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O N A P P E A L  
FROM THE COURT OF APPEAL OF FIJI

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B E T W E E N :

THE COMMISSIONER OF ESTATE AND  
GIFT DUTIES

APPELLANT  
(Original Plaintiff)

- a n d -

FIJI RESORTS LIMITED

RESPONDENT  
(Original Defendant)

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CASE FOR THE APPELLANT

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Messrs Charles Russell & Company  
Hale Court  
Lincolns Inn  
LONDON WC2A 3UL

Solicitors for the Appellant

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B E T W E E N :

THE COMMISSIONER OF ESTATE AND  
GIFT DUTIES

APPELLANT

- a n d -

FIJI RESORTS LIMITED  
(A LIMITED LIABILITY COMPANY  
INCORPORATED IN FIJI)

RESPONDENT

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CASE FOR THE APPELLANT

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THE CIRCUMSTANCES OUT OF WHICH  
THE APPEAL ARISES

RECORD

THE NATURE OF THE APPEAL

1. This Appeal is brought by leave granted by the Court of Appeal of Fiji. It is an appeal from the judgment of the Court of Appeal of Fiji (Gould V.P., Henry J.A. and Spring J.A.) given on 3rd October 1980 whereby the Court of Appeal allowed an appeal by the Respondent from the judgment of Williams J. in the Supreme Court of Fiji, giving judgment for the Appellant for estate duty upon the entirety of certain shares, and directing the Respondent to pay the estate duty assessed thereon by the Appellant.
- p. 67
- p. 12

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THE BACKGROUND FACTS

RECORD

2. Alan Emmett Davis, a citizen of the United States of America, on 14th September 1940 married one Doris Anita Hemrich, the marriage being celebrated at Seattle in the State of Washington. Said individuals are hereafter called "Mr Davis" and "Mrs Davis".
  
3. Mr Davis and Mrs Davis resided together and were domiciled in the State of Washington until 1948. In 1948 they moved to the State of California and acquired a domicile in the State of California. They resided in California until the date of Mr Davis' death in 1972. p. 68  
p. 69
  
4. On 5th October 1961 Mr Davis and Mrs Davis signed (in California) a written agreement governing their proprietary rights. p. 35
  
5. After 5th October 1961, share certificates in Fiji companies were issued, some in the sole name of Mr Davis and some in the names of himself and Mrs Davis. By process of company re-organisation and restructuring, such shares were subsequently 'transmogrified' into shares in a limited liability company incorporated in Fiji, namely the Respondent company, Fiji Resorts Limited. It is those shares which are the subject of this appeal. Such shares are hereafter called "the shares". pp. 136-  
139
  
6. Mr Davis died at Lautoka, Fiji, on 28th February 1972, being still domiciled in California. At the time of his death the shares were still held, some in his sole name, and some in the names of himself and Mrs Davis.

7. In 1973 and 1974 the Respondent company registered transfers of some of the shares prior to grant by the Supreme Court of Fiji of authority to deal with Mr Davis' estate. The remainder of the shares, were transferred after institution of the proceedings referred to in the next paragraph.
  
8. In 1976 the Appellant took legal proceedings against the Respondent company in the Supreme Court of Fiji, seeking an order that the Respondent company deliver to the Appellant a statement containing details of Mr Davis' property dealt with by it, and an order that the Respondent company should show cause why it should not pay duty assessed thereon. By consent it was arranged (with the concurrence of the Supreme Court) that the action (Civil Action 205 of 1976) be divided into two parts. Upon the hearing of the 'first part' of the case, it would be established whether the Respondent company had responsibility for filing the relevant return, and paying such duty as should be ascertained to be due in respect of Mr Davis' estate. Upon the hearing of the 'second part' of the case, assuming the Appellant succeeding upon the 'first part', and after the Respondent company filed an administrator's statement, and was assessed, the amount of duty actually payable by the Respondent company would be ascertained.
  
9. Judgment was given against the Respondent company by the Supreme Court upon the 'first part' of Civil Action 205 of 1976, on 9th November 1977. The formal order of the

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Supreme Court was: "The defendant do deliver to the Commissioner of Estate and Gift Duties a statement as required by Section 28(1) of the Estate and Gift Duties Act, Cap. 178 of the Laws of Fiji .... and show cause why the said Defendant should not pay the duty assessed by the said Commissioner" (The Appellant). The Respondent company appealed to the Court of Appeal of Fiji against this order. On 3rd August 1978 the Court of Appeal of Fiji dismissed the Respondent company's appeal. The Respondent company did not appeal or seek leave to appeal from that decision.

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10. On 16th December 1977 the Respondent company filed with the Appellant an Administrator's Statement. That statement included particulars of the shares.

p. 1

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11. On 18th April 1978 the Appellant assessed the Respondent company to estate duty in the sum of \$F53,303.59, and interest thereon, payable upon the totality of the shares. The estate duty was subsequently reduced by consent in the Supreme Court to \$F47,599.89.

p. 6

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12. The 'second part' of Supreme Court Civil Action 205 of 1976 was heard from Monday 27th August 1979 to Wednesday 5th September 1979 before Mr Justice Williams, the hearing extending over eight days. On Friday 26th October 1979 Mr Justice Williams gave judgment in favour of the Appellant for estate duty upon the entirety of the shares

p. 12

and directed the Respondent company to pay the duty assessed thereon by the Appellant.

RECORD  
p. 34

13. The Respondent company appealed from the judgment of Mr Justice Williams to the Court of Appeal of Fiji. The hearing of the appeal lasted five days, from Monday 22nd September 1980 to Friday 26th September 1980. On Friday 3rd October 1980 the Court of Appeal of Fiji allowed the Respondent company's appeal.

p. 67

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RELEVANT STATUTORY PROVISIONS

The questions for decision involve the construction and application of the Estate and Gift Duties Act of Fiji a copy of which is annexed as Appendix A. The Statutory provisions relevant in the present appeal are as follows:-

1. This Ordinance may be cited as the Estate and Gift Duties Ordinance. Short title.

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

...

“general power of appointment” includes any power or authority which enables the donee or other holder thereof, or would enable him if he was of full capacity, to obtain or appoint or dispose of any property or to charge any sum of money upon any property as he thinks fit for his own benefit, whether exercisable orally or by instrument *inter vivos* or by will or otherwise howsoever, but does not include any power exercisable by a person in a fiduciary capacity under a disposition not made by himself, or exercisable as mortgagee,

**PART II—ESTATE DUTY**

**Estate duty imposed.**

3. In the case of every person who dies after the commencement of this Ordinance, whether in Fiji or elsewhere, and wherever the deceased was domiciled, there shall be payable to the Crown on the final balance of the estate of the deceased as determined in accordance with the provisions of this Ordinance a duty (hereinafter called estate duty) at the rate and in accordance with the provisions of this Ordinance.

4. Estate duty shall be charged and assessed as a percentage of the amount of the final balance of the estate in accordance with the graduated scale of percentages set out in the First Schedule hereto.

**Graduated rate of estate duty. First Schedule.**

5. (1) In computing for the purposes of this Ordinance, the final balance of the estate of a deceased person, his estate shall be deemed to include and consist of the following classes of property:—

**Property subject to estate duty.**

...

(e) the beneficial interest held by the deceased immediately before his death in any property as a joint tenant or joint owner with any other person or persons if that property was situate in Fiji at the death of the deceased;

...

(h) any property situate in Fiji at the death of the deceased over or in respect of which the deceased had at the time of his death a general power of appointment;

(i) any property situate in Fiji at the death of the deceased comprised in any settlement, trust or other disposition of property (including the proceeds of the sale or conversion of any such property and all investments for the time being representing the same and all property which has in any manner been substituted therefor) made by the deceased whether before or after the commencement of this Ordinance—

(i) by which an interest in that property or in the proceeds of the sale thereof is reserved, either expressly or by implication, to the deceased for his life or for the life of any other person or for any period determined by reference to the death of the deceased or of any other person; or

(ii) which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person or for any period determined by reference to the death of the deceased or of any other person; or

(iii) by which the deceased has reserved to himself the right by exercise of any power to restore to himself or to reclaim that property or the proceeds of the sale thereof.

CONTENTIONS OF THE APPELLANT

RECORD

ERRORS OF LAW

General

1. That the Court of Appeal was wrong in holding that if Mrs Davis died immediately after Mr Davis the shares would be liable for double duty to the extent that they were represented in her estate.

p. 72

(a) No question of double taxation could arise in the present case.

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C. of T. v. Luttrell [1949] N.Z.L.R. 823, 846

National Mutual Life Association of Australasia v. CIR [1972] N.Z.L.R. 1021, 1036

Barnes v. Hely Hutchinson [1940] A.C. 81

(b) If and to the extent that the Court of Appeal took into account alleged hardship of Mrs Davis in interpreting the statutory provisions it should not have done so.

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Partington v. A-G (1869) L.R. 4 H.L. 100, 122

Ward v. CIR [1956] A.C. 391, 403-4

IRC v. Hinchy [1960] 1 All E.R. 505

Vestey v. IRC [1980] A.C. 1148, 1194

Roome v. Edwards [1981] 2 W.L.R. 268, 277

Section 18 Estate and Gift Duties Act



2. That the Court of Appeal was wrong in holding that Mr Davis could not appoint or dispose of the shares "as he thinks fit for his own benefit" and in failing to consider whether Mr Davis could obtain the shares or charge any sum of money upon the shares "as he thinks fit for his own benefit".

pp. 75-  
76

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(a) There are four separate elements to the first part of the definition of "general power of appointment" any of which will give rise to such a power. Those elements are obtaining, appointing, disposing and charging.

Thompson v. CSD (1968) 2 N.S.W.R. 235, 242

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(b) The words "as he thinks fit for his own benefit" do not qualify the words "obtain", "appoint" and "dispose" and thus in relation to that the Court of Appeal should merely have asked whether Mr Davis could "obtain", "appoint" or "dispose" of the shares.

(c) Mr Davis could obtain, appoint or dispose of or charge the shares for his own benefit.

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(i) Mr Davis had power to sell the shares as community property without Mrs Davis' consent and to mortgage or pledge them and they were liable for his debts alone.

Civil Code of the State of  
California Section 5125  
Affidavit Strader  
U.S. v. Robbins 269 U.S. 315  
(1926)  
Bedford v. MNR (1964) 35 Tax  
A.B.C. 397, 405  
Earl Grey v. A-G [1900] A.C.  
124, 126  
Farmers Exchange National Bank v.  
Drew 192 P. 105 (1920)  
McClain v. Tufts 187 P.  
2d. 818 (1948)

RECORD  
p. 44  
p. 48

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- (ii) The phrase "for his own benefit" p. 75  
does not mean for his own separate,  
exclusive or absolute personal use.

Ochberg v. Commissioner of Stamp  
Duties (1949) 49 S.R.(N.S.W.) 248  
In Re Going [1951] N.Z.L.R. 144  
Re Manson [1964] N.Z.L.R. 257  
Adams and Richardson's Law of  
Estate and Gift Duties (5th Edn.)  
para 12/22  
Jamieson, Canadian Estate Tax,  
page 130  
In Re Cochrane [1945] Ch. 140, 145  
Oakes v. CSD (N.S.W.) [1954] A.C. 57

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- (iii) The Court of Appeal took too  
narrow a view of the meaning of  
the word "benefit" in the  
definition, all that is required  
is an advantage or use and  
enjoyment

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CSD v. Shrimpton [1941] N.Z.L.R. RECORD  
761, 821

Ward v. IRC [1955] N.Z.L.R. 361, 395

McFarlane v. CSD (1965) 66

S.R.(N.S.W.) 166, 219

In Re Cochrane [1945] Ch. 140, 144

A.G. v. Earl Grey [1898] 1 Q.B.  
318, 325

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- (iv) The Court of Appeal was wrong in attaching any importance to the fact that the power of Mr Davis under the California Civil Code was other than testamentary in that the qualification only goes to the method of exercise of the power and not the objects of the power and under the definition of "general power of appointment" it was wholly immaterial "howsoever" the power of appointment was exercisable.

p. 75

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Webb v. McCracken (1906) 3 C.L.R.  
1018, 1024

In Re Churston Settled Estates  
[1954] 1 Ch. 334, 341

CSD v. Pratt [1929] N.Z.L.R. 163

Adams & Richardson's Law of  
Estate and Gift Duties (5th Edn.)  
para 2/127

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Montreal Trust Company v. M.N.R.  
[1960] C.T.C. 308, 318-19

- (v) To the extent there were restrictions on Mr Davis vis a vis the shares these were not

absolute in that a "restricted" disposition in every case was merely voidable. In any event, such restrictions related only to the method of exercise of the power and not the objects of the power.

RECORD

p. 76

Rudd v. CSD (1937) 37 S.R.(N.S.W.) 366, 372

Adamson v. A-G [1933] A.C. 257

Glennon & Carrigan v. F.C. of T. (1972) 127 C.L.R. 503

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(vi) The provision in section 5105 of the Civil Code that each spouse has a "present existing and equal interest" in community property did not prevent Mr Davis from having a power of appointment over Mrs Davis' share

p. 41

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U.S. v. Robbins (supra) at 327

New Zealand Insurance Company

Limited v. Commissioner of Probate Duties [1973] V.R. 647, 658

Adamson v. A-G [1933] A.C.

257, 267

3. That the Court of Appeal was wrong in holding that the law of California was determinative of whether or not the power possessed by Mr Davis was exercisable in a fiduciary capacity within the meaning of Section 5(1)(h) of the Act.

pp. 76-  
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The question is one of interpretation of a Fiji Statute and the proper law is Fiji law.

Ochberg v. CSD (Supra)  
Estate Elsie May Kershaw v. CIR (1947)  
17 S.A.T.C. 161  
Bedford v. M.N.R. (1964) 35 Tax A.B.C.  
397  
New Zealand Insurance Company Limited  
v. Commissioner of Probate Duties [1967]  
V.R. 647  
Muir v. Muir [1943] A.C. 468, 481  
Inchyra (Baron) v. Jennings [1966]  
Ch. 37  
Lawson v. Rolfe [1970] Ch. 612

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4. That the Court of Appeal was wrong in any event in holding that under California law the power of Mr Davis was a power exercisable in a fiduciary capacity.

pp. 77-  
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The power of Mr Davis under the California community of property regime was only a fiduciary power in limited circumstances.

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Vai v. Bank of America 56 Cal. 2d.  
392, 364 P. 2d. 247 (1961).  
Clark v. Clark 15 Cal Rep. 863  
(4th Dist. 1961)  
Williams v. Williams 14 Cal.  
App. 3d. 560 (1971)

5. That the Court of Appeal was wrong in holding that the power of Mr Davis over the shares was "a power exercisable in a fiduciary capacity under a disposition not made by himself".

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- (a) As Mr Davis could obtain, appoint or dispose of or charge the shares as he

thought fit "for his own benefit" the  
fiduciary exclusion could have no  
application.

RECORD

Green's Death Duties (7th Edn.) 43  
Adams & Richardson's Law of Estate  
and Gift Duties (Supra) para 2/126  
Hardingham & Baxt Discretionary Trusts  
181  
(1981) 97 L.Q.R. 70-71

10 (b) The Court of Appeal did not consider  
whether all three conditions of the  
exclusion were satisfied namely that

(i) the power was exercisable in a  
fiduciary capacity

(ii) there was a disposition

(iii) the disposition was not made  
by Mr Davis

and a failure to satisfy any one of  
those conditions precluded the  
application of the exclusion.

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St. Aubyn v. A-G [1952] A.C. 15, 55

(c) The term "fiduciary capacity" in the  
definition is limited to powers which  
are exercised as a trustee and does  
not encompass every "fiduciary"  
situation.

Oakes v. CSD (N.S.W.) [1954] A.C. 57, 72  
Finn, Fiduciary Obligations 9

- (d) Alternatively it is only where there is a duty to exercise the power that it can be said to be a fiduciary power within the meaning of the definition.

RECORD

In Re Bradshaw, Bradshaw v. Bradshaw  
[1902] 1 Ch. 436

In Re Greaves, Public Trustee v. Ash  
[1954] 1 Ch. 434

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- (e) The Court of Appeal was wrong in holding that the position of Mr Davis in relation to the shares was analagous to that of an administrator as Mr Davis had no duties other than those imposed by the Californian Code and certainly did not possess the various positive duties attaching to the position of an administrator.

pp. 77-  
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Williams v. Williams (Supra)  
CSD v. Thomson (1927) 40 C.L.R. 394, 418  
affirmed at [1929] A.C. 450

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- (f) The Court of Appeal did not find that there was a "disposition" and therefore the exclusion could not apply.

p. 76,  
p. 86

- (g) If there was a disposition it was made by Mr Davis and thus even if the power was exercisable in a fiduciary capacity the exclusion did not apply.

6. That the Court of Appeal was wrong in holding that Ochberg v. C.S.D. (1949) 49 S.R. (N.S.W.) 248 did not apply to the case before them and in omitting to consider that case in connection with section 5(1)(h). RECORD pp. 83-84

(a) The facts of Ochberg cannot be distinguished from the instant facts:

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(i) The Court of Appeal was wrong in holding that the decision in Ochberg depended upon the finding that the husband had, by a trust agreement under the statute, settled a one-half interest in his bonds on his wife p. 84

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(ii) The Court of Appeal found as a fact that the shares were community property and should not therefore have distinguished Ochberg on the basis that the property in that case was community property for it was found as a fact in Ochberg that the bonds were purchased from common funds pp. 86-92

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(iii) The characterization of the property by the Court in Ochberg as being "after acquired" was not essential to the decision in Ochberg

(iv) The community of property regime considered in Ochberg was in all essential respects the same as the California community of property regime under consideration in the instant case.



Brocco N.O. v. CIR (1962) 24  
S.A.T.C. 691, 694

RECORD

- (b) Ochberg should be followed as it has been referred to by Courts of high standing without adverse comment

In Re Going (Supra)  
Re Manson (Supra)

Section 5(1)(i) of the Estate and Gift Duties Act

- 10 7. That the Court of Appeal was wrong in holding that Mr Davis did not make a "settlement" for the purposes of section 5(1)(i) of the Estate and Gift Duties Act and in failing to consider whether Mr Davis made a "disposition" for the purposes of that section.

p. 86

- (a) The term "disposition of property" is a wide term and is not limited to specific items of property

20 Ward v. CIR [1956] A.C. 391  
Carmody v. CIR [1975] 1 N.Z.L.R. 118, 122  
Duke of Northumberland v. A.G. [1905] A.C. 406, 410

- (b) The acquisition of Californian domicile by Mr Davis and Mrs Davis in 1948 was a "settlement or disposition of property" by Mr Davis as they subjected themselves to a community of property regime

De Nicols v. Curlier [1900] A.C. 21  
Ochberg v. CSD (Supra)  
Ward v. CIR (Supra)

RECORD

- 10 (c) If (b) is not correct then the 1961 agreement between Mr Davis and Mrs Davis was a "settlement or disposition of property" by Mr Davis and the Court of Appeal erred in holding that Wedge v. Acting Comptroller of Stamp Duties applied

p. 86

Ochberg v. CSD (Supra)  
Ward v. CIR (Supra)  
Wedge v. Acting Comptroller of Stamps (1941) 64 C.L.R. 75

- (d) If (b) and (c) are not correct then there was "a settlement or disposition of property" by Mr Davis when he acquired the shares

- 20 (i) The payment for the shares was a disposition of property

CSD v. Card [1940] N.Z.L.R. 637, 658

McGain v. FCT (1966) 116 C.L.R. 172, 174

Rossiter v. CIR [1977] 1 N.Z.L.R. 195, 203

- (ii) The disposition was not limited to Mr Davis' interest therein

Ochberg v. CSD (Supra)

CIR v. Estate Kohler (1953)  
18 S.A.T.C. 354, 372

Estate Furman v. CIR (1962)  
25 S.A.T.C. 4

RECORD

(iii) In any event Ochberg is indistinguishable from the present case and should be followed.

See paragraph 6 above.

8. That the Court of Appeal was wrong in holding that Mr Davis did not make any reservation to himself in respect of Mrs Davis' half interest and therefore section 5(1)(i) did not apply.

p. 83

(a) There was a reservation as a result of the change of domicile or entering into the 1961 agreement.

Ochberg v. CSD (Supra)

(b) There was a reservation when the shares were acquired.

Overton's Trustees v. CIR [1968]

N.Z.L.R. 872

Tatham v. IRC (1972) 3 A.T.R. 597

(c) In any event it was not necessary for Mr Davis "himself" to reserve the benefit.

Overton's Trustee's (supra)

Ward v. CIR [1955] N.Z.L.R. 361,384

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Section 5 (1)(e) of the Estate and Gift Duties Act

RECORD

9. That the Court of Appeal was wrong in holding that ownership under the Californian community of property law does not constitute joint ownership for the purposes of section 5(1)(e) of the Estate and Gift Duties Act.

(a) The terms "joint tenant" and "joint owner" do not have the meanings ascribed to them by the Court of Appeal. Joint ownership is not limited to personalty in contradistinction to realty as suggested by the Court of Appeal.  
Halsburys Laws of England 3rd Edition  
Vol. 29 page 380.

p. 74-  
75

(b) The term "joint owner" is wide enough to cover "joint" ownership under the Californian community of property law.

In Re Going (Supra) at 174  
Sura v. MNR 62 D.T.C. 1005, 1008  
Affidavit Strader

p. 38

10. That the Court of Appeal was wrong in holding that Mr Davis did not have a "beneficial interest" in the whole of the shares within the meaning of section 5(1)(e) of the Estate and Gift Duties Act.

(a) The phrase "beneficial interest" in section 5(1)(e) means "beneficial enjoyment".

D'Avigdor-Goldsmid v. IRC [1953] A.C.  
347, 375

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Ralli Brothers v. IRC [1966] 1 All  
E.R. 65, 70, 72

RECORD

Re Brassey's Deed Trusts [1951] 2 All  
E.R. 353

Thomson v. F.C. of T. (1949) 80 C.L.R.  
344

- (b) Mr Davis had beneficial enjoyment  
of Mrs Davis' interest in the shares  
as well as of his own interest


10 Ochberg v. CSD (Supra) at 255

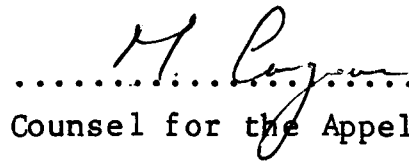
11. The Appellant therefore humbly submits that  
this Appeal should be allowed, that the  
judgment of the Court of Appeal of Fiji  
should be set aside, and that the judgment  
herein of the Supreme Court of Fiji should  
be restored for the following reasons:

REASONS

- 20 (i) That the Court of Appeal of Fiji erred in  
indicating that there would be double  
taxation if the shares were included in the  
estate of Mr Davis and in any event questions  
of hardship should not have been taken into  
account by the Court of Appeal.
- (ii) That the Court of Appeal of Fiji erred in  
law in holding that the shares were not  
dutiabale under section 5(1)(h) of the Estate  
and Gift Duties Act.
- (iii) That the Court of Appeal of Fiji erred in  
law in holding that the shares were not  
dutiabale under section 5(1)(i) of the Estate  
and Gift Duties Act.

(iv) That the Court of Appeal of Fiji erred in law in holding that the shares were not dutiable under section 5(1)(e) of the Estate and Gift Duties Act.

  
.....  
Counsel for the Appellant

  
.....  
Counsel for the Appellant

**APPENDIX A**

## CHAPTER 178

### ESTATE AND GIFT DUTIES

#### *Arrangement of Sections*

#### PART I—PRELIMINARY

##### Section

1. Short title.
2. Interpretation.

#### PART II—ESTATE DUTY

3. Estate duty imposed.
4. Graduated rate of estate duty.
5. Property subject to estate duty.
6. Prohibition on dealing with joint assets.
7. Final balance of estate.
8. Personal property of persons domiciled in Fiji liable to estate duty wherever situate.
9. Mode of determining situation of property of persons domiciled out of Fiji.
10. Allowance to be made for debts.
11. Apportionment of debts between dutiable estate and foreign assets.
12. Funeral and administration expenses.
13. Valuation of contingent interests.
14. Valuation of property subject to encumbrances.
15. Valuation of successions to be taken as at date of death.
16. Apportionment of successions between the dutiable estate and foreign assets.
17. Illegitimate relationship to be taken into account.
18. Relief from successive estate duties.
19. Remission of estate duty in case of property passing more than once owing to deaths caused by war.

#### PART III—ASSESSMENT AND COLLECTION OF ESTATE DUTY

20. Estate duty to be payable by the administrator.
21. Estate duty to become due twelve months after death of deceased.
22. Penalty for default in payment of estate duty.
23. Estate duty to be payable although no grant of administration.
24. Estate duty to be a charge on the dutiable estate.
25. Proportion of estate duty also to be recoverable from each successor.
26. As between successors estate duty to be paid by each successor in proportion to the value of his interest.



## Section.

27. Deduction to be made of duty paid in any other country on property situated in that country.
28. Statement to be delivered to Commissioner by administrator.
29. Estate duty to be assessed by Commissioner.
30. Administration to be sent by Court to the Commissioner.
31. Dealing with estate of deceased person without administration.

## PART IV—GIFT DUTY

32. Gift duty imposed.
33. Exemption of certain gifts from gift and estate duty.
34. Voluntary contracts to be deemed gifts in certain cases.
35. No gift duty except on property situate in Fiji.
36. No gift duty on antenuptial marriage settlements.
37. No gift duty on gift to charity, etc.
38. No deduction to be made from value of gift in respect to benefit of donor.
39. Subsequent gift of reserved benefit.
40. Single disposition of property to be deemed a single gift.
41. Rate of gift duty.
42. Valuation of contingent interests for purposes of gift duty.
43. Valuation of property subject to encumbrances for purposes of gift duty.
44. Gift duty to be a debt due by the donor and a charge upon the property.
45. Gift duty to be also a debt due by the beneficiary and by a trustee for beneficiary.
46. Statement to be delivered by the donor to the Commissioner.
47. Beneficiary to deliver statement in default of donor.
48. Penalty on failure to deliver statement.
49. Stamp duty on instruments of gifts.
50. Additional duty to be paid in case of default with intent to evade duty.
51. Commissioner may assess gift duty although no statement delivered.
52. Penalty for late payment of gift duty.
53. Gift duty to be deducted from estate duty payable on same property.
54. Rebate of gift duty on gifts subject to duty in other countries.

## PART V—MISCELLANEOUS

55. Appeal to Supreme Court from assessment of Commissioner.
56. Power of Commissioner to hold an inquiry.
57. Right of Commissioner to inspect books, registers, etc.
58. Supreme Court may order statement to be delivered.
59. Delivery of false statement an offence.
60. Commissioner may compromise a claim for duty.
61. Duty chargeable at the higher rate in case of coincident provisions.
62. Valuation for the purposes of duty under this Ordinance.

## Section.

63. Further claim may be made in case of payment of too little duty.
64. Duty recoverable.
65. Commissioner may refund duty paid in excess.
66. Refunds of duty payable out of Treasury.
67. Registration of charge for duty.
68. Enforcement of charge for duty by the Supreme Court.
69. Annuity for life—how valued.
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 ESTATE AND GIFT DUTIES

*An Ordinance to consolidate and amend the law relating to the payment of duties on the estates of deceased persons and property disposed of by way of gift.*

*Ordinance  
No. 6 of 1966.*

[24th February, 1966.]

## PART I—PRELIMINARY

1. This Ordinance may be cited as the Estate and Gift Duties Ordinance. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpreta-  
tion

“administration” means any probate, letters of administration, rule or order of the Supreme Court, or any other document whereby any person becomes entitled at law to administer the estate of a deceased person or any part of his estate, and includes all probates or letters of administration granted out of Fiji, and all exemptions thereof, if those probates, letters of administration or exemptions have been resealed in Fiji;

“administrator” means any person to whom any probate or letters of administration have been granted or who is entitled, by virtue of any other administration, to administer the estate of a deceased person or any part of his estate;

“beneficiary” means any person acquiring any beneficial interest under a gift;

“Commissioner” means such officer as the Governor may by notice in the Gazette appoint to be Commissioner of Estate and Gift Duties;

“contributor” in relation to a superannuation fund, means a person by or in respect of whom contributions have been made to the superannuation fund;

"debenture" includes debenture stock, bonds or any other securities of a company, whether constituting a charge on the assets of the company or not;

"debt" includes any pecuniary liability, charge or encumbrance;

"disposition of property" means—

- (a) any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property whether at law or in equity;
- (b) the creation of a trust;
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power or other right, estate or interest in or over any property, whether at law or in equity;
- (d) the release, discharge, surrender, forfeiture or abandonment at law or in equity of any debt, contract or chose-in-action, or of any right, power, estate or interest in or over any property, and for this purpose a debt or any other right, estate or interest shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through lapse of time;
- (e) the exercise of a general power of appointment in favour of any person other than the donee of the power;
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person:

Provided that the passing by a company of a resolution which, by the extinguishment or alteration of the rights attaching to any shares or debentures of the company, results directly or indirectly in the estate of any shareholder or debenture holder of the company being increased in value at the expense of the estate of any other shareholder or debenture holder shall be deemed to be a transaction entered into by that other shareholder or debenture holder if he could have prevented the passing of the resolution by voting against it or otherwise:

Provided that a disclaimer of an interest under a disposition made *inter vivos* or by will or of an interest under an intestacy shall not constitute a disposition of property;

"donor" means any person making a gift;

"dutiable estate" means an estate of a deceased person computed and constituted in accordance with the provisions of section 5 of this Ordinance;

"foreign assets" means any property which is available or which the deceased might by his will have made available for the payment of his debts upon his death but which by reason of its local situation is not part of the dutiable estate of the deceased;

"general power of appointment" includes any power or authority which enables the donee or other holder thereof, or would enable him if he was of full capacity, to obtain or appoint or dispose of any property or to charge any sum of money upon any property as he thinks fit for his own benefit, whether exercisable orally or by instrument *inter vivos* or by will or otherwise howsoever, but does not include any power exercisable by a person in a fiduciary capacity under a disposition not made by himself, or exercisable as mortgagee;

"gift" means any disposition of property which is made otherwise than by will, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth:

Provided that if any such disposition of property is made for a consideration in money or money's worth which is inadequate, the disposition shall be deemed to be a gift to the extent of such inadequacy;

"pension" includes any annuity or other periodical payment by whatever name it is called;

"personal property" does not include leaseholds or other chattel interests in land;

"real property" includes leaseholds and other chattel interests in land;

"share" includes stock;

"succession" means the interest to which a successor is entitled as such;

"successor" means, with respect to any deceased person, any person who, on the death of the deceased—

- (a) acquires under the will of the deceased, whether by way of pecuniary legacy, the exercise of a power of appointment or otherwise howsoever, a beneficial interest in the dutiable estate of the deceased; or
- (b) acquires any beneficial interest in the dutiable estate of the deceased under his complete or partial intestacy; or
- (c) is beneficially entitled, in default of appointment to any property which forms part of the dutiable estate of the deceased, and over which the deceased possessed and has failed to exercise a general power of appointment; or
- (d) is beneficially entitled under a voluntary bond or covenant or in any other manner whatsoever to any debt which is payable out of the dutiable estate of the deceased and the payment of which by the deceased himself would have constituted a gift; or

- (e) becomes beneficially entitled to any moneys payable under any policy of life assurance effected by the deceased on his own life so far as those moneys are included in the dutiable estate of the deceased; or
- (f) becomes beneficially entitled by way of survivorship to any property included in the dutiable estate of the deceased; or
- (g) is beneficially entitled to an interest in the dutiable estate of the deceased by virtue of any settlement, trust or other disposition of property made by the deceased, whether before or after the commencement of this Ordinance—
- (i) by which an interest in that property or the proceeds of the sale thereof for the life of the deceased or of any other person, or for any other period determined by reference to the death of the deceased or of any other person, is reserved, either expressly or by implication, to the deceased; or
  - (ii) which is accompanied by the reservation or assurance of or a contract for any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person; or
  - (iii) by which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof; or
- (h) has become entitled to any property forming part of the dutiable estate of the deceased as a beneficiary under any gift or *donatio mortis causa*;

“superannuation fund” means—

- (a) the Widows and Orphans Pension Scheme established under the provisions of the Widows and Orphans Pension Ordinance; and
- (b) any superannuation fund established for the benefit of the employees of any employer and approved for the time being by the Commissioner of Inland Revenue under the provisions of section 106 of the Income Tax Ordinance;

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“will” includes any testamentary instrument.

#### PART II—ESTATE DUTY

Estate duty imposed.

3. In the case of every person who dies after the commencement of this Ordinance, whether in Fiji or elsewhere, and wherever the deceased was domiciled, there shall be payable to the

Crown on the final balance of the estate of the deceased as determined in accordance with the provisions of this Ordinance a duty (hereinafter called estate duty) at the rate and in accordance with the provisions of this Ordinance.

4. Estate duty shall be charged and assessed as a percentage of the amount of the final balance of the estate in accordance with the graduated scale of percentages set out in the First Schedule hereto.

Graduated  
rate of  
estate duty.  
First  
Schedule.

5. (1) In computing for the purposes of this Ordinance, the final balance of the estate of a deceased person, his estate shall be deemed to include and consist of the following classes of property:—

Property  
subject to  
estate duty.

- (a) all property of the deceased which is situate in Fiji at his death and to which any person becomes entitled under the will or intestacy of the deceased except property held by the deceased as trustee for another person;
- (b) any property comprised in any gift made by the deceased within five years before his death, and whether before or after the commencement of this Ordinance, if the property was situate in Fiji at the time of the gift;
- (c) any property comprised in any gift made by the deceased at any time, whether before or after the commencement of this Ordinance, unless *bona fide* possession and enjoyment has been assumed by the beneficiary not less than five years before the death of the deceased and has been thenceforth retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise, if the property was situate in Fiji at the time of the gift. In the case of property being an interest in land, or being chattels, retention or assumption by the deceased of actual occupation of the land or actual enjoyment of an incorporeal right over the land, or actual possession of the chattels, shall be disregarded if for full consideration in money or money's worth paid before or payable at the date of death of the deceased;
- (d) any property comprised in a *donatio mortis causa* made by the deceased at any time, whether before or after the commencement of this Ordinance, if the property was situate in Fiji at the time of the gift;
- (e) the beneficial interest held by the deceased immediately before his death in any property as a joint tenant or joint owner with any other person or persons if that property was situate in Fiji at the death of the deceased;
- (f) any money payable under a policy of assurance effected by the deceased on his life, whether before or after the commencement of this Ordinance, where the policy is wholly kept up by him for the benefit of a beneficiary

(whether nominee or assignee), or a part of that money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit if (in either case) the money so payable is property situate in Fiji at the death of the deceased:

Provided that no money payable under such a policy shall form part of the final balance of the estate if the beneficiary became absolutely and indefeasibly entitled to the benefit of the policy more than five years before the death of the deceased unless the deceased paid some premiums in the five years before his death, in which event the money payable under such a policy shall form part of the final balance of the estate of the deceased only in the proportion of the policy moneys corresponding to the ratio between the premiums paid by the deceased during such five-year period and the total premiums;

- (g) any annuity or other interest purchased or provided by the deceased, whether before or after the commencement of this Ordinance, either by himself alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased if that annuity or other interest is property situate in Fiji at the death of the deceased;
- (h) any property situate in Fiji at the death of the deceased over or in respect of which the deceased had at the time of his death a general power of appointment;
- (i) any property situate in Fiji at the death of the deceased comprised in any settlement, trust or other disposition of property (including the proceeds of the sale or conversion of any such property and all investments for the time being representing the same and all property which has in any manner been substituted therefor) made by the deceased whether before or after the commencement of this Ordinance—
  - (i) by which an interest in that property or in the proceeds of the sale thereof is reserved, either expressly or by implication, to the deceased for his life or for the life of any other person or for any period determined by reference to the death of the deceased or of any other person; or
  - (ii) which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person or for any period determined by reference to the death of the deceased or of any other person; or
  - (iii) by which the deceased has reserved to himself the right by exercise of any power to restore to himself or to reclaim that property or the proceeds of the sale thereof.

(2) For the purposes of paragraph (g) of the last preceding subsection, the following provisions shall apply:—

- (a) where an annuity or other interest was purchased or provided partly by the deceased and partly by any other person, so much of that annuity or other interest as was purchased or provided by the deceased shall be deemed to be an annuity or other interest to which such paragraph applies;
- (b) the deceased shall be deemed to have purchased or provided the proportion of any annuity or other interest that is equivalent to the proportion contributed by the deceased of the total amount in money or money's worth contributed towards purchasing or providing the annuity or other interest;
- (c) where the deceased has entered into a contract for a benefit to a person who is not a party to the contract, and the contract is enforceable by the administrator of the estate of the deceased, then, notwithstanding that the contract is not enforceable by the person for whose benefit the contract was made, the benefit shall be deemed to be a beneficial interest;
- (d) the extent of any beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased shall be ascertained without regard to any interest in expectancy that the beneficiary may have had therein before the death;
- (e) where the deceased was a contributor to a superannuation fund and, in accordance with its rules, a pension is payable from that fund to his widow for the rest of her life or during her widowhood, that pension shall not be deemed to be included in the dutiable estate of the deceased unless its amount exceeds five hundred pounds a year, in which case it shall not be deemed to be included in the dutiable estate to the extent of five hundred pounds a year:

Provided that—

- (i) where two or more such pensions are payable to a widow the amount so exempted in respect of each pension shall, where necessary, be reduced so that the total amount exempted in respect of all such pensions does not exceed five hundred pounds a year;
- (ii) where the deceased has made an election to surrender the whole or any part of any benefit from the fund in consideration of the payment from the fund after his death of a pension or additional pension to his widow, nothing in this paragraph shall prevent the value of that pension or additional pension from forming part of his dutiable estate;



- (f) where the deceased was a contributor to a superannuation fund and, in accordance with its rules, a pension is payable from that fund to or for the benefit of an infant child of the deceased until the child attains an age not greater than twenty-one years, that pension shall not be deemed to be included in the dutiable estate of the deceased, unless its amount exceeds five hundred pounds a year in which case it shall not be deemed to be included in the dutiable estate to the extent of five hundred pounds a year:

Provided that—

- (i) where two or more such pensions are payable to an infant child the amount so exempted in respect of each pension shall, where necessary, be reduced so that the total amount exempted in respect of all such pensions does not exceed five hundred pounds a year;

- (ii) where the deceased has made an election to surrender the whole or any part of any benefit from the fund in consideration of the payment from the fund after his death of a pension or additional pension to his infant child, nothing in this paragraph shall prevent the value of that pension or additional pension from forming part of his dutiable estate.

(3) Property shall not be subject to estate duty under the provisions of paragraph (i) of subsection (1) of this section by reason of the reservation or assurance of, or any contract for, any interest or benefit, or by reason of the reservation of any right to restore or reclaim the property or the proceeds of the sale thereof, if, by any release, surrender, merger, cesser, forfeiture, determination, alienation or disposition of such interest, benefit or right, the interest, benefit or right (together with any interest, benefit or right, whether of the same or of any different kind, which may have been substituted therefor) has wholly ceased to exist or to be vested in the deceased at any time more than five years before the death of the deceased (and whether before or after the commencement of this Ordinance); but, otherwise than as aforesaid, no such release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition (whether before or after the commencement of this Ordinance) shall have any effect in preventing the operation of the said subsection in the same manner as if the interest, benefit or right continued to be vested in the deceased at the date of his death.

(4) For the purpose of paragraph (i) of subsection (1) of this section, the following provisions shall apply:—

- (a) where, after the date of any settlement or trust or disposition of property made by the deceased, improvements are made otherwise than by or at the expense of the deceased, to any land comprised in the settlement or trust or disposition of property, the value of

the land for the purpose of such paragraph shall be reduced by the value of those improvements as at the date of death of the deceased;

(b) where any settlement or trust or disposition of property was made by the deceased for a consideration in money or money's worth paid, or payable at the date of death of the deceased, either to the deceased for his own use and benefit, or to any other person in satisfaction of a debt incurred by the deceased for full consideration in money or money's worth wholly for his own use and benefit, the value of the property comprised in the settlement or trust or disposition of property shall for the purposes of the said paragraph be reduced by—

(i) the amount of any such consideration so paid together with interest at the rate of five *per centum* per annum on so much thereof and for such period as, in the opinion of the Commissioner, is in all the circumstances reasonable; and

(ii) an amount equal to the value as at the date of death of the deceased of any such consideration so payable:

Provided that no such reduction shall be made in respect of any consideration by way of a benefit to the deceased for the term of his life or of the life of any person, or for any period determined by reference to the death of the deceased or of any other person, except to the extent to which the aggregate of the amounts paid in respect of that benefit exceeds the aggregate of the income from the property for the period from the date of the settlement or trust or disposition of property until the date of death of the deceased; and in this proviso the expression "the aggregate of the income from the property" means such amount as, in the opinion of the Commissioner, is in all the circumstances equal to a reasonable return from the property.

(5) In respect of property comprised in a gift made prior to the date of commencement of this Ordinance—

(a) to any institution, organization or body of persons, whether corporate or unincorporate, operating for charitable purposes in Fiji and not formed or carried on for the profit of any individual, such gift being for use in Fiji; or

(b) to any educational or agricultural institution approved by the Governor in Council; or

(c) to the Government,

the provisions of paragraphs (b) and (c) of subsection (1) of this section shall be read as if the words "one year" were substituted for the words "five years" therein.

(6) The dutiable estate of the deceased shall not include any property to which, on a subsequent death, he becomes entitled by virtue of the provisions of section 33 of the Wills Act, 1837.

(7) Notwithstanding the other provisions of this Ordinance, the dutiable estate of the deceased shall not include any real property the rights to which, under the provisions of any local customary law, cease at the death of the deceased.

Prohibition  
on dealing  
with joint  
assets.

6. (1) Where any shares, debentures, money on fixed deposit, policy of life assurance, or any other property, or money in any bank (in this section referred to as "assets") in the name of any deceased person are held jointly with any other person as owner, no person shall deal with such assets by way of registration or in any manner whatsoever unless the Commissioner certifies in writing that no duty is payable in respect of such assets or that all duties in respect of such assets payable by reason of any increase of benefit or any accruing beneficial interest by reason of the said death, have been paid, or that proper security has been given for the payment thereof:

Provided that the Commissioner may authorise in writing any such dealing in such manner as shall to him appear to be reasonable in order to meet the normal living expenses of the survivor of the joint owners or the normal expenses of carrying on a business.

(2) Where no duty is payable in respect of such assets or when all duties mentioned in the last preceding subsection shall have been paid or when security to the extent required by the Commissioner shall have been given for the payment thereof, the Commissioner shall give any such certificate as aforesaid. The certificate may be given in any form approved by the Commissioner.

(3) Any person dealing with such assets before a certificate has been given by the Commissioner in accordance with the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

Final  
balance of  
estate.

7. (1) The final balance of the estate of the deceased shall be computed as being the total value of his dutiable estate after making such allowances as are hereinafter authorised in respect of the debts of the deceased and in respect of other charges.

(2) All such property shall be valued as at the date of the death of the deceased save that where by section 5 of this Ordinance it is provided that the local situation of any such property shall be determined as at any other date, the value of that property shall be determined as at the same date.

(3) The amount of the final balance of any estate shall be deemed and taken to be its amount in complete pounds.

Personal  
property of  
persons  
domiciled in  
Fiji liable  
to estate  
duty  
wherever  
situate.

8. Where the deceased was domiciled in Fiji at the date by reference to which the local situation of any personal property is to be determined, such personal property shall be deemed for the purpose of this Ordinance to be situate in Fiji at that date.

9. Where the deceased died domiciled elsewhere than in Fiji, the local situation of any of the classes of property hereinafter in this section referred to shall be determined as follows:—

Mode of determining situation of property of persons domiciled out of Fiji.

- (a) any chattel personal the physical situation of which is in Fiji shall be deemed to be situate in Fiji;
- (b) a sea-going ship or any share or interest in such a ship shall be deemed to be property situate in Fiji if the ship is registered in Fiji;
- (c) property at sea (other than a sea-going ship) shall be deemed to be situate in Fiji if in course of transit directly or indirectly to Fiji;
- (d) a debt owing by a corporation, whether incorporated in Fiji or elsewhere, shall be deemed to be property situate in Fiji if the debt was incurred or is payable in Fiji and the corporation has any office or place of business in Fiji;
- (e) a debt owing by any person or persons other than a corporation shall be deemed to be property situate in Fiji if the debtor or any of the debtors is resident in Fiji;
- (f) a debt owing by the Crown in respect of the Government of Fiji shall be deemed to be property situate in Fiji if it is incurred or payable in Fiji;
- (g) notwithstanding anything hereinbefore in this section contained, a debt which is secured by mortgage, charge or otherwise on any property situate or deemed to be situate in Fiji shall itself be deemed to be property situate in Fiji, but, if the value of the security is less than the value of the debt, the debt shall not by reason of the existence of the security be deemed to be situate in Fiji except to the extent of the value of the security;
- (h) shares in a company incorporated in Fiji shall be deemed to be property situate in Fiji save in the case of shares registered in a branch register in any other part of the Commonwealth in accordance with the provisions of the Companies Ordinance;
- (i) shares in a company incorporated under the provisions of the law of any country outside Fiji shall be deemed to be property situate outside Fiji except in the case of shares registered in a branch register of the company in Fiji.

Cap. 216.

10. (1) In computing the final balance of the estate of the deceased, allowance shall, save so far as otherwise provided by this Ordinance, be made for all debts owing by the deceased at his death.

Allowance to be made for debts.

(2) No such allowance shall be made—

- (a) for debts incurred by the deceased otherwise than for full consideration in money or money's worth wholly for his own use and benefit; or

- (b) for debts in respect whereof there is a right of reimbursement from any other estate or person except to the extent to which reimbursement cannot be obtained; or
- (c) more than once for the same debt charged upon different portions of the estate; or
- (d) for contingent debts or any other debts the amount of which is, in the opinion of the Commissioner, incapable of estimation.

(3) If any debt for which, by reason of the provisions of paragraph (d) of the last preceding subsection, an allowance has not been made becomes, at any time within three years after the death of the deceased, actually payable or, in the opinion of the Commissioner, capable of estimation, an allowance shall be made therefor, and a refund of any estate duty paid in excess under this Ordinance shall be made to the person entitled thereto; but no action for the recovery of any such refund shall be commenced except within three years after the payment of the duty so paid in excess.

Apportionment of debts between dutiable estate and foreign assets.

11. (1) The allowance to be made for debts shall extend to all debts, whether incurred or payable in Fiji or elsewhere, save that, where there are any foreign assets, the total debts of the deceased in respect of which an allowance would otherwise be made shall be apportioned between those foreign assets and the dutiable estate of the deceased in proportion to their respective values, and an allowance shall be made only in respect of the proportion so apportioned to the dutiable estate.

(2) The apportionment provided for in this section shall be irrespective of the fact that the debts of the deceased or any of them are charged by mortgage or otherwise upon any part of the dutiable estate or foreign assets, and the apportionment shall, in any such case, be made in the same manner as if no such charge existed.

Funeral and administration expenses.

12. In computing the final balance of the estate of the deceased, an allowance shall be made for the reasonable expenses of the funeral of the deceased in the same manner and to the same extent as if those expenses constituted a debt of the deceased, but no allowance shall be made in respect of the expenses of the administration of the estate, or in respect of commission or other remuneration payable to an administrator, or in respect of the amount of the estate duty payable under the provisions of this Ordinance.

Valuation of contingent interests.

13. (1) For the purposes of estate duty every contingency affecting the interest of the deceased in any property forming part of his dutiable estate shall be deemed to have determined in the manner in which, in the opinion of the Commissioner, it probably will determine, and the interest shall be valued and estate duty assessed and paid accordingly.

(2) If, in the actual event, at any time thereafter the contingency determines in a manner different from that assumed as the basis of assessment under the provisions of the last preceding subsection, estate duty shall thereupon be reassessed by the Commissioner on the basis of the actual event and as of the date of the death of the deceased.

(3) If, on that reassessment, it appears that too much has been paid by way of estate duty, a refund of the excess together with interest thereon, at the rate of five *per centum* per annum from the date of payment of the duty shall be made to the person who would have been entitled to recover the excess of duty had it been paid in error.

(4) If, on any such reassessment as aforesaid, it appears that too little estate duty has been paid, the deficiency together with interest thereon at the rate of five *per centum* per annum as from the date upon which the duty originally paid became due shall thereupon become due and payable, and shall, for all purposes, be deemed to be estate duty which has remained unpaid in error:

Provided that—

- (a) the administrator shall not be personally liable for any such additional duty by reason of having administered and distributed the estate of the deceased before the determination of the said contingency without retaining assets sufficient to satisfy that duty;
- (b) the Commissioner may, if he thinks fit, reduce, remit, or refund the interest payable on any deficiency of estate duty under this subsection where he is satisfied that the payment of the interest would create a hardship; but no such refund shall be made unless application therefor is received by the Commissioner within six months after the date of payment of the interest.

14. For the purpose of computing the value of any succession, no deduction shall be allowed in respect of any mortgage, charge, encumbrance or liability affecting or incident to the property comprised in the succession if and so far as the successor is entitled, as against any other person or property, to any available right of contribution or indemnity in respect of that mortgage, charge, encumbrance or liability.

Valuation of property subject to encumbrances.

15. The value of any succession shall be deemed and taken to be the present value thereof at the death of the deceased:

Valuation of successions to be taken as at date of death.

Provided that the value of any succession acquired by way of gift and coming within the provisions of paragraph (h) of the definition of the word "successor" shall be deemed and taken to be the present value thereof at the date of that gift.

16. (1) If the interest of a successor consists of a pecuniary legacy or other pecuniary claim which may be lawfully paid or satisfied either out of the dutiable estate of the deceased or out of foreign assets, the value of that interest shall be

Apportionment of successions between the dutiable estate and foreign assets.

apportioned between the dutiable estate so available to satisfy the same and the foreign assets so available to satisfy the same in proportion to their relative values and only that part of the interest which is so apportioned to the dutiable estate shall be taken into account in calculating the value of the succession.

(2) The burden of proving the existence and value of any such foreign assets shall lie on the successor and not upon the Commissioner.

Illegitimate relationship to be taken into account.

17. For the purposes of estate duty only, illegitimate relationship shall be recognized as equivalent to legitimate relationship in all cases in which proof is given to the satisfaction of the Commissioner of the illegitimate relationship of the successor to the deceased.

Relief from successive estate duties.

18. (1) For the purposes of this section—

“deceased successor” means a person who has become entitled to any property as a successor to a predecessor;

“predecessor” in relation to a deceased successor, means a person who has died within five years before the death of the deceased successor.

(2) Where the Commissioner is satisfied that the dutiable estate of a deceased successor includes any property identified as being or representing property to which the deceased successor has become entitled as a successor to a predecessor, the Commissioner shall reduce the net amount of the estate duty payable in the estate of the deceased successor in respect of that property as follows:—

- (a) if the deceased successor has died within the first period of four months after the death of the predecessor, by seventy-five per cent;
- (b) if the deceased successor has died within the second period of four months after the death of the predecessor, by sixty per cent;
- (c) if the deceased successor has died within the third period of four months after the death of the predecessor, by fifty per cent;
- (d) if the deceased successor has died within the second year after the death of the predecessor, by forty per cent;
- (e) if the deceased successor has died within the third year after the death of the predecessor, by thirty per cent;
- (f) if the deceased successor has died within the fourth year after the death of the predecessor, by twenty per cent;
- (g) if the deceased successor has died within the fifth year after the death of the predecessor, by ten per cent:

Provided that where the net amount of the estate duty payable in the estate of the deceased successor in respect of that property (before making any reduction under this section) exceeds the net amount of the estate duty payable in the

estate of the predecessor in respect of that property or the property that it represents, the reduction to be made under this section shall be the appropriate percentage of the last mentioned amount.

19. (1) This section shall apply where—

(a) any person is killed while on active service, or dies from wounds inflicted, accident occurring, or disease contracted or aggravated, within three years before death, while on active service against an enemy, whether on sea, land or air, or on service which, in the opinion of the Governor in Council, is of a warlike nature or involves the same risks as active service, and was when killed, or when the wounds were inflicted, the accident occurred or the disease was contracted or aggravated, subject to any naval, military or air force law; or

Remission of estate duty in case of property passing more than once owing to deaths caused by war.

(b) any person other than a person referred to in the last preceding paragraph is killed in circumstances which, in the opinion of the Governor in Council, are attributable to the operations of war, or dies from injuries received, or disease contracted or aggravated, within three years of his death and which were, in the opinion of the Governor in Council, caused by the operations of war.

(2) Where the Governor is satisfied that estate duty leviable under this Ordinance has become payable on any property passing on the death of any person to which this section applies, and that subsequently such estate duty has again become payable on the same property or any part thereof passing on the death of some other person to whom this section applies, the whole of such estate duty payable on such subsequent death in respect of the property so passing shall be remitted, or, in case such estate duty has been paid, repaid, and the property shall not be aggregated with any property passing on such subsequent death for the purpose of determining the rate of such duties.

(3) This section shall apply whether or not on any such death any property passes to the widow, lineal descendants, lineal ancestors, brothers or sisters, or the descendants of such brothers or sisters, of the deceased.

### PART III—ASSESSMENT AND COLLECTION OF ESTATE DUTY

20. (1) The amount of the estate duty payable under this Ordinance shall constitute a debt payable to the Crown out of the estate of the deceased in the same manner as the debts of the deceased, and that duty shall be paid by the administrator accordingly out of all real or personal property vested in him and forming part of the dutiable estate of the deceased, whether that property is available for the payment of the other debts of the deceased or not, and whether the property in respect of which the duty or any part thereof has been assessed is vested in the administrator or not.

Estate duty to be payable by the administrator.



(2) For the purpose of paying estate duty, the administrator shall have the same power of selling, leasing or mortgaging any real or personal property vested in him as in the case of a sale, lease or mortgage for the payment of the debts of the deceased.

Estate duty to become due twelve months after death of deceased.

21. (1) Estate duty shall become due and payable on the assessment thereof by the Commissioner, or, if not duly so assessed within twelve months from the date of the death of the deceased, then on the expiration of that period of twelve months.

(2) Interest at the rate of ten *per centum* per annum shall be payable upon all estate duty unpaid at the expiration of twelve months from the date of the death of the deceased person and shall be computed from the date of the expiration of such period.

(3) Such interest shall be deemed to be estate duty and shall be chargeable and recoverable accordingly.

(4) If in any case it is proved to the satisfaction of the Commissioner that the delay in the payment of estate duty is not due to the fault of the administrator, the Commissioner may remit the whole or any part of the interest payable under the provisions of this section.

Penalty for default in payment of estate duty.

22. If the full amount of estate duty is not paid within six months after notice has been given to the administrator of the assessment thereof by the Commissioner, or within such extended period as the Commissioner thinks fit to allow on the application of the administrator made before the expiration of the said period of six months, there shall be added by way of penalty a further sum equal to five *per centum* of the duty so unpaid, and the additional sum shall be deemed to be estate duty and shall be chargeable and recoverable accordingly.

Estate duty to be payable although no grant of administration.

23. The estate of a deceased person shall not be exempt from estate duty by reason merely of the fact that no grant of administration has been or need be or can be made in Fiji in respect of that estate, and in any such case all the provisions of this Ordinance shall, so far as is applicable, apply notwithstanding the fact that there is no administrator of the estate.

Estate duty to be a charge on the dutiable estate.

24. (1) Estate duty payable under the provisions of this Ordinance shall constitute, as from the death of the deceased, a charge upon the whole dutiable estate of the deceased and upon all property included in that estate, whether vested in the administrator or not, but no such charge shall affect the title of any purchaser for value (whether before or after the death of the deceased) without actual notice of the existence of the charge.

(2) Any successor or other person whose interest is affected by the realization or enforcement of any such charge shall, save so far as otherwise provided by this Ordinance or by the will of

the deceased, have a right of indemnity as against the administrator of the estate to the extent of all assets which are or have been available in the hands of the administrator for the payment of estate duty.

25. Without excluding the liability of the administrator under the foregoing provisions of this Ordinance, the estate duty payable on the dutiable estate of the deceased shall constitute a debt due to the Crown by every successor of the deceased, and by the trustee of any such successor:

Proportion of estate duty also to be recoverable from each successor.

Provided that —

- (a) each successor and his trustee shall be so liable only for the same proportion of the estate duty as the value of his succession bears to the aggregate value of all the successions;
- (b) where the interest of any successor is a future interest, he shall not become so liable for estate duty until his interest becomes an interest in possession.

26. (1) As between the several successors of the deceased, and without affecting the rights and remedies of the Crown under the foregoing provisions of this Ordinance, the provisions of this section shall be applicable.

As between successors estate duty to be paid by each successor in proportion to the value of his interest.

(2) Estate duty shall be payable in accordance with the directions of the will of the deceased so far as regards any property which is subject to the dispositions of that will and, subject to any such directions, estate duty shall be payable out of the property comprised in each succession, whether that property is vested in the administrator or not, or out of any money, investments or other property for the time being representing that property, in the same proportion that the value of that succession bears to the aggregate value of all the successions.

(3) If any estate duty is, in the first instance, paid by the administrator or by any successor or the trustee of any successor otherwise than in accordance with the provisions of this section, the person by whom duty is so paid may recover the same by action in any court of competent jurisdiction (together with such interest thereon as the court thinks just) from the successor or the trustee of the successor out of whose property the duty was payable in accordance with the provisions of this section:

Provided that where the interest of the last-mentioned successor is a future interest he shall not become so liable until his interest becomes an interest in possession.

(4) If any estate duty is paid in the first instance otherwise than in accordance with the provisions of this section, every person whose interest is thereby affected shall have a right of indemnity against the property out of which that duty was payable in accordance with the provisions of this section.

(5) For the purpose of carrying into effect the provisions of this section, the Supreme Court may, on the application of the administrator or of any person interested, make such orders as it deems just with respect to the administration of the dutiable estate of the deceased, and may, by any such order, impose on any part of that estate, or on any money, investments or other property for the time being representing the same, a charge in favour of any person who is entitled to any such right of indemnity as aforesaid, and every such charge shall bear such interest, if any, as the Court thinks just.

(6) On the application of the administrator or of any person interested for the enforcement of any such charge, the Supreme Court may make such order as it thinks just, either for the sale of the property charged or of any part thereof, or for the appointment of a receiver of the rents, profits or income thereof.

(7) When any property has been sold under any such order, the Supreme Court may make an order vesting the property in the purchaser.

(8) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers and assignments of the property for such estate or interest as is specified in the order, and the order shall be subject to stamp duty accordingly.

Deduction to be made of duty paid in any other country on property situate in that country.

27. (1) Where the Commissioner is satisfied that in any country outside Fiji, duty is payable by reason of a death in respect of any property situate in such country and passing on such death, he shall allow a sum equal to the amount of such duty or to the amount of duty payable under the provisions of this Ordinance in respect of the same property on the same death, whichever sum shall be the less, to be deducted from the entire amount of duty payable.

(2) For the purposes of this section, the local situation of property shall be determined in the same manner as hereinbefore provided in this Ordinance, save that the local situation of property shall not be determined for this purpose by reference to the domicile of the deceased and also that the local situation in the United Kingdom of any property shall be determined in accordance with the law of England with regard to the local situation of property within the meaning of section 20 of the Finance Act, 1894.

(3) No such deduction as is provided for in this section shall be made until and unless the duty so payable in another country has been actually paid, and in the meantime the full amount of death duty shall be assessed and payable and on payment of the duty in that other country a refund of the amount thereof shall be made accordingly in the same manner as in the case of duty paid in excess.

Statement to be delivered to Commissioner by administrator.

28. (1) In order to ascertain the amount payable as estate duty under the provisions of this Ordinance every administrator shall, within six months from the grant of administration, deliver to the Commissioner a statement in writing in the prescribed

form, or in such form as the Commissioner may, in his discretion, permit, containing the prescribed particulars with respect to the dutiable estate of the deceased and with respect to the interests of the several successors of the deceased and containing such other particulars, if any, as may be prescribed for the purposes of this Ordinance.

(2) The Commissioner may, upon application, extend the time within which such statement must be delivered, and may also permit or require the statement to be amended.

(3) Every such statement and every amendment thereof shall be verified by statutory declaration in the prescribed form and manner.

(4) Any administrator who fails to deliver a statement to the Commissioner within the time prescribed by this section or to deliver an amended statement when required by the Commissioner so to do shall be liable to a fine of fifty pounds.

(5) No administrator shall be exempt from the requirements of this section on the ground that no estate duty is payable.

29. (1) On the delivery of the statement in accordance with the provisions of the last preceding section by the administrator, the Commissioner shall proceed to assess the estate duty payable and shall give notice of his assessment to the administrator. If the Commissioner is of opinion that no such duty is payable he shall certify to the administrator accordingly.

Estate duty to be assessed by Commissioner.

(2) If the administrator fails to deliver a statement within the time limited by this Ordinance in that behalf, or, if no grant of administration is made within six months after the death of the deceased, the Commissioner may proceed to assess the estate duty payable and to recover payment of the duty so assessed in the same manner with all necessary modifications as if a statement had been duly filed by an administrator.

30. (1) Every administration shall, immediately upon the grant thereof, be sent to the Commissioner by the Chief Registrar of the Supreme Court, and the Commissioner shall issue the same to the person entitled to receive it on payment of the estate duty assessed and payable.

Administration to be sent by Court to the Commissioner.

(2) The Commissioner, if he thinks fit, may issue an administration before payment of duty if the administrator gives security to the satisfaction of the Commissioner for the payment of the full duty, either by mortgage of some portion of the property affected by the administration sufficient in the opinion of the Commissioner to secure the payment of the duty, or by bond to Her Majesty the Queen, either with or without sureties, for the payment of the full duty within six months from the date of the grant of administration or such further time as is agreed to by the Commissioner and set forth in the bond.

(3) The penalty of any such bond shall be twice the estimated duty computed upon the approximate value of the dutiable estate and of the interests of the successors as verified, if the Commissioner so requires, by the statutory declaration of the administrator or of any other person.

(4) Where the Public Trustee is the administrator it shall not be necessary for him to give any such security, and the Commissioner may, if he thinks fit, issue the administration without payment of duty accordingly.

Dealing  
with estate  
of deceased  
person  
without  
administra-  
tion.

31. (1) If any person takes possession of or in any manner deals with any part of the estate of any deceased person without obtaining administration of his estate within six months after his decease, or within two months after the termination of any action or dispute respecting the grant of administration of the estate, or within such further time as may be allowed by the Commissioner on application, the Commissioner may apply to the Supreme Court for an order that the person so taking possession or dealing as aforesaid deliver to the Commissioner within such time as the Commissioner may determine, a statement as required by subsection (1) of section 28 of this Ordinance, and to pay such duty as would have been payable if administration had been obtained, together with the cost of the proceedings, or to show cause to the contrary.

(2) If no cause or no sufficient cause is shown to the contrary, the person so offending shall, in addition to the duty payable by him as aforesaid, forfeit a sum not exceeding five hundred pounds, in the discretion of the Supreme Court; but if cause is shown, such order shall be as seems just.

(3) Nothing in this section or elsewhere in this Ordinance shall affect the special provisions of any enactment for the time being in force authorising the payment of money belonging to the estate of any deceased person without requiring administration of the estate to be obtained.

#### PART IV—GIFT DUTY

Gift duty  
imposed.

32. Subject to the exceptions provided for in this Ordinance, a duty (in this Ordinance referred to as gift duty) shall be chargeable in respect of every gift made after the commencement of this Ordinance.

Exemption  
of certain  
gifts from  
gift and  
estate duty.

33. A gift shall not be taken into account as such either for the purposes of gift duty or for the purposes of estate duty if the Commissioner is satisfied—

- (a) that the gift, together with all other gifts made by the same donor to the same beneficiary in the same calendar year, does not exceed in the aggregate two hundred pounds in value and is made in good faith as part of the normal expenditure of the donor; or
- (b) that the gift is made for or towards the maintenance of the wife, husband or any relative of the donor, and is not excessive in amount having regard to the legal or moral obligation of the donor to afford such maintenance.

34. (1) In this Part of this Ordinance the term "voluntary contract" means a contract entered into, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth. If any contract is made for a consideration in money or money's worth which is inadequate, the contract shall be deemed to be voluntary to the extent of that inadequacy.

Voluntary contracts to be deemed gifts in certain cases.

(2) A disposition of property made in performance or satisfaction of a voluntary contract shall be deemed to be a gift, whether the contract or disposition was made before or after the commencement of this Ordinance.

(3) A voluntary contract, whether made before or after the commencement of this Ordinance, shall not in itself constitute a gift within the meaning of this Ordinance, but shall become or be deemed to have become a gift so soon and so far as it has attached to and affected the legal or equitable title to any property to which it relates.

35. (1) The provisions of this Ordinance as to gift duty shall apply to every gift of property situate in Fiji at the time the gift was made whether such gift is made in Fiji or elsewhere, but if the gift is made out of Fiji the period of three months from the making thereof shall be substituted for the period of one month from the making thereof wherever the last-mentioned period is fixed for any purpose under the provisions of this Ordinance.

No gift duty except on property situate in Fiji.

(2) For the purposes of gift duty the local situation of property shall be determined in manner following:—

(a) if the donor is domiciled in Fiji at the date of the gift or is a body corporate incorporated in Fiji, all personal property comprised in the gift shall be deemed to be situate in Fiji;

(b) subject to the provisions of the last preceding paragraph, the local situation of any property shall be determined in the same manner as is provided in section 9 of this Ordinance with respect to estate duty.

36. (1) No marriage settlement made before and in consideration of marriage, or made after marriage in pursuance of a binding antenuptial contract, shall be liable to gift duty with respect to any beneficial interest acquired thereunder by either party to the marriage or by the children or remoter issue of the marriage.

No gift duty on antenuptial marriage settlements.

(2) Notwithstanding anything in this section contained, a covenant or contract contained in a marriage settlement, whether before or after the commencement of this Ordinance, to pay money or to make any disposition of future-acquired property shall be deemed to be a voluntary contract, and all the provisions of section 34 of this Ordinance shall apply thereto and gift duty shall be payable accordingly.

No gift duty  
on gift to  
charity, etc.

37. No gift duty shall be payable on—

- (a) any gift to any institution, organization or body of persons, whether corporate or unincorporate, operating for charitable purposes in Fiji and not formed or carried on for the profit of any individuals, such gift being for use within Fiji;
- (b) any gift to any educational or agricultural institution approved by the Governor in Council;
- (c) any gift to the Government;
- (d) contributions by an employer to a fund established for the purpose of providing retiring allowances or pensions for his employees or any class or classes of his employees or for the purpose of providing benefits on or after the death of his employees or any class or classes of his employees;
- (e) payments made by an employer to an employee in consequence of the retirement of that employee from the service of the employer, and any gratuity or bonus paid by an employer to an employee during the continuance of the employment in recognition of special or faithful services rendered, if—
  - (i) the employer is a body corporate other than an incorporated company; or
  - (ii) the employer is an incorporated company and the Commissioner is satisfied that more than fifty per cent of the stock or shares comprising the capital of the employer company, or comprising the capital of a company which controls the voting power of the employer company, is held for the benefit of a person or persons other than the employee, the spouse of the employee, and relatives of the employee of or within the second degree of relationship; or
  - (iii) the employer is an unincorporated firm or an individual, and the Commissioner is satisfied that the employee is not a relative of or within the second degree of relationship or a spouse of the employer or any of the employers;
- (f) payments made to a widow by a person who has been her deceased husband's employer, if—
  - (i) the employer is a body corporate other than an incorporated company; or
  - (ii) the employer is an incorporated company and the Commissioner is satisfied that more than fifty per cent of the stock or shares comprising the capital of the employer company, or comprising the capital of a company which controls the voting power of the employer company, is held for the benefit of a person or

persons other than the widow and the relatives of or within the second degree of relationship of the widow or of her deceased husband; or

- (iii) the employer is an unincorporated firm or an individual, and the Commissioner is satisfied that the widow is not and her deceased husband was not a relative of or within the second degree of relationship of the employer or any of the employers:

Provided that the Commissioner may, for the purposes of the two last preceding paragraphs, if he is satisfied that any payment made to any employee or the widow of any employee being a relative of the employer of or within the second degree of relationship is a payment made in consideration of genuine services rendered by such employee to such employer, allow such payment to be free of gift duty.

38. (1) When any gift is made in consideration or with the reservation of any benefit or advantage to or in favour of a donor, whether by way of any estate or interest in the same or any other property, or by way of mortgage or charge, or by way of any annuity or other payment, whether periodical or not, or by way of any contract for the benefit of the donor, or by way of any condition or power of revocation or other disposition, or in any other manner whatsoever, whether that benefit or advantage is charged upon or otherwise affects the property comprised in the gift or not, no deduction or allowance shall be made in respect of that benefit or advantage in computing the value of the gift, and the gift shall be valued and gift duty shall be paid as if the gift had been made without any such consideration or reservation:

No deduction to be made from value of gift in respect to benefit of donor.

Provided that—

- (a) notwithstanding the provisions of section 49 of this Ordinance, where an instrument is presented to the Commissioner of Stamp Duties under the provisions of the Stamp Duties Ordinance, the Commissioner may permit the instrument to be withdrawn for the purpose of cancelling or altering it, if application in writing in that behalf is made to him by the parties to the instrument within six months after the date of the instrument, or within such extended time as he thinks fit to allow;
- (b) on evidence to the satisfaction of the Commissioner being produced of any such cancellation or alteration, the gift shall be deemed not to have been made except to the extent to which the transaction as altered constitutes a gift, and the benefit or advantage shall be deemed not to have been created or reserved except to the extent to which the transaction as altered creates or reserves a benefit or advantage; and the Commissioner shall reassess the gift duty accordingly.

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(2) This section shall not apply to a gift made in consideration of any benefit or advantage to or in favour of a donor by way of any annuity or other payment, whether periodical or not, if and so far as the annuity or payment—

(a) is of a fixed or ascertainable amount in money payable over a fixed or ascertainable period or at a fixed or ascertainable date or dates or on demand; and

(b) is secured to the donor under an instrument executed by the beneficiary either creating a mortgage, encumbrance or charge over the property comprised in the gift or being an agreement for the sale and purchase of land comprised in the gift, or is secured to the donor under a deed executed by the beneficiary.

(3) For the purposes of this section, the expression "ascertainable" means ascertainable, to the satisfaction of the Commissioner, as at the date of the gift.

Subsequent gift of reserved benefit.

39. Where the donor of a gift to which the last preceding section applies (in this section referred to as the original gift) makes a further gift of the whole or any part of the benefit or advantage created or reserved on the making of the original gift, there shall be deducted from the gift duty which would otherwise be payable in respect of the further gift (so far as that gift duty extends) an amount bearing the same proportion to the gift duty paid on the original gift as the value of the further gift bears to the value of the original gift, and only the residue, if any, of the gift duty on the further gift shall be payable:

Provided that the amount so deducted or, where there are two or more further gifts, the aggregate of the amounts so deducted shall not exceed an amount bearing to the gift duty paid on the original gift the same proportion as the value of the benefit or advantage as originally created or reserved bears to the value of the original gift.

Single disposition of property to be deemed a single gift.

40. For the purposes of this Ordinance, a single disposition of property shall be deemed to constitute a single gift although distinct interests are acquired thereunder by different beneficiaries.

Rate of gift duty.

41. (1) For the purposes of this section, the term "aggregated gift", in relation to a gift, means any other gift made at the same time or within twelve months subsequently or previously (whether before or after the commencement of this Ordinance) by the same donor to the same or any other beneficiary, not being a gift exempt from gift duty by virtue of any of the provisions of this Ordinance or exempt from gift duty by reason of its nature.

(2) Nothing in the last preceding subsection shall be construed to exclude from the definition of the term "aggregated gift" any gift on which no gift duty is payable only because the value of that gift does not exceed two thousand pounds.

(3) The amount of the gift duty payable on a gift shall be calculated as follows:—

- (a) where the value of the gift, together with the value of all aggregated gifts, if any, does not exceed two thousand pounds, no gift duty shall be payable on the gift;
- (b) where the value of the gift exceeds two thousand pounds and there are no aggregated gifts, the gift duty payable on the gift shall be an amount calculated on the value of the gift in accordance with the graduated scale of rates set out in the Third Schedule to this Ordinance; Third Schedule.
- (c) where there are aggregated gifts and the value of the gift together with the value of all aggregated gifts exceeds two thousand pounds, the gift duty payable on each gift shall be an amount calculated on the value of the gift in accordance with the rate shown in the graduated scale of rates set out in the Third Schedule to this Ordinance as being applicable to the sum of the value of the gift and the value of all aggregated gifts. Third Schedule.
- (4) The duty shall be payable on the making of the gift notwithstanding that the interests of the beneficiaries or any of them may be future interests.
- (5) Where a gift first becomes liable to gift duty by reason of the making of a subsequent gift, the gift duty on the first gift shall be payable immediately upon the making of the subsequent gift.
- (6) Where a gift subject to gift duty subsequently becomes liable to a greater amount of gift duty by reason of the making of a subsequent gift, the additional gift duty on the first gift shall be payable immediately upon the making of the subsequent gift.
- (7) Where by reason of any other gift or gifts made previously or subsequently by the same donor, a gift not subject to gift duty subsequently becomes dutiable in accordance with the provisions of this Ordinance, or, being subject to gift duty subsequently becomes liable to a greater amount of gift duty, the references in this Ordinance to the date of the making of the gift shall, so far as may be necessary in their application to any gift so becoming dutiable or becoming liable to a greater amount of gift duty, be construed as references to the date on which the gift has become dutiable or has become liable to a greater amount of gift duty.

42. (1) For the purposes of gift duty, the provisions of section 13 of this Ordinance shall, with all necessary modifications apply with respect to every contingency affecting the interest of a beneficiary in the same manner as that in which such section applies with respect to contingencies affecting the interest of the deceased in any property forming part of his dutiable estate.

Valuation of contingent interest for purposes of gift duty.

(2) Subject to the provisions of this Part of this Ordinance, the value of a gift shall be deemed and taken to be the value thereof at the time of the making of the gift.

(3) For the purposes of this Part of this Ordinance, the value of any gift shall be deemed and taken to be its value in complete pounds.

Valuation of property subject to encumbrances for purposes of gift duty.

43. For the purpose of computing the value of a gift no deduction shall be allowed in respect of any mortgage, charge, encumbrance or liability affecting or incident to the property included in the gift if and so far as the beneficiary is entitled, as against the donor or any other person or as against any other property, to any available right of indemnity or contribution in respect of that mortgage, charge, encumbrance or liability.

Gift duty to be a debt due by the donor and a charge upon the property.

44. (1) Gift duty shall constitute a debt due and payable by the donor to the Crown on the making of the gift.

(2) The duty shall also constitute a charge on all property comprised in the gift.

(3) Unless it is otherwise provided by the terms of the gift, a beneficiary shall be entitled to be indemnified by the donor against the operation of any such charge.

(4) No such charge shall prevail against the title of a purchaser for value and in good faith without actual notice of the existence of the charge.

Gift duty to be also a debt due by the beneficiary and by a trustee for beneficiary.

45. (1) Without excluding the liability of the donor under the foregoing provisions gift duty shall constitute a debt due to the Crown by the beneficiary on the making of the gift:

Provided that—

(a) where there is more than one beneficiary under the same gift, each of such beneficiaries shall be liable only for the same proportion of the gift duty as the value of his interest bears to the total value of the gift;

(b) where the interest of a beneficiary is a future interest he shall not become personally liable until it becomes an interest in possession.

(2) When a gift has been made by way of trust for any beneficiary the gift duty shall, without excluding the liability of the donor or beneficiary under the foregoing provisions, constitute a debt due to the Crown by the trustee on the making of the gift.

(3) Unless it is otherwise provided by the terms of the gift a beneficiary or a trustee for a beneficiary shall be entitled to be indemnified by the donor against all liability under this section.

Statement to be delivered by the donor to the Commissioner.

46. (1) Within one month after the making of any gift the value of which is not less than one thousand pounds, or the value of which, added to the value of any other gifts made by the donor within twelve months previously, amounts to not less than one thousand pounds, the donor shall deliver to the Commissioner a statement in the prescribed form, verified by statutory declaration in the prescribed form and manner, and containing all such

particulars with respect to the gift or gifts as are necessary to enable the Commissioner to determine whether the same is or are dutiable and to assess the duty thereon, if any, and the Commissioner shall thereupon proceed to assess and recover gift duty accordingly.

(2) If any gift has been created or is evidenced by any written instrument the donor shall deposit with the Commissioner, along with the statement aforesaid, the said instrument or a copy thereof verified as a true copy by statutory declaration.

(3) After the delivery of the aforesaid statement it shall be the duty of the donor, and of every beneficiary or trustee of a beneficiary, to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Ordinance with respect to the gift.

47. If the donor makes default in delivering the prescribed statement of particulars to the Commissioner within one month after the making of the gift, it shall be the duty of every beneficiary and of the trustees, if any, of any beneficiary, within fourteen days after such default, to deliver the same statement which the donor ought to have delivered and also to deposit with the Commissioner the instrument of gift, if any, or a copy thereof verified by statutory declaration, and at all times thereafter to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Ordinance with respect to the gift.

Beneficiary to deliver statement in default of donor.

48. If a donor, beneficiary or trustee of a beneficiary makes default in delivering to or depositing with the Commissioner any statement or other document which he is hereby required to deliver or deposit, or in furnishing the Commissioner with any evidence which he is hereby required to furnish, he shall be liable to a fine not exceeding two pounds for every day during which he so makes default or one hundred pounds in the whole.

Penalty on failure to deliver statement.

49. (1) Notwithstanding anything to the contrary in the Stamp Duties Ordinance, no stamp duty thereunder shall be chargeable on any instrument creating, evidencing or giving effect to any arrangement relating to a gift in respect of which gift duty under this Ordinance has been duly paid:

Stamp duty on instruments of gifts.  
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Provided that—

(a) where, in respect of any instrument, the duties payable under the provisions of the Stamp Duties Ordinance and of this Ordinance differ in amount, the higher duty shall be paid;

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(b) nothing in this section shall operate to relieve any such instrument from any liability to stamp duty under the Stamp Duties Ordinance to which it would thereunder be subject by reason of its operating otherwise than as an instrument of gift exclusively.

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(2) Where an instrument is presented to the Commissioner of Stamp Duties for stamping under the Stamp Duties Ordinance and is an instrument creating, evidencing or giving effect to

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any arrangement relating to a gift under this Ordinance in respect of which gift duty under this Ordinance has not been paid or may be payable the Commissioner of Stamp Duties shall impound the instrument and shall pass it to the Commissioner who shall keep it impounded until the full amount of gift duty has been paid in accordance with the provisions of this Ordinance or until the Commissioner is satisfied that no gift duty is payable.

(3) Where stamp duty has been paid on any instrument which creates, evidences or gives effect to any arrangement relating to a gift under the provisions of this Ordinance and subsequently because of the operation of the provisions of this Part of this Ordinance that instrument becomes chargeable with gift duty, the Commissioner shall set off against the amount of gift duty otherwise payable upon that instrument the amount of the stamp duty already paid and only the balance of the gift duty shall be required to be paid.

Additional duty to be paid in case of default with intent to evade duty.

50. (1) If a donor, with intent to evade or delay the payment of gift duty, makes default in delivering to the Commissioner any statement or document required by this Ordinance to be so delivered or in furnishing the Commissioner with any evidence which he is lawfully required to furnish, or if, with the like intent, he continues any such default, the gift duty payable shall, by way of penalty, be increased by one-half, and this additional duty shall be assessable and recoverable in all respects as ordinary gift duty.

(2) The said penalty shall be in addition to and not in substitution for any fine to which the donor or any other person is liable under the provisions of this Ordinance.

Commissioner may assess gift duty although no statement delivered.

51. If a donor makes default in delivering to the Commissioner within one month after the making of the gift the statement required by section 47 of this Ordinance to be so delivered, the Commissioner may thereupon proceed to assess and recover the duty payable on the gift in the same manner as if the statement had been duly delivered.

Penalty for late payment of gift duty.

52. (1) If the full amount of gift duty on any gift not including any deficient duty payable by virtue of a reassessment under the provisions of section 41 of this Ordinance is not paid within one year after the making of the gift, there shall be added by way of penalty a further sum equal to ten *per centum* of the duty so unpaid, and the additional sum shall, except for the purposes of the next succeeding section, be deemed to be gift duty and shall be chargeable and recoverable accordingly. The said penalty shall be in addition to and not in substitution for any fine to which the donor or any other person is liable under the provisions of this Ordinance.

(2) The Commissioner may, if he thinks fit, on special grounds, reduce, remit or refund in whole or in part any penalty incurred under this section but no such refund shall be made unless application therefor is received by the Commissioner within six months after the date of payment of the penalty.

53. When the same property is liable both to gift duty whether before or after the commencement of this Ordinance, and also, upon the death of the donor, to estate duty, the amount paid or payable by way of gift duty shall be deducted from the sum which would otherwise be payable in respect of that property by way of estate duty, and only the residue, if any, of that sum shall be payable as estate duty.

Gift duty to be deducted from estate duty payable on same property.

54. Where any disposition of property is subject to gift duty under the provisions of this Ordinance and also under the law of any country outside Fiji, and the Commissioner is satisfied that the law of that country makes provision for the rebate of gift duty similar to the provision contained in this section, the Commissioner may allow a rebate of the gift duty payable under the provisions of this Ordinance of an amount equal to one-half of the gift duty payable by virtue of the provisions of this Ordinance or under the law of that country, whichever is the lesser amount.

Rebate of gift duty on gifts subject to duty in other countries.

#### PART V—MISCELLANEOUS

55. (1) Any administrator who is dissatisfied on any point of law or of fact with any assessment of estate duty made by the Commissioner, and any donor who is dissatisfied on any point of law or of fact with any assessment of gift duty so made, may, within thirty days, or in the case of an administrator or donor who is not resident in Fiji, ninety days, after notice of the assessment has been given to him, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.

Appeal to Supreme Court from assessment of Commissioner.

(2) The Commissioner shall thereupon state and sign a case accordingly setting forth the facts, the question to be decided and the assessment made by him, and shall deliver the case so signed to the administrator or donor (hereinafter referred to as the appellant).

(3) The appellant shall, within fourteen days after receiving the case, transmit the same to the Chief Registrar of the Supreme Court, and the Chief Registrar shall thereupon enter the case for hearing by the Court and shall give notice thereof to the appellant and to the Commissioner.

(4) On the hearing of the case, the Supreme Court shall determine the question submitted and the Commissioner shall thereupon assess the duty payable in accordance with that determination.

(5) The Supreme Court may if it thinks fit cause the case to be sent back to the Commissioner for amendment and thereupon the case shall be amended accordingly and the Court shall thereupon proceed to hear and determine the question so submitted.

(6) The costs of any such appeal to the Supreme Court shall be in the discretion of the Court having regard to the extent to which the Commissioner's assessment exceeds the amount admitted by the appellant before the appeal commenced and the extent to which the Commissioner's assessment is upheld or varied.

(7) If and so far as any appeal relates to a question of fact, the Supreme Court may make such order as it thinks fit as to the trial of that issue and as to the reception of evidence by affidavit or otherwise.

(8) Any allegations of fact comprised in a case stated by the Commissioner under this section may be disputed by the appellant on the hearing of the appeal, but, in the absence of sufficient evidence adduced by the appellant to the contrary, all such allegations shall be presumed to be correct.

Power of  
Com-  
missioner to  
hold an  
inquiry.

56. (1) In any case in which the Commissioner deems it necessary to hold an inquiry for the purpose of obtaining information respecting any claim for duty under this Ordinance, the Commissioner may summon before him and examine on oath touching any matter which is relevant to the claim for duty all persons whom the Commissioner or any other person interested requires to be so called and examined.

Cap. 36.

(2) On any such inquiry the Commissioner shall be deemed to be vested with all the powers which may be conferred on Commissioners under the Commissions of Inquiry Ordinance, and the provisions of that Ordinance shall apply accordingly.

Right of  
Com-  
missioner to  
inspect  
books,  
registers,  
etc.

57. (1) All public officers and all other persons whatsoever having in their custody or possession any rolls, books, records, registers, papers or other documents the inspection whereof may tend to secure the payment of any duty under the provisions of this Ordinance or to the proof or discovery of any fraud or omission in relation to any such duty shall, at all reasonable times, notwithstanding anything to the contrary in any other Ordinance, permit any person therunto authorised by the Commissioner to inspect all such rolls, books, records, registers, papers and documents and to take such notes, copies or extracts thereof or therefrom as he may deem necessary without fee or reward.

(2) Every person refusing to permit or obstructing any such inspection or any such taking of notes, copies or extracts shall be liable to a fine not exceeding fifty pounds.

Supreme  
Court may  
order  
statement  
to be  
delivered.

58. (1) If any person makes default in delivering to the Commissioner any statement required by the provisions of this Ordinance to be so delivered for the purposes of any duty under this Ordinance, the Commissioner may apply to the Supreme Court by motion for an order directing the person so in default to deliver the statement within such period as the Court may order, and on the hearing of the motion the Court may make such order in that behalf as is thought just and any order so made for the delivery of a statement may be enforced by attachment in accordance with the practice of the Supreme Court.

(2) The Commissioner may apply to the Supreme Court for such an order as is referred to in the last preceding subsection, although the time allowed by this Ordinance for the delivery of the statement has not expired, and, if the Court is of opinion that sufficient reason has been shown for requiring delivery of the statement before the said time has expired, it may make an order accordingly.

59. (1) Every person who makes or delivers or causes or permits to be made or delivered to the Commissioner any document which he knows to be false in any particular, or knowingly makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorised by the Commissioner shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds.

Delivery of false statement an offence.

(2) A prosecution for an offence against the provisions of the last preceding subsection may be commenced at any time.

60. (1) Where by reason of the complexity or uncertainty of the facts or from any other cause it is difficult or impracticable to ascertain exactly the amount of any duty payable under the provisions of this Ordinance or so to ascertain the same without undue delay or expense, the Commissioner may assess by way of composition for the duty so payable such sum as the Commissioner thinks proper in the circumstances, and may accept payment of the sum so assessed in full discharge of all claims for that duty.

Commissioner may compromise a claim for duty.

(2) No such composition shall constitute a good discharge from duty if it has been procured by fraud or by a wilful failure to disclose material facts.

61. Where, by reason of coincident provisions in this Ordinance, the same description of duty may be assessed and charged in different ways, it shall be assessed and charged in that manner which is estimated to produce the greatest amount of duty.

Duty chargeable at the higher rate in case of coincident provisions.

62. (1) For the purpose of assessing estate duty or gift duty, if the Commissioner is not satisfied as to the value as stated by the administrator or donor, as the case may be, he may determine it either by agreement between himself and the administrator in the case of estate duty or between himself and the donor in the case of gift duty or, in the event of a failure to agree, by a valuation made by an official valuer appointed under the Stamp Duties Ordinance.

Valuation for the purposes of duty under this Ordinance.

(2) There shall be payable to the official valuer by the administrator in the case of estate duty, or by the donor in the case of gift duty, in respect of any such valuation such fee as may be determined by the Commissioner:

Cap. 177.

Provided that such fee shall not be payable by the administrator or donor, as the case may be, in any case in which the valuation made by the official valuer does not exceed the valuation submitted by such administrator or donor by more than—

- (a) twenty *per centum*, where the valuation of the official valuer of the property does not exceed ten thousand pounds; or
- (b) ten *per centum*, in any other case.



(3) Any administrator in the case of estate duty, or any donor in the case of gift duty, or the Commissioner in either case, may, within one month from the date upon which a valuation by an official valuer is communicated to him, appeal by way of originating summons against such valuation to the Supreme Court.

Partnership.

(4) In ascertaining the value of a share in a partnership the valuer shall not be bound by any provision as to the disposition of such share contained in the partnership deed or arrangement.

Companies.

(5) In ascertaining the value of shares in a company no account shall be taken of the effect upon that value of any restrictive provisions or other conditions as to the alienation or transfer of those shares contained in the memorandum or articles of association of the company.

Further claim may be made in case of payment of too little duty.

63. (1) Notwithstanding any assessment or payment of any duty under the provisions of this Ordinance or any certificate of the Commissioner that no such duty is payable, it shall be lawful for the Commissioner, at any time thereafter, if it is discovered that any duty payable has not been fully assessed and paid, to make a further assessment of the duty so unpaid and to recover the same in the same manner as if no previous assessment or payment had been made.

(2) Except in the case of fraud an administrator shall not be personally liable for any estate duty under any such further assessment by reason of having administered or distributed the estate of the deceased without retaining sufficient assets to satisfy the duty.

(3) Nothing in this section shall affect the operation of any settlement of a claim for duty expressed to be made by way of composition under the provisions of this Ordinance in that behalf.

Duty recoverable.

64. Any duty under this Ordinance may be recovered as a debt due to the Crown.

Commissioner may refund duty paid in excess.

65. At any time within six years after the payment of any duty the Commissioner may, on proof to his satisfaction that the duty has been paid in excess, order that the amount overpaid be returned to the person entitled thereto.

Refunds of duty payable out of Treasury.

66. All moneys payable under the provisions of this Ordinance by way of refund of duty shall, without further appropriation than this Ordinance, be paid by the Accountant-General out of the Treasury.

Registration of charge for duty.

67. (1) When any estate duty or gift duty constitutes a charge on any real property, the Commissioner may file with the Registrar of Titles a memorandum under the hand of the Commissioner setting forth the description of the land so charged and the amount of duty payable, and the said Registrar shall, without fee, register the memorandum against the title of the land charged.

(2) Upon the registration of any such memorandum it shall be deemed and taken to be actual notice to all persons of the existence of the charge and the charge shall have operation and priority accordingly.

(3) When any such charge has been satisfied the Commissioner shall deposit with the said Registrar a memorandum of satisfaction and the Registrar shall, without fee, register the same against the title of the land.

68. (1) If any estate duty or gift duty is in arrear and unpaid and constitutes, by virtue of the provisions of this Ordinance, a charge on any property, the Commissioner may apply by petition to the Supreme Court for the enforcement of that charge and the Court may make such order in the premises as it thinks just, either for the sale of that property or any part thereof or for the appointment of a receiver of the rents, profits or income thereof and for the payment of the duty and the costs of the Commissioner out of the proceeds of the sale or out of the said rents, profits or income.

Enforcement of charge for duty by the Supreme Court.

(2) In any case in which any land or interest therein shall be directed to be sold by the Supreme Court, the Court may, under section 181 of the Land (Transfer and Registration) Ordinance, give such direction to the Registrar of Titles as to issuing a certificate of title or otherwise to the purchaser as may be necessary.

Cap. 136.  
1955  
Edition.

69. For the purposes of this Ordinance, the present value of any annuity or other interest for the life of any person or for any other period, or the present value of any interest expectant on the death of any person or on any other event, shall be determined by reference to the tables contained in the Second Schedule to this Ordinance:

Annuity for life—how valued.

Second Schedule.

Provided that the expectation of life of any person who is suffering from a serious illness likely to shorten the duration of the life of such person shall be ascertained by the Commissioner in such manner as he thinks fit.

70. The payment of all duties under this Ordinance shall be denoted by impressed stamp and shall be impressed with the Commissioner's seal.

Duties to be denoted by impressed stamp.

71. The Commissioner may in his discretion remit the whole or any part of any fine or penalty incurred under this Ordinance.

Commissioner may remit penalties.

72. (1) Every statutory declaration required or authorised by this Ordinance or by any regulations thereunder shall be exempt from stamp duty.

Statutory declarations exempt from stamp duty.

(2) The Commissioner is hereby empowered to take any such declaration.

73. (1) For the purposes of this section—

“Discretions Review Board” or “Board” means the Discretions Review Board constituted under the Income Tax Ordinance;

Discretion of Commissioner subject to review.  
Cap. 176.

Fourth  
Schedule.

“discretion” means a discretion or a power to determine any matter vested in the Commissioner such as is specified in the Fourth Schedule to this Ordinance.

Cap. 176.

Cap. 176.

(2) Where the Commissioner makes a decision in exercise of a discretion and makes an assessment of estate duty or gift duty accordingly, the administrator in the case of estate duty and the donor in the case of gift duty may, within thirty days, or, in the case of an administrator or donor who is not resident in Fiji, ninety days, after notice of the assessment has been given to him, object to that decision by delivering or posting to the Commissioner a written notice of objection stating shortly the grounds of his objection and requiring the objection to be heard and determined by the Discretions Review Board, and in that event the objection shall be heard and determined by the Board and the provisions of the Income Tax Ordinance, shall apply in respect of the institution, hearing and determination of the proceedings on the objection except that the Commissioner shall refer the matter to the Chairman of the Board for determination instead of the notice of objection being filed by the appellant with the Board as required by the provisions of the Income Tax Ordinance.

(3) No notice of objection given after the time so specified shall be of any force or effect unless the Commissioner, in his discretion, accepts the same and gives notice to the objector accordingly.

(4) On the determination of any such objection the Board may either confirm, modify or cancel the decision of the Commissioner, and the Commissioner shall thereupon assess the duty in accordance with the determination of the Board.

(5) The provisions of this section shall apply to the estates of all persons dying on or after the commencement of this Ordinance and to all gifts made on or after that date.

(6) Every notice of objection delivered or posted to the Commissioner in accordance with the provisions of subsection (2) of this section shall be accompanied by a fee of one pound.

Regulations.

74. The Governor in Council may from time to time make regulations consistent with the provisions of this Ordinance—

- (a) prescribing the duties of the Commissioner and all other officers acting under the provisions of this Ordinance;
- (b) prescribing forms of statements and other documents and forms required or authorised by this Ordinance;
- (c) prescribing the procedure to be adopted in the assessment and collection of any duty under the provisions of this Ordinance;
- (d) making any other provisions which he deems necessary in order to give full effect to this Ordinance.

Free postage.

75. All information and correspondence and all payments of estate or gift duty, under the provisions of this Ordinance, shall be carried and delivered by the Department of Posts and Telegraphs, free of postal or other charges, if the postal packet containing such information, correspondence and payments is addressed to the Commissioner of Estate and Gift Duties.

## FIRST SCHEDULE

(Section 4)

## SCALE OF ESTATE DUTY

*Final Balance of Estate*

	£			£	Rate %
Not exceeding	500	.....	.....	.....	Nil
Exceeding	500	but not exceeding		1,000	1
"	1,000	"	"	2,000	2
"	2,000	"	"	3,000	2.5
"	3,000	"	"	4,000	3
"	4,000	"	"	5,000	3.5
"	5,000	"	"	6,000	4
"	6,000	"	"	7,000	4.5
"	7,000	"	"	8,000	5
"	8,000	"	"	9,000	5.5
"	9,000	"	"	10,000	6
"	10,000	"	"	12,000	6.5
"	12,000	"	"	14,000	7
"	14,000	"	"	16,000	7.5
"	16,000	"	"	18,000	8
"	18,000	"	"	20,000	8.5
"	20,000	"	"	22,500	9
"	22,500	"	"	25,000	10
"	25,000	"	"	27,500	11
"	27,500	"	"	30,000	12
"	30,000	"	"	32,500	13
"	32,500	"	"	35,000	14
"	35,000	"	"	37,500	15
"	37,500	"	"	40,000	16
"	40,000	"	"	45,000	17
"	45,000	"	"	50,000	18
"	50,000	"	"	55,000	19
"	55,000	"	"	60,000	20
"	60,000	"	"	65,000	21
"	65,000	"	"	70,000	22
"	70,000	"	"	75,000	23
"	75,000	"	"	80,000	24
"	80,000	"	"	85,000	25
"	85,000	"	"	90,000	26
"	90,000	"	"	95,000	27
"	95,000	"	"	100,000	28
"	100,000	"	"	115,000	29
"	115,000	"	"	130,000	30
"	130,000	"	"	145,000	31
"	145,000	"	"	160,000	32
"	160,000	"	"	180,000	33
"	180,000	"	"	200,000	34
"	200,000	.....	.....	.....	35

Provided that—

- (a) the estate duty payable on the final balance of an estate in any grade shall not exceed the estate duty payable on the maximum final balance of an estate in the preceding grade plus the amount by which the actual final balance of the estate exceeds the maximum final balance of an estate in the preceding grade;
- (b) in the case of the estate of a person who to the satisfaction of the Commissioner was domiciled in Fiji at the date of death the first £5,000 of the final balance of his estate shall be exempt from the payment of estate duty and where the final balance of the estate in such a case exceeds £5,000 such excess shall attract duty at the rate appropriate to the full final balance of the estate.

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SECOND SCHEDULE

(Section 69)

TABLES OF THE VALUES OF ANNUITIES TO BE USED FOR  
THE CALCULATION OF DUTY UNDER SECTION 69

TABLE A

Present Value of an Annuity or Other Interest for Life

<i>Years of Age</i>	<i>Value of £1 per Annum for Life</i>	<i>Years of Age</i>	<i>Value of £1 per Annum for Life</i>
Birth	18.92425	15	18.00425
1	19.06650	16	17.83650
2	19.19100	17	17.67800
3	19.26400	18	17.53275
4	19.28800	19	17.40550
5	19.26975	20	17.29475
6	19.21600	21	17.19850
7	19.13225	22	17.13050
8	19.02825	23	17.06825
9	18.90975	24	17.00575
10	18.78150	25	16.94000
11	18.64350	26	16.86725
12	18.49600	27	16.77275
13	18.33925	28	16.67050
14	18.17375	29	16.56050

<i>Years of Age</i>	<i>Value of £1 per Annum for Life</i>	<i>Years of Age</i>	<i>Value of £1 per Annum for Life</i>
30	16.44375	63	8.83300
31	16.32000	64	8.52450
32	16.19025	65	8.21625
33	16.05200	66	7.90750
34	15.90475	67	7.61950
35	15.74875	68	7.33425
36	15.58475	69	7.05200
37	15.41525	70	6.77450
38	15.24000	71	6.50400
39	15.06075	72	6.23975
40	14.87500	73	5.97375
41	14.68200	74	5.69650
42	14.47575	75	5.41025
43	14.26100	76	5.11475
44	14.03500	77	4.77850
45	13.79725	78	4.44475
46	13.54825	79	4.12475
47	13.28125	80	3.81150
48	13.00475	81	3.50725
49	12.71975	82	3.21725
50	12.42975	83	2.92500
51	12.13850	84	2.63100
52	11.85700	85	2.34925
53	11.57875	86	2.07800
54	11.30650	87	1.84575
55	11.03900	88	1.64875
56	10.77500	89	1.48350
57	10.51500	90	1.33450
58	10.25500	91	1.22800
59	9.99050	92	1.07350
60	9.72050	93	.93150
61	9.43775	94	.79425
62	9.14100	95	.64550

TABLE B  
PRESENT VALUE OF ANNUITY OR OTHER INTEREST FOR PERIOD OTHER THAN LIFE OR  
EXPECTANT ON EVENT OTHER THAN DEATH

Years	Present Value of £1 Per Annum for Period	Present Value of £1 Payable After Period	Years	Present Value of £1 Per Annum for Period	Present Value of £1 Payable After Period
	£	£		£	£
1	.95238	.95238	51	18.33898	.08305
2	1.85941	.90703	52	18.41807	.07910
3	2.72325	.86834	53	18.49340	.07533
4	3.54595	.82270	54	18.56514	.07174
5	4.32948	.78353	55	18.63347	.06833
6	5.07569	.74622	56	18.69854	.06507
7	5.78637	.71068	57	18.76052	.06197
8	6.46321	.67684	58	18.81954	.05902
9	7.10782	.64461	59	18.87575	.05621
10	7.72173	.61391	60	18.92929	.05354
11	8.30641	.58468	61	18.98027	.05099
12	8.86325	.55684	62	19.02883	.04856
13	9.39357	.53032	63	19.07508	.04625
14	9.89864	.50507	64	19.11912	.04404
15	10.37966	.48102	65	19.16107	.04195
16	10.83777	.45811	66	19.20102	.03995
17	11.27407	.43630	67	19.23907	.03805
18	11.68959	.41552	68	19.27530	.03623
19	12.08532	.39573	69	19.30981	.03451
20	12.46221	.37689	70	19.34268	.03287
21	12.82115	.35894	71	19.37398	.03130
22	13.16300	.34185	72	19.40379	.02981
23	13.48857	.32557	73	19.43218	.02839
24	13.79864	.31007	74	19.45922	.02704
25	14.09394	.29530	75	19.48497	.02575
26	14.37518	.28124	76	19.50949	.02453
27	14.64303	.26785	77	19.53285	.02336
28	14.89813	.25509	78	19.55510	.02225
29	15.14107	.24295	79	19.57628	.02119
30	15.37245	.23138	80	19.59646	.02018
31	15.59281	.22036	81	19.61568	.01922
32	15.80268	.20987	82	19.63398	.01830
33	16.00255	.19987	83	19.65141	.01743
34	16.19290	.19035	84	19.66801	.01660
35	16.37419	.18129	85	19.68382	.01581
36	16.54685	.17266	86	19.69887	.01506
37	16.71129	.16444	87	19.71321	.01434
38	16.86789	.15661	88	19.72687	.01366
39	17.01704	.14915	89	19.73987	.01301
40	17.15909	.14205	90	19.75226	.01239
41	17.29437	.13528	91	19.76406	.01180
42	17.42321	.12884	92	19.77529	.01124
43	17.54591	.12270	93	19.78590	.01070
44	17.66277	.11686	94	19.79618	.01019
45	17.77407	.11130	95	19.80589	.00971
46	17.88007	.10600	96	19.81513	.00924
47	17.98101	.10095	97	19.82394	.00880
48	18.07716	.09614	98	19.83232	.00838
49	18.16872	.09156	99	19.84030	.00798
50	18.25592	.08720	100	19.84791	.00760

## THIRD SCHEDULE

(Section 41)

## SCALE OF GIFT DUTIES

<i>Value of Gift including all aggregated gifts</i>							<i>Rate</i>
£							£
Not exceeding 2,000	....	....	....	....	....	....	Nil
2,001— 3,000	....	10·5%	of the excess of the value over				2,000
3,001— 4,000	....	105 plus	5·5% of the value over				3,000
4,001— 5,000	....	160	"	9%	"	"	4,000
5,001— 6,000	....	250	"	8%	"	"	5,000
6,001— 7,000	....	330	"	9%	"	"	6,000
7,001— 8,000	....	420	"	10%	"	"	7,000
8,001— 9,000	....	520	"	11%	"	"	8,000
9,001—10,000	....	630	"	12%	"	"	9,000
10,001—11,000	....	750	"	13%	"	"	10,000
11,001—12,000	....	880	"	14%	"	"	11,000
12,001—13,000	....	1,020	"	15%	"	"	12,000
13,001—14,000	....	1,170	"	16%	"	"	13,000
14,001—15,000	....	1,330	"	17%	"	"	14,000
15,001—16,000	....	1,500	"	26%	"	"	15,000
16,001—17,000	....	1,760	"	28%	"	"	16,000
17,001—18,000	....	2,040	"	30%	"	"	17,000
18,001—19,000	....	2,340	"	32%	"	"	18,000
19,001—20,000	....	2,660	"	34%	"	"	19,000
20,001—21,000	....	3,000	"	36%	"	"	20,000
21,001—22,000	....	3,360	"	38%	"	"	21,000
22,001—23,000	....	3,740	"	40%	"	"	22,000
23,001—24,000	....	4,140	"	42%	"	"	23,000
24,001—25,000	....	4,560	"	44%	"	"	24,000
25,001—26,000	....	5,000	"	46%	"	"	25,000
26,001—27,000	....	5,460	"	48%	"	"	26,000
27,001—28,000	....	5,940	"	50%	"	"	27,000
28,001—29,000	....	6,440	"	52%	"	"	28,000
29,001—30,000	....	6,960	"	54%	"	"	29,000
Over 30,000	....	....	25% of the value				



## FOURTH SCHEDULE

(Section 73)

<i>Section</i>	<i>Subject matter of discretion</i>
1. Paragraph (b) of subsection (4) of section 5 ....	Determination in respect of value of consideration to be taken into account in the case of a settlement, trust or disposition of property.
2. Paragraph (d) of subsection (2) of section 10 ....	Determination that debt considered incapable of estimation.
3. Subsection (3) of section 10	Determination as to whether debt subsequently becomes capable of estimation.
4. Section 13 ....	Determination of manner in which contingency likely to determine.
5. Subsection (2) of section 18	Determination as to whether dutiable estate of deceased successor includes any property of deceased.
6. Section 33 : ....	(i) Determination that gift not made in good faith as part of the normal expenditure of donor. (ii) Determination that gift excessive having regard to the legal or moral obligation of the donor to afford such maintenance.
7. Subsection (3) of section 38	Determination as to amount "ascertainable for gift in respect of benefit to donor".
8. Subsection (1) of section 42	Determination of manner in which contingency likely to determine.
9. Section 69 ....	Determination of expectation of life of person suffering from serious illness.

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O N A P P E A L  
FROM THE COURT OF APPEAL OF FIJI

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B E T W E E N :

THE COMMISSIONER OF ESTATE AND  
GIFT DUTIES

APPELLANT  
(Original Plaintiff)

- a n d -

FIJI RESORTS LIMITED

RESPONDENT  
(Original Defendant)

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CASE FOR THE APPELLANT

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Messrs Charles Russell & Company  
Hale Court  
Lincolns Inn  
LONDON WC2A 3UL

Solicitors for the Appellant