Probate Rules 1936

TABLE OF PROVISIONS

PROBATE RULES 1936 (Tas)

Rules 1-3A

1 Short title and commencement

(1) These Rules may be cited as the *Probate Rules* 1936.
(2) These Rules shall come into force on 1st October 1936

2 Repeal

All Rules, Orders, and instructions heretofore made and issued for regulating the procedure and practice of the Court in regard to non-contentious or common form probate business are hereby rescinded.

3 Interpretation

"Non-contentious business" and "common form business" shall have the meanings assigned to them by section 3 of the *Supreme Court Civil Procedure Act* 1932.

3A Practitioner

"practitioner" means an Australian legal practitioner.

PROBATE RULES 1936 (Tas)

TABLE OF PROVISIONS

Rules 4-6

NON-CONTENTIOUS BUSINESS

PROBATE RULES 1936 (Tas)

EXECUTION OF A WILL

Rules 7-12

7 Affidavit required where no attestation clause, &c

If there be no attestation clause to a will presented for probate, or if the attestation clause thereto be insufficient, the Registrar shall require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of the Wills Act 1840, in reference to the execution, were in fact complied with.

8 Note to be signed by Registrar

(1) A note signed by the Registrar shall be inserted on the engrossed copy will annexed to the probate or letters of administration, and registered, to the effect that affidavits of due execution, or domicile, or as the case may be, have been filed.

(2) In cases presenting difficulty, the affidavits themselves may be registered by direction of the Registrar.

9 Refusal of probate in certain cases

If, on perusing the affidavits of both the subscribing witnesses, it appears that the requirements of the statute were not complied with, the Registrar shall refuse probate.

10 Motions before judge

If on perusing the affidavits setting forth the facts of the case it appears doubtful whether the will has been duly executed, the Registrar may require the parties to bring the matter before a judge on motion.

11 Evidence of execution of will where subscribing witnesses dead

If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons, if any, who may have been present at the execution of the will; but, if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

12 Registrar not to allow probate or administration in certain cases

The Registrar shall not allow probate of the will, or administration with the will annexed, of the estate of any blind or obviously illiterate or ignorant person, to issue, unless he has previously satisfied himself that the will was read over to the testator before its execution, or that the testator at that time had knowledge of its contents.

PROBATE RULES 1936 (Tas)

PROBATE COPIES OF WILLS

Rule 13

13 Requirements for copies of wills and affidavits

(1) The Registrar shall take care that the copies of wills and affidavits to be annexed to probates or letters of administration are fairly and properly written, and shall reject those which are otherwise.

(2) It shall not be necessary that such copies be engrossed on parchment or be hand-written.

PROBATE RULES 1936 (Tas)

INTERLINEATIONS AND ALTERATIONS

Rules 14-15

14 Interlineations and alterations invalid in certain cases

Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the Wills Act 1840, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

15 Affidavit required in certain cases

When interlineations or alterations appear in the will (unless duly executed, or recited in, or otherwise identified by, the attestation clause) an affidavit in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses.

PROBATE RULES 1936 (Tas)

Rules 16-17

ERASURES AND OBLITERATIONS

16 Where erasures and obliterations to prevail

Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

17 Affidavit required in certain cases

In every case of words having been erased or obliterated which might have been of importance, an affidavit shall be required.

PRPROBATE RULES 1936 (Tas)

INSTRUMENTS REFERRED TO IN A WILL

Rules 18-19

18 Where production of documents required

If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum, or other document shall be required, with a view to ascertaining whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

19 Where documents can form part of will

No deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

PROBATE RULES 1936 (Tas)

APPEARANCE OF THE PAPER

Rule 20

20 Marks on testamentary papers to be accounted for

If there are any vestiges of sealing-wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document shall be required; and, if not produced, its non-production must be accounted for.

PROBATE RULES 1936 (Tas)

APPLICATIONS RELATING TO PROOF OF WILLS AND PERSONS PRESUMED DECEASED

Rules 20A-20B

20A Applications relating to nuncupative wills and copy wills, &c

(1) Subject to this rule, an application for an order admitting to proof —

a) a nuncupative will; or

b) a will contained in a copy, completed draft, or reconstruction or other evidence of its contents where the original will is not available, shall be made by summons to a judge.

(2) An application under subrule (1) shall be supported by —

a) an affidavit setting out the grounds of the application;

(*b*) such evidence on affidavit as the applicant can adduce as to —

(i) the due execution of the will;

(ii) the existence of the will after the death of the testator; and

(iii) the accuracy of the copy or other evidence of the contents of the will; and

c) any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

(3) Notwithstanding subrule (1), where a will is not available owing to its being detained in the custody of a foreign court or official, the Registrar may admit to proof a duly authenticated copy of the will without an order under that subrule being made.

20B Applications for leave to swear to death of persons

An application for leave to swear to the death of a person shall be made by summons to a judge and shall be supported by an affidavit —

a) setting out the grounds of the application; and

b) containing particulars of every policy of insurance on the life of the person presumed deceased.

PROBATE RULES 1936 (Tas)

AS TO LETTERS OF ADMINISTRATION

Rules 21-45A

21 Priority of right to grant, where will (amended by SR 2012 No 59)

Where the deceased died leaving a will, the priority of right to a grant of administration with the will annexed where there is no executor who proves shall be as follows:

(*a*) residuary legatees or devisees in trust;

(*b*) residuary legatees or devisees for life;

(*c*) ultimate residuary legatees or devisees, or, where the residue is not wholly disposed of, the person entitled upon an Intestacy;

(*d*) the legal personal representative of persons indicated in paragraph (c);

(*e*) legatees, or devisees, or creditors;

(*f*) contingent residuary legatees, or devisees, or contingent legatees or devisees, or persons having no interest in the estate who would have been entitled to a grant had the deceased died wholly intestate;

(*g*) the Crown.

22 Priority of right to grant where no will (substituted by SR 2010 No 157 on 1 January 2011)

(1) In this rule –

"spouse" has the same meaning as in the *Intestacy Act 2010*.

(2) Where a person has died wholly intestate, the priority of right to a grant of administration is to be as follows:

(a) a spouse of the deceased;

(b) children of the deceased;

(c) the issue of any child of the deceased, if –

(i) the child of the deceased has failed to survive the deceased person; and

(ii) the issue is entitled to a share of the deceased person's estate taking *per stirpes*;

(d) parents of the deceased;

(e) brothers and sisters of the deceased, whether or not they share one or both parents;

(f) the issue of any brother or sister of the deceased, if –

(i) the brother or sister has failed to survive the deceased person; and

(ii) the issue is entitled to a share of the deceased person's estate taking *per stirpes*;

(g) grandparents of the deceased;

(h) aunts and uncles of the deceased;

(i) the issue of any aunt or uncle of the deceased, if –

(i) the aunt or uncle has failed to survive the deceased person; and

(ii) the issue is entitled to a share of the deceased person's estate taking *per stirpes*;

(j) the State;

(k) creditors of the deceased.

(3) A person is not entitled to a grant of administration unless he or she has survived the deceased person according to the rules of survivorship within the *Intestacy Act 2010*.

(4) For the purposes of a priority of right to a grant of administration under this rule, an adopted child and his or her family relationships are to be determined in accordance with section 10 of the *Intestacy Act 2010*.

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23 Preference of interests

In the making of a grant, live interests will be preferred to dead interests; and, in the case of conflicting claims, the nearer interest will be preferred to the more remote, unless a judge shall otherwise direct.

24 Joinder of persons to grant

Where it is sought to join, with a person entitled to a grant, a person not equally or next entitled, all persons with a prior right must be cleared off by renunciation or consent, or by a judge's order on summons for a joint grant.

25 Method of applying for letters of administration

(1) An application for letters of administration shall be included in the administrator's oath that is required to be made by the applicant.

(2) If there is any person within the jurisdiction having a right to a grant of letters of administration equal, or prior, to the right of the applicant, a citation shall be taken out before the application is made, unless such person has consented to the grant or has renounced his right to a grant.

(3) Except as aforesaid, it shall not be necessary to take out a citation unless the Registrar otherwise directs.

26 Notice of application

The applicant shall advertise a notice in the prescribed form of his intention to make such application, once at least in the Gazette and also in once at least in a newspaper.

27 Requirements in respect of notice under rule 26

The notice referred to in rule 26 shall be in the prescribed form, and shall be signed by the person intending to apply for letters of administration or by his practitioner; and shall contain -

(*a*) the full Christian and surname of the deceased;

(*b*) his last place of residence:

(*c*) his occupation;

(*d*) the full Christian and surname of the applicant;

(*e*) his place of residence and occupation, and shall state in what capacity the applicant claims to be entitled to a grant of letters of administration.

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28 Time for making applications

No application for letters of administration shall be made until after the expiration of 14 days from the last publication of the notice required by rule 26, and until the applicant has deposed to the due publication of that notice in his administrator's oath.

29 Administrator's oath

(1) The oath to lead a grant of administration, whether with the will annexed or otherwise, is to be so worded as to clear off all persons having a prior, or equal, right to the grant.

(2) In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

30 Minorities and life interests to be stated

In every such oath the deponent shall state whether there is a minority, and, in the case of administration with the will annexed, whether there is a life interest, and the Registrar may call for such further evidence thereon as he may require.

31 Administration bonds

(1) Administration bonds shall be attested by the Registrar, or by a commissioner of the Court or a justice, but in no case are they to be attested by the practitioner or agent of the party who executes them.

(2) The signature of the administrator to such bond, if not taken in the Registry, must be attested by the person who administers the oath to the administrator.

32 Amount of administration bonds

(1) Administration bonds shall be given in the amount of the property to be placed in the possession of, or dealt with by, the administrator by means of the grant.

(2) The value of such property shall be verified by affidavit if the Registrar so requires; the bond shall be in such of the forms in the Appendix as is appropriate to the case or such other form as in the special circumstances of the case the Registrar may direct.

33 Registrars to settle form of certain bonds

The form of administration bond in all cases of limited or special administrations shall be settled by the Registrar.

34 Sureties to be responsible persons

The Registrar shall take care, as far as possible, that the sureties to administration bonds are responsible persons.

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35 Sureties not required in certain cases

Sureties to administration bonds shall not be required when the grant of administration is
made -

(*a*) to a trust corporation as defined by the Act; or

(*b*) to 2 or more individuals, unless the Registrar otherwise directs,

nor shall sureties be required in those cases where, owing to the smallness of the estate, or the fact that the person to whom administration is to be granted is the sole beneficiary, the Registrar deems it unnecessary to require sureties.

36 Justification of sureties

When any person takes letters of administration in default of the appearance of persons cited, but not personally served with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court, the sureties to the administration bond must justify.

37 Limited administrations

Limited administrations shall not be granted unless every person entitled to the general grant has consented or renounced or has been cited and failed to appear, except by the direction of a judge.

38 Persons entitled to general grant not permitted to take limited grant
Save as in the Act expressly provided, no person entitled to a general grant in respect of the estate of a deceased person will be permitted to take a limited grant except by the direction of a judge.

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Grants of administration under the discretionary powers of the Court and grants ad colligenda bona

38A Administrations under section 13 of the Act &c

An application for an order for -

(a) a grant of administration under section 13 of the Act; or

(b) a grant of administration ad colligenda bona,

shall be made by summons to a judge and shall be supported by an affidavit setting out the grounds of the application.

39 Administrations under section 11 of the Act

(1) An application under section 14(2) of the Act shall be made to a judge by way of summons supported by the affidavit of the applicant.

(2) The original grant may be noted with the appointment of the substituted administrator, or may be impounded, or revoked, as the circumstances of the case may require, or as the judge may direct.

(3) The original grantee, if he is not the applicant, shall be served with the summons unless the judge shall otherwise direct.

40 Administrations under section 15 of the Act

(1) Where an application is made under section 15 of the Act for a separate grant in respect of the real estate or any part thereof, or of the personal estate (not being trust estate), the oath shall state that the deceased died solvent.

(2) The renunciation or consent, in respect of that part of the estate, of all persons first entitled to a general grant, must be filed, and so in like manner in respect of a grant of trust property only.

(3) An application for an order for a grant under section 15 of the Act limited to part of an estate shall be made by summons to a judge and shall be supported by an affidavit stating -

(*a*) whether the application is made in respect of -

(i) the real estate only or any part thereof;

(ii) real estate and personal estate; or

(iii) a trust estate only;

(*b*) whether the estate is known to be insolvent; and

(*c*) that every person entitled to a grant in respect of the whole estate in priority to the applicant has been cleared off.

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41 Administrations under section 21 of the Act

(1) An application under section 21 of the Act shall be made by way of summons, and the judge may require notice to be given to persons having a prior right to a grant or to such other persons as he may think fit.

(2) A grant under the said section may be limited as to time, or to portion of the estate, or otherwise as the Court may think fit.

42 Grants to an attorney

In the case of a person residing out of Tasmania, administration, or administration with the will annexed, may be granted to his attorney, acting under a power of attorney.

43 Grants of administration to guardians

Grants of administration may be made to guardians of infants for their use and benefit, and elections by infants over 7 years of age of a guardian will be required, and assignments of guardians to infants over that age will be dispensed with.

44 Assignment of guardians

In cases of infants under the age of 7 years not having a testamentary guardian, or a guardian appointed by the Court, a guardian must be assigned by order of a judge; the order is to be obtained on summons supported by an affidavit showing that the proposed guardian is either next-of-kin of the infants, or that their next-of-kin has renounced his right to the guardianship, and has consented to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.

45 Guardians may act in certain cases without being specially assigned
Where there are infants, both over and under the age of 7 years, the guardian elected by the infants over 7 years of age may act for the infants under that age without being specially assigned to them by order of a judge, but if the object be to renounce a grant, the guardian must be specially assigned to the infants by order of a judge.

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Grants in case of mental or physical incapacity

45A Administration for use and benefit of incapacitated persons entitled to grant.

(1) Subject to this rule, where a judge is satisfied upon summons supported by an affidavit that a person entitled to a grant is, by reason of mental or physical incapacity, incapable of managing his affairs, administration for the use and benefit of that person, limited during his incapacity or in such other way as the judge directs, may be granted to such other person as the judge may, by order, direct.

(2) Where a person other than the Public Trustee makes an application under this rule, he shall give notice of the application to the Public Trustee.

(3) A person who makes an application under this rule on the ground of the physical incapacity of a person entitled to a grant shall give notice of the application to that last-mentioned person.

(4) No grant of administration shall be made on an application under this rule unless every person who is entitled in the same degree as the person in respect of whose incapacity the application is made has been cleared off.

PROBATE RULES 1936 (Tas)

RESEALING OF GRANTS

Rules 46-55

46 Applications for resealing to be accompanied by oath

An application under Part VI of the Act must be accompanied by an oath of the executor, administrator, or attorney in the prescribed form.

47 Bonds on resealing letters of administration

(1) On application to seal letters of administration, the administrator or his attorney shall give a bond in the prescribed form to the value of the estate of the deceased within the jurisdiction of the Court.

(2) The same practice as to sureties shall be observed as on an application for letters of administration.

48 Applications by creditors

An application by a creditor under section 51 of the Act shall be made by summons supported by affidavit.

49 Evidence as to domicile

The Registrar in any case, may require further evidence as to domicile, and shall require such evidence whenever the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in the grant.

50 Seal not to be affixed in certain cases

If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the grant issued, the seal shall not be affixed unless the grant is such as would have been made by the Supreme Court of this State.

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51 Copies of all testamentary papers to be included

The grant, or copy grant, to be sealed, and the copy to be deposited in the Registry, must include copies of all testamentary papers admitted to probate.

52 Where delay is made in applying for resealing

(1) When the application to seal a probate or letters of administration is made after the lapse of 3 years from the death of the deceased, the reason for the delay is to be certified to the Registrar.

(2) If such certificate is unsatisfactory, the Registrar shall require such proof of the cause of delay as he may think fit.

53 Order of judge necessary in certain cases

Special or limited or temporary grants shall not be sealed without an order of a judge.

54 Notice of resealing to be given

Notice of the sealing in Tasmania of a grant shall be sent to the court from which the grant issued.

55 Notices relating to resealing of Tasmanian grants

When intimation has been received of the resealing of a Tasmanian grant, notice of the revocation of, or any alteration in, such grant shall be sent to the court by whose authority such grant was resealed.

PROBATE RULES 1936 (Tas)

GENERAL RULES AND ORDERS FOR THE REGISTRAR

Rules 56-66

56 Time when probate or letters of administration with will annexed may be issued

No probate, or letters of administration with the will annexed, shall issue until after the lapse of 7 days from the death of the deceased, unless by the direction of a judge.

57 Time when letters of administration may be issued

No letters of administration shall issue until after the lapse of 14 days from the death of the deceased, unless by the direction of a judge.

58 Delay in applying for probate or administration

(1) In every case where probate or administration is, for the first time, applied for after the lapse of 3 years from the death of the deceased, the reason for the delay is to be certified to the Registrar.

(2) If such certificate is unsatisfactory, the Registrar shall require such proof of the alleged cause of delay as he may see fit.

59 Trust corporations

Where application is made for probate or administration by a trust corporation other than the Public Trustee, the officer appointed by the corporation for such purpose shall in every case depose, in the oath to lead the grant, that the corporation is a trust corporation, and, except where such corporation has been appointed executor, shall further depose in what manner such corporation has been authorised to apply for the grant by the persons entitled thereto.

60 Excess executors

Where there are more than 4 executors who have not renounced and are competent to take probate, the grant shall bear a notation that power is reserved to the other executors to apply on vacancies occurring.

61 Oath of executors and administrators

The usual oath of administrators, as well as that of executors and administrators with the will annexed, is to be subscribed and sworn by them as an affidavit, and then filed in the Registry—

62 Proof of death

The affidavit of death shall state the deponent's means of knowledge to the satisfaction of the Registrar.

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63 Affidavit of assets and liabilities

(1) A person who applies to the Registrar for probate or letters of administration or to have the seal of the Court affixed to any probate or letters of administration granted in another jurisdiction shall, on making the application, lodge with the Registrar ¾

> (a) a duplicate original of an affidavit of assets and liabilities in accordance with Form 1 in the Schedule to the *Deceased Persons' Estates Duties Regulations* 1963, if the Commissioner of Taxes requires such an affidavit to be so lodged by that person; or
>
> (b) an affidavit of assets and liabilities, to be known as "a short form affidavit" in any other case.

(2) A short form affidavit shall be in accordance with Form IIIa in Part III of the Appendix to these rules.

(3) If, after an applicant has lodged with the Registrar an affidavit for the purposes of subrule (1), it is found to be inaccurate or incomplete, the applicant shall forthwith lodge with the Registrar a further affidavit correcting the inaccuracy or supplying the deficiency.

(4) A person is not entitled to —

(*a*) search for, inspect, or make a copy of any information contained in, an affidavit lodged under this rule; or

(*b*) inspect or make a copy of any information contained in an election filed by the Public Trustee or a trustee company,

unless the Registrar is satisfied that that person is, as the case may be -

(*c*) the executor or administrator of the relevant estate;

(*d*) a beneficiary in that estate;

(*e*) a person having a genuine claim against that estate;

(*f*) the Public Trustee, in the case of an election filed by him;

(*g*) an officer of a trustee company, in the case of an election filed by that company;

(*h*) a person having a reason which is valid, in the opinion of the Registrar, for making any such search, inspection, or copy, in the case of an affidavit, or for making any such inspection or copy, in the case of an election; or

(*i*) the agent of any of the persons mentioned in paragraphs (*c*) to (*h*).

(5) In subrule (4)(*g*), "officer", in relation to a trustee company, includes a director, secretary, manager, executive officer, or employee of the company.

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64 Identity of parties

The Registrar may, in cases where he deems it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

65 Testamentary papers to be marked

Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will annexed is sworn, must be signed by such executor or administrator and by the person before whom he is sworn.

66 Searches, inspections, and office copies

(1) Subject to rule 63(4), any person may, on payment of the prescribed fee, search and inspect any will or other document filed with the Registrar.

(2) Where a grant of probate or letters of administration has been made by the Court or an election has been filed by the Public Trustee or a trustee company, any person may, on payment of the prescribed fee, be supplied with an office copy of the grant, or, in the case of an election, with an office copy of the election if the Registrar is satisfied that he is one of the persons mentioned in paragraphs (*c*) to (*i*) of rule 63(4).

(3) The seal of the Court shall not be affixed to an office copy unless the Registrar has certified it to be an examined copy

PROBATE RULES 1936 (Tas)

RENUNCIATIONS

Rules 67-68A

67 Effect of renunciation of probate: Renunciations withdrawable in certain cases

(1) Renunciation of probate by an executor shall not operate as a renunciation of any right which he may have to a grant of administration in another capacity, unless he expressly renounces that right.

(2) Unless a judge in chambers otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in another capacity.

(3) Subject to subrule (4), a renunciation of probate or administration may be withdrawn at any time on the order of a judge in chambers.

(4) Notwithstanding subrule (3), leave to withdraw a renunciation of probate shall not be given to an executor after a grant of probate has been made to another person who is entitled thereto in a lower capacity, unless the judge to whom the application for leave is made is satisfied that there are exceptional circumstances which justify the granting of the application.

68 Withdrawal of renunciations

(1) Where an executor, who has renounced probate, applies under rule 67 to a judge for leave to withdraw his renunciation, after a grant has been made, he shall lodge such grant with the papers on motion.

(2) When leave to withdraw a renunciation has been granted, a notation of the subsequent probate shall be made upon the original grant and the record thereof; or, in the event of the original grant not being available, upon the record.

(3) The grant when so noted shall be retained in the Registry unless the judge shall otherwise direct.

68A Application of rules 4, 5, and 6 of Order 41

The provisions of rules 4, 5, and 6 of Order 41 of the Rules of Court shall, *mutatis mutandis,* apply to non-contentious business or common form business.

PROBATE RULES 1936 (Tas)

AFFIDAVITS

Rules 69-76

69 Requirements for affidavits

(1) Every affidavit shall be drawn in the first person, and the addition and true place of abode of every deponent making it shall be inserted therein.

(2) An affidavit that is filed with the Registrar by a practitioner shall state the office address of the practitioner.

70 Names of persons swearing affidavit to be inserted in jurat

In every affidavit made by 2 or more deponents, the name of each person swearing the affidavit shall be inserted in the jurat, except that, if the oaths of all the deponents are taken at one time by the same person, it shall be sufficient to state that it was sworn by "both (or 'all') the abovenamed deponents".

71 Interlineations and alterations to be authenticated

No affidavit, having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or the Registrar, be filed or used in any matter depending in the Court or Registry, unless the interlineation or alteration, not being an erasure, is authenticated by the initials of the person taking the affidavit, indicating the exact nature and extent thereof, or, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the person taking it.

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72 Where affidavits made by blind or illiterate persons

Where an affidavit is made by any person who is blind, or who, from his signature or otherwise, appears to be illiterate the person before whom such affidavit is made shall state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and that he made his mark, or wrote his signature, in the presence of the person before whom the affidavit was made.

73 Affidavits insufficient in certain cases

No affidavit shall be sufficient which has been sworn before the party on whose behalf the same is offered.

74 - ..... Rescinded by SR 1980, No. 134

75 Subscribing witnesses to will to depose to certain facts

In every case where an affidavit is made by a subscribing witness to a will, he shall depose as to the mode in which the will was executed and attested.

76 Affidavits to be fairly and legibly written

The Registrar shall not allow any affidavit to be filed (except by leave of a judge) which is not fairly and legibly written.

PROBATE RULES 1936 (Tas)

CAVEATS

Rules 77-82

77 Caveats to be entered in Registry

Any person intending to oppose the issue of a grant of probate or letters of administration shall, either personally or by his practitioner, enter a caveat in the Registry.

78 Provisions relating to caveats and renewal of caveats

(1) A caveat shall bear date on the day it is entered, and, if not withdrawn, shall, subject to the provisions of rule 82, remain in force for the space of 6 months only, unless previously renewed.

(2) A caveat may be renewed at any time prior to its expiry, and shall remain in force for 6 months from the date of the last renewal.

(3) Every caveat shall give an address within 10 kilometres of the Registry at which writs, proceedings, and other documents requiring service may be left.

79 Caveat bar to sealing of grant

No grant shall be sealed at any time while an effective caveat exists.

80 Warnings to caveats

(1) All caveats shall be warned from the Registry, and the warning shall be signed by the Registrar.

(2) The warning may be served personally or left at the address for service mentioned in the caveat or sent by registered post to that address.

(3) The warning shall specify a time for appearance, which shall be fixed by the Registrar in conformity with the rules relating to appearance to writs of summons.

81 Particulars to be stated in warnings

The warning to a caveat shall stare the name and interest of the party on whose behalf the same is issued, and, if such person claims under a will, shall state the date of such will, and shall contain an address for service within one mile of the Registry at which any proceeding or document requiring service may be left.

82 Lapse of caveats

Where no appearance has been entered to a warning duly served, the caveat shall lapse upon the filing of an affidavit of the service of the warning, stating the manner of service, and of search for appearance, and of nonappearance.

PROBATE RULES 1936 (Tas)

AMENDMENT AND REVOCATION OF GRANTS

Rule 82A

82A Amendment and revocation of grants

(1) Subject to subrule (2), where a judge is satisfied upon summons supported by an affidavit that a grant should be amended or revoked, he may make an order accordingly.

(2) Notwithstanding subrule (1), except in special circumstances at the discretion of a judge, no grant shall be amended or revoked except on the application or with the consent of the person to whom the grant was made.

PROBATE RULES 1936 (Tas)

CITATIONS
Rules 83-86

83 Affidavits to be filed

No citation shall issue under seal of the Court until an affidavit in verification of the averments it contains has been filed in the Registry.

84 Caveat to be entered against estate of deceased

Before any citation is signed by the Registrar, a caveat shall be entered against any grant being made in respect of the estate of the deceased to which such citation relates.

85 Service of citations

(1) Citations shall be served personally.

(2) Personal service shall be effected by leaving a true copy of the citation with the party cited, producing the original if demanded.

(3) A judge may, if he thinks fit, dispense with service of a citation upon any of the persons mentioned in section 155(1) of the Supreme Court Civil Procedure Act 1932, if he is satisfied -

(*a*) that the person to be served is incapable of understanding the citation;

(*b*) that the service of the citation would be injurious to his health; or

(*c*) that service of the citation is impracticable or inexpedient.

86 Advertisement of citations

Citations and other instruments which cannot be served personally shall be served by the insertion of the same, or of an abstract thereof, settled and signed by the Registrar, as an advertisement in such newspapers, and at such intervals, as a judge may direct

PROBATE RULES 1936 (Tas)

NOTICE TO KING'S PROCTOR
Rules 87-88

87 Notices to be given of certain applications for letters of administration

In all cases not affected by the *Status of Children Act* 1974, where application is made for letters of administration (either with or without the will annexed) of the goods of an illegitimate person dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relation, notice of such application shall be given to the Attorney-General in order that he may determine whether he will interfere on the part of the Crown and no grant shall be issued until the Attorney-General has signified the course which he thinks proper to take.

88 Citations where persons die intestate

(1) In the case of a person dying intestate leaving no known person entitled to share in his estate, a citation must be issued against all persons having, or pretending to have, a right to share in the estate.

(2) Such citation shall be served upon the Attorney-General and upon such persons, if any, and in such manner, as a judge shall direct.

PROBATE RULES 1936 (Tas)

ATTENDANCE WITH DOCUMENTS

Rules 89-90

89 Applications for production of documents within one mile of Registry

If a will or other document filed in the Registry is required to be produced at any place within one mile of the Registry, application shall be made for that purpose not later than the day before the day on which it is to be produced.

90 Applications for production of documents beyond one mile of Registry

If a will or other document filed in the Registry is required to be produced at any place beyond one mile from the Registry, application shall be made for that purpose so as to allow time for making and examining a copy of such will or other document to be deposited in its place, at least 3 days before the day on which the document is to be produced.

PROBATE RULES 1936 (Tas)

SUBPOENAS TO BRING IN TESTAMENTARY PAPERS
Rules 91-93

91 Testamentary papers under subpoena to be taken to Registrar

Any person bringing in a will or testamentary paper in obedience to a subpoena shall take it to the Registrar, and the Registrar shall sign a minute recording the delivery thereof and issue a receipt for the same.

92 Minutes of subpoenas and fees payable

(1) The minute is to be entered in a book to be kept by the Registrar for that purpose, and the fee for the entry, and a further fee for filing each testamentary paper, will then be payable.

(2) If such fees are not paid by the person bringing in the will or paper, the same shall be charged to the person who may first apply to the Registrar to make use of the will or paper so brought in.

93 Appearances may be entered

Any person served with a subpoena to bring in a testamentary paper may enter an appearance if he thinks fit.

PROBATE RULES 1936 (Tas)

COSTS FEES AND CHARGES

94 Fees (Amended by SR 2011 No 16)

(1) There shall be payable to the Registrar on proceedings (other than contentious proceedings) under the Act and these rules the fees set out in Part I of the Appendix.

(1A) The fees set out in Part I of the Appendix as substituted by the Probate Amendment Rules 2011 apply to proceedings whether those proceedings have commenced before or commence after those rules take effect.

(2) There shall be payable to a commissioner of the Supreme Court the fees specified in Part I of the Appendix in respect of the matters specified in that Part.

95 (Rescinded by SR 2011 No 16)

96 (Rescinded by SR 2011 No 16)

97 (Rescinded by SR 2011 No 16)

98 (Rescinded by SR 2011 No 16)

99 (Rescinded by SR 2011 No 16)

100 (Rescinded by SR 2011 No 16)

101 (Rescinded by SR 2011 No 16)

PROBATE RULES 1936 (Tas)

GENERAL

102 Application of Imperial rules

(1) The prescribed rules, so far as they are applicable, apply to all matters relating to the administration of the estates of deceased persons for which no provision is made by these rules.

(2) In subrule (1), "prescribed rules" means the rules of court for the time being in force under the *Supreme Court of Judicature (Consolidation) Act* 1925 of the Imperial Parliament and any rules of court or probate rules that may for the time being be in force under the Administration of Estates Act 1925 of that Parliament.

(3) A reference in subrule (2) to an Imperial Act includes a reference to that Act as amended from time to time and any Imperial Act passed in substitution for that Act.

PROBATE RULES 1936 (Tas)

FORMS

103 Forms

The forms set out in **Part III** of the Appendix shall be used, so far as applicable, in all proceedings under these rules.