Article 18.

Actions and Proceedings.

§ 28A-18-1. Survival of actions to and against personal representative.

(a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of the person's estate.

(b) The following rights of action in favor of a decedent do not survive:

(1) Causes of action for libel and for slander, except slander of title;

(2) Causes of action for false imprisonment;

(3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death. (1868-9, c. 113, ss. 63, 64; Code, ss. 1490, 1491; Rev., ss. 156, 157; 1915, c. 38; C.S., ss. 159, 162; 1965, c. 631; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-18-2. Death by wrongful act of another; recovery not assets.

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled the injured person to an action for damages therefor, the person or corporation that would have been so liable, and the personal representatives or collectors of the person or corporation that would have been so liable, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or devises, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-48.37. All claims filed for burial expenses of the decedent and reasonable hospital and medical expenses shall be subject to the approval of the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time.

(b) Damages recoverable for death by wrongful act include:

(1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;

(2) Compensation for pain and suffering of the decedent;

(3) The reasonable funeral expenses of the decedent;

(4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected;

a. Net income of the decedent,
b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,
c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered;

(5) Such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had the decedent survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in G.S. 1D-5;

(6) Nominal damages when the jury so finds.

(c) All evidence which reasonably tends to establish any of the elements of damages included in subsection (b), or otherwise reasonably tends to establish the present monetary value of the decedent to the persons entitled to receive the damages recovered, is admissible in an action for damages for death by wrongful act.

(d) In all actions brought under this section the dying declarations of the deceased shall be admissible as provided for in G.S. 8-51.1. (R.C., c. 1, s. 10; c. 46, ss. 8, 9; 1868-9, c. 113, ss. 70-72, 115; Code, ss. 1498-1500; Rev., ss. 59, 60; 1919, c. 29; C.S., ss. 160, 161; 1933, c. 113; 1951, c. 246, s. 1; 1959, c. 879, s. 9; c. 1136; 1969, c. 215; 1973, c. 464, s. 2; c. 1329, s. 3; 1981, c. 468; 1985, c. 625; 1993, c. 299, s. 1; 1995, c. 514, s. 2; 1997-456, s. 7; 2006-264, s. 66(b); 2011-284, s. 16; 2011-344, s. 4; 2013-91, s. 1(a).)

§ 28A-18-3. To sue or defend in representative capacity.

All actions and proceedings brought by or against personal representatives or collectors upon any cause of action or right to which the estate of the decedent is the real party in interest, must be brought by or against them in their representative capacity. (1868-9, c. 113, s. 79; Code, s. 1507; Rev., s. 160; C.S., s. 164; 1973, c. 1329, s. 3.)

§ 28A-18-4. Service on or appearance of one binds all.

In actions against personal representatives or collectors, they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the plaintiff may proceed against those served, and if the plaintiff recovers, judgment may be entered against all. (1868-9, c. 113, s. 81; Code, s. 1508; Rev., s. 161; C.S., s. 165; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-18-5. When creditors may sue on claim; execution in such action.

An action may be brought by a creditor against the personal representative or collector on a demand at any time after it is due, but no execution shall issue against the personal representative or collector on a judgment therein against the personal representative or collector without leave of the court, upon notice of 20 days and upon proof that the defendant has refused to pay such judgment or its ratable part, and such judgment shall be a lien on the property of the estate of the decedent only from the time of such leave granted. (1868-9, c. 113, s. 82; Code, s. 1509; Rev., s. 162; C.S., s. 166; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-18-6. Service by publication on executor without bond.

Whenever process may issue against an executor who has not given bond, and the same cannot be served upon the executor by reason of the executor's absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions. (1868-9, c. 113, s. 94; Code, s. 1523; Rev., s. 163; C.S., s 167; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-18-7. Execution by successor in office.

Any personal representative or collector may have execution issued on any judgment recovered by any person who preceded the personal representative or collector in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done. (1868-9, c. 113, s. 84; Code, s. 1513; Rev., s. 164; C.S., s. 168; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-18-8. Action to continue, though letters revoked.

In case the letters of a personal representative or collector are revoked, pending an action to which the personal representative or collector is a party, the adverse party may, notwithstanding, continue the action against the personal representative or collector in order to charge the personal representative or collector personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the personal representative or collector in the administration of the estate, in the same manner as in case of death. (1868-9, c. 113, s. 85; Code, s. 1514; Rev., s. 165; C.S., s. 169; 1973, c. 1329, s. 3; 2011-344, s. 4.)