Family Law:

Marriages

(A) A marriage is prohibited and void from the beginning, without being so decreed and its nullity may be shown in any collateral proceeding, when it is between;

(1) A man and his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter or sister's daughter;

(2) A woman and her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's husband, husband's son's son, husband's daughter's son, brother's son or sister's son; or

(3) Any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce.

(B) Any of such marriages may also be declared to have been null and void by judicial decree.

Adoption

Any inhabitant of the Virgin Islands may petition the proper court to adopt a child who is not his own and who is in the Virgin Islands. If desired, the petition may also ask for a change of the child's name. In no case however, may the petition of a person who has a spouse be granted unless the spouse joins therein. Except where husband and wife adopt jointly, no person shall be adopted by more than one person. Title 16 V.I.C. § 141. et.seq.

The statutory sections comprising the territorial adoption statute, which use "child" and "person" interchangeably, permit afdoption of adults. In re Williams, 14 V.I. 141 (Terr. Ct. St. C. 1977).

Anti-Nuptial & Pre-Nuptial Agreements

Legal Separation

A decree granting a legal separation or dissolving a marriage may be entered when the court is satisfied from the evidence presented that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

Title 16 V.I.C. § 104 et.seq.

The legitimate objects of matrimony would be considered destroyed, where no reasonable likelihood of preservation of the marriage remained, and divorce would be granted, where marriage had been deteriorating for years, during which arguing had increased to point where husband had frequently exercised violence upon wife and police were called on numerous occasions to preserve the peace, several reconciliation efforts had failed, the couple had lost all love and respect for each other, and they had not cohabited as husband and wife for months, and each was determined to end the union. Kirby v. Kirby, 14 V.I. 601 (Terr. Ct. St. C. 1978).

Custody & Guardianship

(a) A court in the Virgin Islands which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) The Virgin Islands:

(A) is the home of the child at the time of commencement of the proceeding; or

(B) had been the child's home within six months before commencement of the proceeding and the child is absent from this territory because of his removal or retention by a person claiming his custody or for other reasons and a parent or person acting as parent continues to live in this territory; or

(2) it is in the best interest of the child that a court in this territory assume jurisdiction because:

(A) the child and his parent, or the child and at least one contestant, have a significant connection with this territory; and

(B) there is within the jurisdiction of the court in this territory substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this territory, and:

(A) the child has been abandoned; or

(B) it is necessary in an emergency to protect the child; or

(4) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this territory is the more appropriate forum to determine the custody of the child; and

(A) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a) of this section, physical presence in this territory of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court in this territory to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody. 16 V.I.C. §117 et.seq.

Divorce

A husband and wife may maintain an action against the other for a legal separation or the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

Annulment

When a marriage has been solemnized in the Virgin Islands, an action may be maintained to declare it void if the plaintiff is an inhabitant of the Virgin Islands at the commencement of the action If the marriage has not been solemnized in the Virgin Islands, such action can only be maintained when the plaintiff has been an inhabitant thereof for six weeks prior to the commencement of the action.

1. INJURED PARTY.

This is the re-edited version of Injured Party Provision in the Virgin Islands Divorce Law (Act Leg. Assem. app. Dec. 29, 1944, § 7), states that a divorce may only be granted at instance if injured party did not require plaintiff to prove himself innocent of any conduct, which might have been grounds for divorce at the instance of the defendant, but only that he had been injured by existence of the ground which he asserts. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952).

2. CRUEL AND INHUMAN TREATMENT.

Where Virgin Islands Divorce Law (Act Leg. Assem. app. Dec. 29, 1944, § 7(5)) fixed “cruel and inhuman treatment calculated to impair health or endanger life” as ground for divorce, words “calculated to” meant “likely to” rather than “intended to”. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952)

Where defendant, without provocation, was guilty of such cruel and inhuman treatment of his wife as was calculated to impair her health, a divorce was granted. Gordon v. Gordon, 1 V.I. 15 (D.C.V.I. 1921)

3. INCOMPATIBILITY OF TEMPERAMENT.

Common sense reading of law providing for divorce on grounds of breakdown of marriage causing destruction of legitimate objects of matrimony, and no reasonable likelihood of preservation of the marriage, makes it clear that the old concept, that if the parties are so mismated that their marriage has in fact ended as the result of their hopeless disagreement and discord, the court should be empowered to terminate the marriage as a matter of law, a concept applied under prior incompatibility of temperament ground for divorce, is continued. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

Divorce absolute would be granted to both plaintiff wife and counterclaiming husband, each of which grounded their claim upon incompatibility, where incompatibility was clear, and clearly irreconcilable, and where there was no evidence that only one of them was at fault. Pena v. Pena, 8 V.I. 612 (D.C.V.I. 1971)

Conflicts in personalities and dispositions between husband and wife so deep as to be irreconcilable and to render it impossible for parties to continue a normal marital relationship with each other were sufficient to show incompatibility of temperament

between the spouses to entitle husband to a divorce, despite relationship of husband with another woman. Colby v. Colby, 6 V.I. 362, 283 F. Supp. 150 (D.C.V.I. 1968)

Where incompatibility of temperament complained of was due to wife's conduct in objecting to husband's relationship with another woman, a sufficient case of incompatibility was not established. Colby v. Colby, 6 V.I. 362, 283 F. Supp. 150 (D.C.V.I. 1968); Schlesinger v. Schlesinger, 6 V.I. 671, 399 F.2d 7 (3d Cir. 1968)

"Combatability" is not per se incompatibility. Schlesinger v. Schlesinger, 6 V.I. 671, 399 F.2d 7 (3d Cir. 1968)

In determining whether a married pair are so incompatible as to justify a divorce on that ground the inquiry is not as to the fault of either or both but rather as to whether their marital barque has so far foundered upon the rocks of disharmony and discord as to be beyond the possibility of salvage. Schlesinger v. Schlesinger, 6 V.I. 671, 399 F.2d 7 (3d Cir. 1968)

In order to establish incompatibility of temperament under this section quarrels between spouses must establish that there existed a state of incompatibility because of the basic unsuitability of the spouses for each other. Schlesinger v. Schlesinger, 6 V.I. 671, 399 F.2d 7 (3d Cir. 1968)

It is to the question whether the marriage is in fact ended because of the basic unsuitability of the spouses for each other, as shown by the events of their married life, rather than to the causes of the state in which they find themselves that the court must direct its inquiry in determining whether incompatibility of temperament exists. Schlesinger v. Schlesinger, 6 V.I. 671, 399 F.2d 7 (3d Cir. 1968)

To obtain a decree of divorce in the Virgin Islands on the ground of incompatibility of temperament it need only appear that, for whatever reason, there exists between the parties an irreconcilable conflict in personality or disposition which renders the maintenance of a normal marital relationship impossible. Del Peschio v. Del Peschio, 5 V.I. 461, 356 F.2d 402 (3d Cir. 1966), cert. denied 385 U.S. 886, 87 S.Ct. 181

It is the fact that the marriage has in truth ended because of the hopeless disagreement and discord of the parties which is the determining factor in a case of incompatibility of temperament rather than the causes of the unhappy state. Del Peschio v. Del Peschio, 5 V.I. 461, 356 F.2d 402 (3d Cir. 1966), cert. denied 385 U.S. 886, 87 S.Ct. 181

In determining whether a married pair are so incompatible as to justify divorce the inquiry is not to the fault of either but whether the marriage may be saved. Del Peschio v. Del Peschio, 5 V.I. 461, 356 F.2d 402 (3d Cir. 1966), cert. denied 385 U.S. 886, 87 S.Ct. 181

Besides considering whether the best interests of the parties, and of the public will be served by granting a divorce, the court must also weigh the possibilities of personal adjustment, and reconciliation and the restoration of a normal marital status in determining whether to exercise its discretionary power to grant a divorce upon the ground of incompatibility. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S.Ct. 1463, 16 L. Ed. 2d 540 (1966)

The incompatibility of temperament contemplated by this section involves a conflict of personalities and dispositions so deep as to destroy the legitimate ends of matrimony and the possibility of reconciliation. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S.Ct. 1463, 16 L. Ed. 2d 540 (1966)

Evidence, which showed that wife objected to husband's actions involving another woman, was not sufficient to establish incompatibility of temperament in divorce action by husband. Sachs v. Sachs, 3 V.I. 264, 155 F. Supp. 860 (D.C.V.I. 1957), aff'd, 3d Cir. 1959, 4 V.I. 102, 265 F.2d 31

Under provision of Virgin Islands Divorce Law (Act Leg. Assem. app. Dec. 29, 1944) cruel treatment of wife by husband did not bar his obtaining divorce on ground of incompatibility of temperament. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952)

While incompatibility of temperament in the Virgin Islands Divorce Law (Act Leg. Assem. app. Dec. 29, 1944, § 7) did not refer to those petty quarrels and minor bickerings which were but the evidence of that frailty which all humanity was heir to, it unquestionably did refer to conflicts in personalities and dispositions so deep as to be irreconcilable and to render it impossible for the parties to continue a normal marital relationship with each other. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952)

Under provision of Virgin Islands Divorce Law (Act Leg. Assem. app. Dec. 29, 1944, § 7) whereby incompatibility of temperament was ground for divorce, plaintiff could assert that he was party injured by incompatibility of temperament in which he himself participated, since incompatibility of temperament necessarily involves both parties. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952)

In an action for divorce under the divorce law of the Municipality of St. Thomas and St. John on grounds of incompatibility of temperament, plaintiff was required to show that he was not in fault and that he had been injured by the resulting condition existing between the parties. Quinones v. Castaigns, 2 V.I. 134 (D.C.V.I. 1950)

Although spouses were possessed of strong and unyielding wills, high tempers and assertive personalities, and, therefore, incompatible, plaintiff shown to be at fault could

not obtain divorce on ground of incompatibility of temperament. Christian v. Christian, Civ. No. 48-1937 (D.C.V.I. Nov. 29, 1937)

Party to divorce action who caused separation was precluded by that fault from subsequently obtaining a divorce on the ground of incompatibility of temperament. Nielsen v. Nielsen, 1 V.I. 391 (D.C.V.I. 1937).

4. IRRECONCILABLE BREAKDOWN.

Where wife, following two years of tolerable difficulties in marriage, developed extra-marital relationship with another man and her emotional attachment to her husband declined, husband later had a phone call from a friend to effect friend had seen wife in Miami with another man when wife was supposed to be in New Jersey visiting her mother, domestic peace ended and wife left the home, and among many other incidents husband struck wife in front of their children and husband saw wife leave motel room shortly after her man friend had left it, evidence of irreconcilable breakdown of marriage was sufficient and divorce could be granted. Hodge v. Hodge, 13 V.I. 561 (D.C.V.I. 1977)

5. MISCONDUCT OF PLAINTIFF.

The fact that plaintiff's conduct and disposition may have contributed to the incompatible state of the parties does not defeat his suit, although misconduct on his part may be considered by the court with all other evidence in determining whether the best interests of the parties and public will be served by granting a divorce. Del Peschio v. Del Peschio, 5 V.I. 461, 356 F.2d 402 (3d Cir. 1966), cert. denied, 385 U.S. 886, 87 S.Ct. 181

Evidence of misconduct on part of husband could be considered by District Court of Virgin Islands along with all the other evidence in determining whether, in the discretion of the court, the best interests of parties and of public would be served by granting of divorce, where Virgin Islands Divorce Law (Act Leg. Assem. app. Dec. 29, 1944) lodged in the court discretion to grant or deny a divorce. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952)

6. QUESTIONS FOR JURY.

Where procedural law of the Virgin Islands (1921 Codes, Title V, ch. 13, § 1; Title III, ch. 38, § 1; Divorce Law of Virgin Islands, app. Dec. 29, 1944, § 1) applicable to actions for divorce, provided that jury could be employed only to make findings as to particular facts, reference of all issues in divorce case to jury was unwarranted and verdict rendered by jury was without legal effect. Burch v. Burch, 2 V.I. 559, 195 F.2d 799 (3d Cir. 1952)

7. EXECUTIVE ACTION.

Divorce is strictly a civil matter in which the Executive may take no official action other than that which may be ordered by the court., 1 V.I.Op.A.G. 327

8. RES JUDICATA.

Where under New Jersey law quantum of proof differed from Virgin Islands divorce law on ground of incompatibility, prior action brought by the same parties on the same ground in New Jersey which was dismissed with prejudice was not res judicata to action brought in the Virgin Islands. Del Peschio v. Del Peschio, 5 V.I. 461, 356 F.2d 402 (3d Cir. 1966), certiorari denied 385 U.S. 886, 87 S.Ct. 181.

9. DEFENSES.

The defense of recrimination is the doctrine that plaintiff must show himself innocent of any substantial wrongdoing before he is entitled to a divorce. Colby v. Colby, 6 V.I. 362, 283 F. Supp. 150 (D.C.V.I. 1968)

Defense of recrimination has no application in the Virgin Islands in cases involving incompatibility of temperament as grounds for divorce. Colby v. Colby, 6 V.I. 362, 283 F. Supp. 150 (D.C.V.I. 1968)

Evidence disclosed that the quarrels of the parties did not result in creation of a status of incompatibility of temperament within the meaning and contemplation of this section. Schlesinger v. Schlesinger, 6 V.I. 671, 399 F.2d 7 (3d Cir. 1968)

Neither the defense of recrimination nor the doctrine of comparative rectitude is available to bar the granting of a divorce upon the ground of incompatibility of temperament. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S.Ct. 1463, 16 L. Ed. 2d 540 (1966).

10. EVIDENCE.

Regarding issue whether there remains no reasonable likelihood that a marriage can be preserved, which, with a breakdown of the marriage to extent that the legitimate objects of matrimony have been destroyed, allows granting of a divorce, the marriage as a whole must be considered and the court must be satisfied that the parties can no longer live together because of difficulties so substantial that no reasonable efforts could reconcile them; and all the surrounding facts must be considered, the subjective state of mind of the parties toward the relationship and any observable acts being relevant upon the issue. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

If the court is to make a determination which is just to the parties and to society as to the existence of an irremediable incompatibility, as this section contemplates, the evidence should provide it with a full picture of the personal ties and dispositions of the spouses and of their attitude and conduct toward each other. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S. Ct. 1463, 16 L. Ed. 2d 540 (1966)

It is important for the court to be informed of the cause of the incompatibility which the evidence is alleged to show and whether it is the result of volition or of a predisposition or is congenital. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S. Ct. 1463, 16 L. Ed. 2d 540 (1966)

Evidence tending to show that when plaintiff was faced with serious financial reverses, he took to drink from which he has now freed himself, and that the defendant is willing to resume the marital relationship. But plaintiff is, for some undisclosed reason, reluctant to do so, and is not sufficient to establish incompatibility of temperament in an action for divorce. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S. Ct. 1463, 16 L. Ed. 2d 540 (1966)

Where plaintiff's husband, was faced with serious financial reverses, he took to drink from which he subsequently freed himself but was unwilling to resume the marital relationship, Although the defendant's wife was willing, there was no irremediable disharmony in the life of the parties which would sustain a divorce on the ground of incompatibility. Shearer v. Shearer, 5 V.I. 439, 356 F.2d 391 (3d Cir. 1965), cert. denied, 384 U.S. 940, 86 S. Ct. 1463, 16 L. Ed. 2d 540 (1966)

11. INSUFFICIENT GROUNDS.

Divorce would not be granted where it was not proven that to any substantial extent the legitimate objects of matrimony were destroyed or that there was no reasonable likelihood the marriage could be preserved: It being readily apparent and evidenced in the testimony and demeanor of the parties at trial that there existed a strong, continuing sub-current of mutual love, affection, respect, understanding, sexual fulfillment, concern, emotional support and involvement in the nurture and happiness of parties' children. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

Mere absence of one of the parties from the home is no bar to denial of a divorce, though it is normally strong evidence that the marriage has broken down, and where husband had been absent for 6-12 months but had a continued close interaction in every aspect of home and married life, the court was convinced that he had not irrevocably decided the marriage was at an end, with no possibility of reconciliation. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

Court will not put the force of law on the fleeting passion of a middle-aged man to again "be free," and grant him a divorce, when his every action evidences his continuing love and dependency on his home and his relationship there with his wife. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

12. SUFFICIENT GROUNDS.

Legitimate objects of matrimony were destroyed, no reasonable likelihood of preservation of the marriage remained, and divorce would be granted, where marriage had been deteriorating for years, during which arguing had increased to point where husband had frequently exercised violence upon wife and police were called on

numerous occasions to preserve the peace, several reconciliation efforts had failed, the couple had lost all love and respect for each other, and they had not cohabited as husband and wife for months and each was determined to end the union. Kirby v. Kirby, 14 V.I. 601 (Terr. Ct. St. C. 1978)

13. BURDEN OF PROOF.

One suing for divorce has burden of proof as to statutory requisites to grant of divorce. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

14. JUDICIAL DISCRETION.

This section does not deprive court of power to find facts and determine law, or grant litigants such power by allowing a departure from the household to effect a termination in fact of the marriage. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

Whether a marriage is irretrievably broken is left to trial court's discretion based upon the evidence adduced in the case at hand, and court will not attempt to set forth specific guidelines for identifiable legitimate objects of matrimony which must be destroyed to constitute a breakdown of a marriage, for the central inquiry is subjective, not objective, and observable acts and occurrences in the marriage and the causes of the state in which the parties find themselves are not as important or controlling as the question whether the marriage is in fact ended because of the basic unsuitability of the spouses for each other and their state of mind toward the relationship. Hendry v. Hendry, 14 V.I. 610 (Terr. Ct. St. C. 1978)

Cited. Cited in Pfister v. Pfister, 23 V.I. 3 (Terr. Ct. St. T. and St. J. 1987).

Estate Planning

DISPOSITION OF PROPERTY BY WILL

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

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

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

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

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

“Section 6. – A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

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

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

“Section 9. – If such child or children, or their descendants, shall have an equal proportion of the testator’s estate bestowed on them in the testator’s lifetime by way of

advancement, they shall take nothing by virtue of the provisions of the preceding section.

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

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

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

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

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

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

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

“Section 17. – If any person has attested or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting real or personal estate other than or except charges in lands, tenements, or hereditaments for the payment of any debt or debts shall be thereby given or made, such devise, legacy, estate, gift or appointment shall, so far only as concerns such person attesting the execution of such will or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

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

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

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

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

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

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

“Section 24. – [Provisions of this section were carried into Title 28 of this Code.]

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

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

“Section 27. – The term ‘will’, as used in this chapter, shall be so construed as to include all codicils as well as wills.

“Section 28. – All courts and others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all matters brought before them.

“Section 29. – [Provisions of this section were carried into Title 28 of this Code].

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

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

§ 191. Petition for settlement without administration

Statute text

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

(1) the name and residence of the deceased;

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

(3) the names and capacities of the heirs;

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

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

(6) the proportion due each heir.

The petition shall end with a prayer that the heirs be recognized as the legal heirs of the deceased and as such be placed in full possession of the decedent's estate, real and personal.

Annotations

HISTORY

§ 192. Inventory to be annexed to petition

Statute text

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

§ 193. Presentation of petition to United States attorney

Statute text

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

Annotations

§ 194. Deposit and payment of tax

Statute text

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

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

§ 195. Judgment prima facie proof of title

Statute text

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

§ 196. Acceptance of estate on behalf of minors

Statute text

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

§ 197. Creditor's lien

Statute text

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

§ 198. Procedure where decedent left will

Statute text

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

§ 199. Service of process upon absent heir or legatee

Statute text

Any heir or legatee, non-resident of the Virgin Islands, or who shall remove therefrom after having been placed in possession of any of the assets of an estate under this chapter in relation to any claim against said estate is presumed to have consented to be sued in the District Court of the Virgin Islands and service on any such absent heir or legatee shall be sufficient if made upon the clerk of the district court in this territory. The clerk of the court, upon receipt of the summons, is required to forward same promptly by registered mail to the heir or legatee named in said proceedings addressed to his or her

last known address; provided that the time for filing the answer shall be sixty (60) days from the date of the service by the marshal on the clerk of the court.

Statute text

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

Name Change

Application for change of name may be heard and determined by the district court. No lawful change of the name of a person, except a woman upon her marriage or divorce, or upon the adoption of a child, shall be made unless for sufficient reasons not inconsistent with the public interest and satisfactory to the court. Title 16 V.I.C. § 181. et.seq.

Plaintiff could not legally change name to a series of numbers. In re Padilla, 22 V.I. 28 (Terr. Ct. St. C. 1986).