

Malawi

## Statute Law (Miscellaneous Provisions Act) Chapter 5:01

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# Malawi

## Statute Law (Miscellaneous Provisions Act)

### Chapter 5:01

Assented to on 6 November 1967

Commenced on 14 November 1967

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[27 of 1967; 9 of 1977]*

**An Act to consolidate, replace and amend certain statutory provisions relating to Compensation in cases of fatal Accident, survival of causes of action, tortfeasors, contributory negligence, common employment, prerogative writs, execution of instruments by corporations, frustrated contracts, apportionment and matters connected therewith**

#### 1. Short title

This Act may be cited as the Statute Law (Miscellaneous Provisions) Act.

### Part I – Fatal accidents

#### 2. Interpretation

- (1) In this Part, except where the context otherwise requires—  
“**child**” means a son, a daughter, a grandson, a granddaughter, a stepson and a stepdaughter;  
“**parent**” means a father, a mother, a grandfather, a grandmother, a stepfather and a stepmother.
- (2) For the purposes of this section, a person shall be deemed to be the child or parent of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under this section is included within the meaning of the expression “child” and “parent”, any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.
- (3) In this section, “**adopted person**” means a person who has been adopted under any written or customary law for the time being in force in the country in which such adoption took place.

#### 3. Action maintainable against person causing death through wrongful act

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

#### 4. Action to be for benefit of family of deceased

- (1) Every action brought by virtue of this Part shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall, subject to [section 7](#), be

brought by and in the name of the executor or administrator of the person deceased; and in every such action, the court may award such damages as it may think proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit such action is brought; and the amount so recovered after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned persons in such shares as the court, by its judgment, shall find and direct:

Provided that not more than one action shall lie for and in respect of the same subject-matter of complaint, and that every such action shall be commenced within three years after the death of such deceased person.

- (2) In assessing damages, under subsection (1), the court shall not take into account—
- (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this Act;
  - (b) any widows' or orphans' pension or allowance payable or any sum payable under any contributory pension or other scheme declared by the Minister, by notice published in the *Gazette*, to be a scheme for the purpose of this paragraph.

## 5. Payment into court

Notwithstanding [section 4](#), it shall be sufficient, when the defendant pays money into court, that he pays it as a compensation in one sum to all persons entitled under the said section to damages for his wrongful act, neglect or default, without specifying the shares into which it is to be divided by the court; and if the said sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court shall think the same sufficient, the defendant shall be entitled to judgment on that issue.

## 6. Funeral expenses may be awarded by way of damages in certain cases

In an action brought by virtue of this Part, the court may award, in addition to any damages awarded under [section 4](#) (1), damages in respect of the funeral expenses of the deceased person, if such expenses have been incurred by the parties for whom and for whose benefit the action is brought.

## 7. Action by persons beneficially interested

Where, in any case intended and provided for by this Part, there shall be no executor or administrator of the person deceased, or if no action is brought by such executor or administrator within six months after the death of such deceased person, an action may be brought by and in the name or names of all or any of the persons for whose benefit such action would have been brought, if it had been brought by and in the name of such executor or administrator, and every action so brought shall be for the benefit of the same person or persons as if it were brought by and in the name of such executor or administrator.

## 8. Plaintiff to deliver full particulars of the persons for whom damages claimed

In every action brought by virtue of this Part, the plaintiff on the record shall be required, together with the statement of claim, to deliver to the defendant, or his legal representative, full particulars of the person or persons for whom, and on whose behalf, such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

## 9. In the event of death, action maintainable against estate

- (1) Upon the death of any person against whom, were it not for his death, an action would be maintainable by virtue of this Part, such action shall be maintainable against his estate.

- (2) No proceedings shall be maintainable in respect of a cause of action which by virtue of this section has survived against the estate of a deceased person, unless either—
  - (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
  - (b) proceedings are taken in respect thereof not later than six months after his personal representative took out representation.
- (3) Where, by virtue of this Act, a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action as would have subsisted if he had died after the damage was suffered.
- (4) Notwithstanding any other written law, in the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action by reason of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate.

## Part II – Survival of causes of action

### 10. Effect of death on certain causes of action

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

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.
- (2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—
  - (a) shall not include any exemplary damages;
  - (b) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
  - (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.
- (3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless either—
  - (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
  - (b) proceedings are taken in respect thereof not later than six months after his executor or administrator took out representation.
- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.
- (5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by Part I, or the Warsaw Convention, 1929 (relating to carriage by air) in its application to Malawi

or any other Convention relating to carriage by air to which Malawi accedes, and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under Part I and such Convention as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

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

### Part III – Joint tortfeasors

#### 11. Proceedings against, and contribution between, joint and several tortfeasors

- (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—
- (a) a judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
  - (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise), the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
  - (c) a tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued in due time have been, liable in respect of the same damage whether as a joint tortfeasor or otherwise:

Provided that—

- (i) no person shall be entitled to recover contribution under this paragraph from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought;
  - (ii) no proceedings under this paragraph may be brought after the expiry of the period—
    - (A) within which proceedings were maintainable by the person who suffered the damage or the person entitled to bring an action under section 4 or 7; or
    - (B) of six months from the date on which proceedings by the person who suffered the damage or the person entitled to bring an action under section 4 or 7, or proceedings under this paragraph were served on the person claiming contribution, whichever period last expires;
- (2) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.
- (3) For the purposes of this section—
- (a) “parent” and “child” have the same meaning as they have for the purposes of Part I;
  - (b) “proceedings” includes third party proceedings; and

- (c) the reference in this section to “the judgment first given” shall in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed, and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.
- (4) Nothing in this section shall—
  - (a) affect any criminal proceedings against any person in respect of any wrongful act; or
  - (b) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been enacted.

## **Part IV – Contributory negligence**

### **12. Apportionment of liability in case of contributory negligence**

- (1) Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage:  
Provided that—
  - (a) this subsection shall not operate to defeat any defence arising under a contract;
  - (b) where any contract or written law providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.
- (2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.
- (3) Part III shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.
- (4) When any person dies as a result partly of his own fault and partly of the fault of any other person or persons, and accordingly, if an action were brought for the benefit of the estate under Part II, the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under Part I, shall be reduced to a proportionate extent.
- (5) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his executor or administrator by pleading any written law limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contribution from that other person or executor or administrator by virtue of the said subsection.
- (6) Article 21 of the Warsaw Convention 1929 (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person) or any provision to the like effect in any Convention, relating to carriage by air, to which Malawi accedes in addition to or in lieu of the said Warsaw Convention, shall, in its application to Malawi, have effect subject to this section.
- (7) For the purposes of this section, “fault” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or which would, apart from this section, give rise to the defence of contributory negligence.

### 13. Provisions as to workmen and employers

- (1) Where, within the time limited for the taking of proceedings under the Workmen's Compensation Act (hereafter in this section referred to as "the Act") an action is brought to recover damages independently of the Act in respect of an injury or disease giving rise to a claim for compensation under the Act, and it is determined in that action that—
  - (a) damages are recoverable independently of the Act subject to such reduction as is mentioned in [section 12](#) (1) of this Act; and
  - (b) the employer would have been liable to pay compensation under the Act,and if the claimant chooses to have compensation assessed and awarded in accordance with [section 25](#) (2) of the Act (which enables the court, on the dismissal of an action to recover damages independently of the Act, to assess and award compensation under the Act), that section shall apply in all respects as if the action has been dismissed and no damages shall be recoverable in the said action.
- (2) Where a workman or his executor or administrator or any of his dependants has recovered compensation under the Act, in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of [section 12](#) of this Act from some person other than the employer (hereinafter referred to as the third party), any right conferred by [section 24](#) of the Act on the person by whom the compensation was paid, or on any person called on to pay an indemnity under [section 23](#) of the Act, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.
- (3) For the purposes of this section, "dependants", "employer" and "workman" have the same meaning as in the Act.

*[Cap. 55:03]*

### 14. Application of this Part

This Part shall not apply to any claim to which [section 1](#) of the Maritime Conventions Act, 1911, of the United Kingdom applies, and that Act shall have effect as if this Part had not been enacted.

*[1 and 2 Geo. 5, c. 57]*

## Part V – Abolition of the doctrine of common employment

### 15. Common employment

- (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him that that person was at the time the injuries were caused in common employment with the person injured.
- (2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act), shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.
- (3) For the purposes of this section, "personal injury" includes any disease and any impairment of a person's physical or mental condition, and "injured" shall be construed accordingly.

## Part VI – Mandamus, prohibition, certiorari and habeas corpus

### 16. Abolition of prerogative writs and substitution of orders or directions

- (1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs.
- (2) In any case in which the High Court in England is, by virtue of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order.  
*[1 and 2 Geo. 6, c. 63]*
- (3) No return shall be made to any such order, and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5).
- (4) In any written law, references to any writ of mandamus, prohibition or certiorari shall be construed as references to the corresponding order, and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.
- (5) Any person aggrieved by an order made in the exercise of the jurisdiction of the High Court under the foregoing provisions of this section may appeal therefrom to the Supreme Court of Appeal.
- (6)
  - (a) The High Court may whenever it thinks fit direct—
    - (i) that any person within the limits of Malawi be brought up before the Court to be dealt with according to law;
    - (ii) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;
    - (iii) that any prisoner detained in any prison situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
    - (iv) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any written law for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;
    - (v) that any prisoner within such limits be removed from one custody to another for the purpose of the trial; and
    - (vi) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.
  - (b) The Chief Justice may from time to time make rules to regulate the procedure in cases under this subsection.

*[9 of 1977]*

### 17. Rules of court

- (1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court—
  - (a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order under section 16 is sought;
  - (b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;

- (c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon except with the leave of the court, other than the relief and grounds specified when the application for leave was made.
- (2) Subject to subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.
- (3) In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of such judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where such judgment, order, decree, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (4) Until rules under subsection (1) have been made, the rules of court made under section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925, pursuant to section 10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom shall apply with such adaptation as appears appropriate.

*[15 and 16 Geo. 5, c. 49]*

*[1 and 2 Geo. 6, c. 63]*

## **Part VII – Execution of instruments by corporations**

### **18. Execution of instruments by or on behalf of corporations**

- (1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.
- (2) The board of directors, council or other governing body of a corporation aggregate may by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.
- (3) Where a person is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.
- (4) Where a corporation aggregate is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute a deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorized.
- (5) The foregoing provisions of this section apply to transactions wherever effected.

- (6) Notwithstanding anything contained in this section, any mode of execution or attestation authorized by law or by practice or by the written law, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorized by this section) be as effectual as if this section had not been passed.

## Part VIII – Frustrated contracts

### 19. Adjustment of rights and liabilities of parties to frustrated contracts

- (1) Where a contract governed by the law of Malawi has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to [section 20](#), have effect in relation thereto.

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

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

- (3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular—
  - (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and
  - (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.
- (4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.
- (5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any written law.
- (6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

## 20. Provision as to application of this Part

- (1) This Part shall apply to contracts, whether made before or after the commencement of this Act, as respects which the time of discharge is on or after the commencement of this Act, but not to contracts as respects which the time of discharge is before the said date.
- (2) Where any contract to which this Part applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to [section 19](#) to such extent, if any, as appears to the court to be consistent with the said provision.
- (3) Where it appears to the court that a part of any contract to which this Part applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat [section 19](#) as only applicable to the remainder of that contract.
- (4) This Part shall not apply—
  - (a) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea; or
  - (b) to any contract of insurance, save as is provided by [section 19](#) (5); or
  - (c) to any contract to which section 9 of the Sale of Goods Act (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

*[Cap. 48:01]*

## Part IX – Apportionment

### 21. Rents and other periodical payments to accrue from day to day and be apportionable

All rents, annuities, salaries, pensions, dividends, interest and other periodical payments in the nature of income (whether received or made payable under an instrument in writing or otherwise) shall be deemed to accrue from day to day and shall be apportionable in respect of time accordingly:

Provided that—

- (a) this section shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place;
- (b) the apportioned part of any such rent or other payment shall be payable or recoverable in the case of a continuing rent or other such payment when the entire portion, of which such apportioned part forms part, shall become due and payable and, in the case of a rent or other such payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable if the same had not so determined.

## Part X – Application to the Government

### 22. Act to bind the Government

This Act shall bind the Government.