor” means the executor or administrator of a deceased person, and includes, as regards any obligation, any person who takes possession of or intermeddles with the property of a deceased person;

“will” includes a codicil.

PART II

GENERAL

Application of common law and rules of equity. 3. (1) Save in so far as other provision has been made or may hereafter be made by any written law in force in the Federation or any part thereof, the Court shall apply the common law of England and the rules of equity as administered in England at the date of the coming into force of this Ordinance:

Provided always that the said common law and rules of equity shall be applied so far only as the circumstances of the States and Settlements comprised in the Federation and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

d/ LN. 332/58

(2) Subject to the express provisions of this Ordinance or any other written law in force in the Federation or any part thereof, in the event of conflict or variance between the common law and the rules of equity with reference to the same matter, the rules of equity shall prevail.

4. (1) In the administration by any Court of the assets of any deceased person whose estate proves to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under any law from time to time in force relating to companies, whose assets prove to be insufficient for the payment of its debts and liabilities, and the costs of winding up, the same rules shall prevail and be observed, as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as are in force for the time being, under the law of bankruptcy, with respect to the estates of persons adjudged bankrupt.

Administra-
tion of
insolvent
estates, and
winding up
companies.

(2) All persons who, in any such case, would be entitled to prove for and receive dividends, out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Ordinance.

(3) Any absolute assignment, by writing, under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been, effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee under the law as it existed before the date of the coming into force of this Ordinance, to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

5. (1) In all questions or issues which arise or which have to be decided in ~~any Malay State~~ with respect to the law of partnerships, corporations, banks and banking, principals and agents carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be

Application
of English
law in
commercial
matters.

*in the States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang,
Perak, Perlis, Selangor and Trengganu*

administered in England in the like case at the date of the coming into force of this Ordinance, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.

*L States of
Malacca
and Penang
LN. 322/58*

(2) In all questions or issues which arise or which have to be decided in the ~~Settlements~~ with respect to the law concerning any of the matters referred to in the last preceding sub-section, the law to be administered shall be the same as would be administered in England in the like case at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.

*Immoveable
property.*

d/ LN. 322/58

6. Nothing in this Part shall be taken to introduce into the Federation or any of the States ~~and Settlements~~ comprised therein any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immoveable property or any estate, right or interest therein.

PART III

FATAL ACCIDENTS AND SURVIVAL OF CAUSES OF ACTION

*Compensa-
tion to the
family of a
person for
loss occa-
sioned by
his death.*

7. (1) Whenever the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to an offence under the Penal Code.

(2) Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

(3) In every such action the Court may give such damages, as it thinks proportioned to the loss resulting

from such death to the parties respectively for whom and for whose benefit such action is brought:

Provided that—

(i) in assessing such damages there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the coming into force of this Ordinance;

(ii) damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought:

new Act 30/66 >

(4) The amount so recovered after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them in such shares as the Court by its judgment or decree directs.

(5) Not more than one action shall be brought for and in respect of the same subject matter of complaint, and every such action shall be brought within three years after the death of such deceased person.

(6) In any such action the executor of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect, or default, which sum when recovered shall be deemed part of the assets of the estate of the deceased.

(7) The plaint or writ or summons in any such action shall give full particulars of the person or persons for whom or on whose behalf such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

(8) If there is no executor of the person deceased or there being such executor no action as in this section mentioned has, within six calendar months after the death of such deceased person, been brought by the executor, such action may be brought by all or any of the persons, if more than one, for whose benefit such action would have been brought if it had been brought by the executor, and every action so to be brought shall be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be as if it was brought by the executor.

(9) It shall be sufficient for any defendant in any action brought under this section to pay any money,

he is advised to pay into Court as a compensation, in one sum to all persons entitled under this section for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided.

(10) If the said sum is not accepted and an issue is taken by the plaintiff as to its sufficiency and the Court thinks the same sufficient, the defendant shall be entitled to judgment upon that issue.

New Act 30/66 > requires—

(11) In this section unless the context otherwise

“parent” includes father, mother, grand-father and grand-mother;

“child” includes son, daughter, grandson, grand-daughter, stepson and stepdaughter:

Provided that in deducing any relationship referred to in this sub-section any illegitimate person or any person who has been adopted, or whose adoption has been registered, in accordance with the provisions of any written law shall be treated as being or as having been the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

Effect of death on certain causes of action.

8. (1) Subject to the provisions of this section, on the death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this sub-section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to any claim for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action either—

(a) were pending at the date of his death; or

(b) are taken not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 7 of this Ordinance and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said section as it applies in relation to other causes of action not expressly excepted from the operation of sub-section (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

PART IV

Repealed by O. 36/57

MARRIED WOMEN, TORT-FEASORS AND AWARD
OF INTEREST

9. (1) Subject to the provisions of this section the husband of a married woman shall not, by reason only of his being her husband, be liable—

(a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or

Abolition of husband's liability for wife's torts and antenuptial contracts, debts and obligations.

(b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

(2) For the avoidance of doubt it is hereby declared that nothing in this section—

(a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this section had not been enacted;

(b) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage in respect of which he would have been liable if this section had not been enacted;

(c) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and of suing and being sued either in tort or in contract or otherwise, in like manner as if they were not married;

(d) prevents the exercise of any joint power given to a husband and wife.

Proceedings
against, and
contribution
between,
joint and
several
tort-feasors.

10. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

(a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in

those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

- (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

(a) the expressions "parent" and "child" have the same meanings as they have for the purposes of section 7 of this Ordinance; and

(b) the reference in this section to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

(a) affect any criminal proceedings against any person in respect of any wrongful act; or

(b) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been enacted.

Power of
Courts to
award
interest on
debts and
damages.

11. In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

- (a) shall authorise the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

PART V

CONTRIBUTORY NEGLIGENCE AND COMMON EMPLOYMENT

Apportionment of liability in case of contributory negligence.

12. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

- (a) this sub-section shall not operate to defeat any defence arising under a contract;
- (b) where any contract or written law providing for the limitation of liability is applicable to the claim the amount of damages recoverable by the claimant by virtue of this sub-section shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing sub-section subject to such reduction as is therein mentioned, the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section 10 of this Ordinance shall apply in any case where two or more persons are liable or would,

if they had all been sued, be liable by virtue of sub-section (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 8 of this Ordinance, the damages recoverable would be reduced under sub-section (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under section 7 of this Ordinance shall be reduced to a proportionate extent.

(5) Where in any case to which sub-section (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation Ordinance, 1953, or any other written law limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said sub-section.

No. 4 of
1953.

(6) In this section "fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Ordinance, give rise to the defence of contributory negligence.

13. (1) The last preceding section shall not apply to any claims to which section 513 of the Merchant Shipping Ordinance, 1952, applies and that Ordinance shall have effect as if this Ordinance had not been passed.

Saving for
Merchant
Shipping
Ordinance,
1952.
No. 70 of
1952.

(2) The said section shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of this Ordinance.

14. (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured.

Common
employment.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the coming into force of this Ordinance) shall be void in so far as it would have the effect of excluding or

limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

(3) For the purpose of this section "personal injury" includes any disease and any impairment of a person's physical or mental condition, and the expression "injured" shall be construed accordingly.

PART VI

FRUSTRATED CONTRACTS

Adjustment
of rights and
liabilities of
parties to
frustrated
contracts.

15. (1) Where a contract has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of the next succeeding section, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Ordinance referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which the last foregoing sub-section applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party

obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular—

(a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under the last foregoing sub-section; and

(b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of sub-section (3) of this section any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

16. (1) The last preceding section shall apply to contracts, whether made before or after the coming into force of this Ordinance, as respects which the time of discharge is on or after the 1st January, 1955, but not to contracts as respects which the time of discharge is before the said date.

Provisions
as to appli-
cation of
section 15.

(2) The said section shall apply to contracts to which the Government or the Crown is a party in like manner as to contracts between subjects.

(3) Where any contract to which the said section applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to the said section to such extent, if any, as appears to the court to be consistent with the said provision.

(4) Where it appears to the court that a part of any contract to which the said section applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat the said section as only applicable to the remainder of that contract.

(5) The said section shall not apply—

(a) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) or the corresponding provisions of any written law for the carriage of goods by sea; or

(b) to any contract of insurance, save as is provided by sub-section (5) of the said section; or

(c) to any contract to which section 7 of the Sale of Goods Act, 1893 (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) or the corresponding provisions of any written law applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

PART VII

PROVISIONS RELATING TO THE DISPOSAL AND
DEVOLUTION OF PROPERTY

17. (1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following, namely:

General restrictions on accumulation of income.

- (a) the life of the grantor or settlor; or
- (b) a term of twenty-one years from the death of the grantor, or settlor; or
- (c) the duration of the minority or respective minorities of any person or persons living or *en ventre sa mere* at the death of the grantor or settlor; or
- (d) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated.

In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (save as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed.

(2) This section does not extend to any provision—

- (a) for payment of the debts of any grantor, settlor or other person;
- (b) for raising portions for:
 - (i) any child, children or remoter issue of any grantor or settlor; or
 - (ii) any child, children or remoter issue of a person taking any interest under any settlement or other disposition directing the accumulations or to whom any interest is thereby limited,

and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

Qualification of restrictions on accumulation.

18. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the coming into force of this Ordinance) to be taken into account in determining the periods for which accumulations are permitted to be made by the last preceding section, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

Restriction on accumulation for the purchase of land.

19. No person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only for any longer period than the duration of the minority or respective minorities of any person or persons who, under the limitations of the instrument directing the accumulation, would for the time being, if he had attained his majority, be entitled to the income so directed to be accumulated.

Validation of appointments where objects are excluded or take illusory shares.

20. (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—

- (a) an unsubstantial, illusory, or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or
- (b) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section shall not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section shall apply to appointments made before or after the coming into force of this Ordinance.

Executor deemed to be trustee for person entitled to residue on intestacy.

21. When any person dies or has died, having by his will, appointed any person to be his executor, such executor shall be deemed to be a trustee for the person, if any, who would be entitled to the estate in case the person died intestate in respect of any residue not expressly disposed of, unless it appears by the will that

the person so appointed executor was intended to take such residue beneficially.

22. (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of mortgage, charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will deed or other document signified a contrary or other intention, the interest so charged, shall as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

Charges on property of deceased to be paid primarily out of the property charged.

(2) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

23. (1) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his or her debts.

Moneys payable under policy of assurance not to form part of the estate of the insured.

(2) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid.

(3) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment of the moneys payable under any such policy.

(4) In default of any such appointment of a trustee such policy immediately on its being effected shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid.

(5) If at the time of the death of the insured or at any time afterwards there is no trustee, or it is expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by the High Court.

(6) The receipt of a trustee or trustees duly appointed, or in default of any such appointment or in default of notice to the insurance office the receipt of the legal personal representative of the insured, shall be a discharge to the office for the sum secured by the policy or for the value thereof in whole or in part.

*Bona
vacantia.*

24. When a right to the personal estate of any person who dies intestate without next of kin has accrued to the Government of the Federation, such personal estate or the proceeds thereof shall form part of the general revenue of the Federation and shall be appropriated as part of such revenue to such public purposes as the ~~High Commissioner in Council~~ from time to time thinks proper and directs:

*yang di-
perluan
Agong
-d-*

Provided that the ~~High Commissioner in Council~~ may by warrant order the transfer of the whole or any part of such personal estate or the proceeds thereof to any person or persons who shall establish to the satisfaction of the ~~High Commissioner in Council~~ any equitable or moral claim thereto.

*-d-
Ln. 332/58
Saving.*

25. Nothing in this Part shall affect the disposal of any property according to Muslim law.

PART VIII
MISCELLANEOUS

*Agreement
by way of
gaming or
wagering to
be null
and void.*

26. (1) All contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void.

(2) No action shall be brought or maintained in the Court for recovering any sum of money or valuable

thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.

(3) Sub-sections (1) and (2) of this section shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime or exercise.

(4) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by sub-sections (1) and (2) of this section, or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money.

27. In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the date of the coming into force of this Ordinance, regard being had to the religion and customs of the parties concerned, unless other provision is or shall be made by any written law. Infants.

28. (1) No person shall be chargeable with any rents or profits of any immoveable property which he has *bona fide* paid over to any person of whom he *bona fide* held the same notwithstanding it afterwards appears that the person to whom such payment was made had no right to receive such rents or profits. No person chargeable with rent *bona fide* paid to holder under defective title.

(2) If any person erects any building or makes an improvement upon any lands held by him *bona fide* in the belief that he had an estate in fee simple or other absolute estate, and such person, his executor or assign, or his under-tenant is evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his executor or assign shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief estimated and paid or secured to him or at the option of the person causing the eviction to purchase the interest of such person in the lands at the value thereof irrespective of the value of such building or improvement.

(3) The amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction.

(4) Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

(5) When any writ or summons issued by a landlord against a tenant for the recovery of immoveable property is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or any part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting three years' rack rent of the premises held by such sub-tenant to the person of whom he holds, to be recovered by such person by action in any Court having jurisdiction.

Repeal.

29. The Ordinances and Enactments set out in the Schedule to this Ordinance are hereby repealed to the extent specified in the third column of such Schedule.

SCHEDULE			
S.S. Cap. 42	Civil Law Ordinance	The whole
S.S. Cap. 118	Conveyancing and Law of Property Ordinance	S. 73
F.M.S. No. 3 of 1937	Civil Law Enactment...	The whole
F.M.S. Cap. 8	Probate and Administration Enactment	S. 93 (ii)
F.M.S. Cap. 19	Executors (Powers) and Fatal Accidents Enactment	The whole
Johore Enactment No. 22...	...	Probate and Administration Enactment	S. 82
Johore Enactment No. 99...	...	Fatal Accidents Enactment ...	The whole
Kelantan Enactment No. 15 of 1931	...	Executors (Powers) and Fatal Accidents Enactment	..
Kedah Enactment No. 2 of 1360	...	Fatal Accidents Enactment, 1360	..
Trengganu Enactment No. 22 of 1356	...	Probate and Administration Enactment	S. 44 (ii)
F. of M. No. 49 of 1951	...	Civil Law (Extension) Ordinance, 1949	The whole