



## 2009 CHAPTER 6

### *Declarations of presumed death*

#### **Effect on property rights of variation order**

6.—(1) Subject to the following provisions of this section, a variation order shall have no effect on rights to or in any property acquired as a result of a declaration under section 1.

(2) Where a declaration under section 1 has been varied or revoked by a variation order, the High Court, on making the order, must make such further order, if any, in relation to any rights to or in any property acquired as a result of that declaration as it considers reasonable in all the circumstances of the case.

(3) An order made under subsection (2) shall not affect any income accruing between the date of a declaration under section 1 and the date of the variation order.

(4) In considering what order to make under subsection (2), the High Court must, so far as practicable in the circumstances, have regard to the following considerations, namely—

- (a) that, in the case of any property which is being or has been administered under a trust, any person who on account of the variation order would, apart from subsection (1), have been entitled to rights to or in any such property, or any person deriving right from that person, shall be entitled to have made over to him or her by the trustee in full satisfaction of those rights only—
  - (i) the said rights to or in any such property or other property for the time being representing it which is still in the hands of the trustee at the date of the variation order, and

- (ii) the value, as at the date of distribution, of the said rights to or in any such property which has been distributed;
  - (b) that any capital sum paid by an insurer as a result of the declaration (other than a capital sum which has been distributed by way of an annuity or other periodical payment) or any part of such sum should be repaid to the insurer if the facts in respect of which the variation order was made justify such repayment.
- (5) The High Court must not, except where it considers that there are exceptional circumstances, make an order under subsection (2) unless the application for the variation order has been made to the Court within the period of 5 years beginning with the date on which the declaration under section 1 was made.
- (6) Where any person who has acquired rights to or in any property as a result of a declaration under section 1, or any person deriving right from him or her, enters into a transaction with another person whereby that other person acquires in good faith and for value any right to or in that property or any part of it, the transaction and any title acquired under it by that other person shall not be challengeable on the ground that an order under subsection (2) has been made in relation to that property.
- (7) A trustee shall be liable to any person having entitlement by virtue of an order under subsection (2) for any loss suffered by that person on account of any breach of trust by the trustee in the administration or distribution of the whole or any part of the property, except in so far as the liability of the trustee may be restricted under any statutory provision or by any provision in any deed regulating the administration of the trust.