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For your information  
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No. 8/5

UNION OF SOUTH AFRICA

Central Native Appeal Court,  
P.O. Box 1179,  
JOHANNESBURG,

12th April, 1955.

The Assistant Director,  
South African Institute of Race Relations,  
P.O. Box 97,  
JOHANNESBURG.

Dear Sir,

With reference to your letter of the 5th April, 1955, the Acting President of this Court, Advocate Menge, states as follows:-

"In divorce, separation or nullity suits between Natives who have contracted civil marriages, - as opposed to Native customary unions, - Roman-Dutch law is applied precisely as in the case of Europeans in the Supreme Court; the only difference is that a more simplified and cheaper procedure has been laid down; - see Section 10, Act 9 of 1929 as amended by Section 27, Act 56 of 1949 and Section 26, Act 54 of 1952, and also the regulations published under Government Notice 2888 of 9th November, 1951, as amended by Government Notice No. 628 of 27th March, 1953.

"In regard to deceased estates where there is a valid will the matter is handled by the Master of the Supreme Court under Roman-Dutch law in the same way as in the case of Europeans - see Section 23, Act 38 of 1927. Where there is no valid will, i.e. on intestacy, the estate is administered by the Native Commissioner under the provisions of Government Notice No. 1664 of 20th September, 1929 as amended by Government Notices 716 of 1939, 1171 of 1939 and 939 of 1947. Briefly the position is that Roman-Dutch law will apply on intestacy in the case of certain exempted Natives (exempted from the operation of Native law); Natives who have contracted civil marriages in community of property or by ante-nuptial contract, and other Natives in whose cases the application of Native law would result in undue hardship. In all other cases the Native Commissioner applies Native law and custom.

"In speaking of Roman-Dutch law, it must be remembered that this has to some extent been modified by statute.

"Apart from the Acts and regulations quoted above there are useful articles on these subjects in the late Mr. Howard Rogers' book "Native Administration in the Union of South Africa", second edition (1949) at pages 215 and 223-230."

Yours faithfully,

(sgd.) C. Schoombee.

REGISTRAR

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