

CHAPTER 225

THE INTESTATES ESTATES ACT

Arrangement of Sections

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 INTESTATES ESTATES

(11th December, 1945.)

 S.R.O. 4/1945.
 22/1956.
 35/1986.
 4/1989.

1. This Act may be cited as the Intestates Estates Act. Short title.

2. In this Act— Interpretation.

"brother" or "sister" in relation to an intestate includes any child of the father or mother of the intestate;

"child" or "issue" in relation to a deceased person includes a child born out of wedlock in respect of whom

(a) that person has been adjudged by the High Court or Magistrate's Court to be the father or putative father, or

(b) that person has acknowledged himself to be the father under section 26 of the Births and Deaths (Registration) Act; Cap. 53.

"father" includes a person who has

(a) been adjudged by the High Court or the Magistrate's Court to be the father or putative father, or

(b) acknowledged himself to be the father under section 26 of the Births and Deaths (Registration) Act.

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

"personal chattels" means carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass,

books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money;

"residuary estate" means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate, after payment of all such funeral and administration expenses, debts and other liabilities as are properly payable thereout, which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will.

Abolition of descent to heir, curtesy, dower and escheat.

3. (1) With regard to the real estate and personal inheritance of every person dying after the commencement of this Act, there shall be abolished—

(a) all existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or otherwise howsoever; and

(b) tenancy by the curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or by custom or otherwise however; and

(c) dower and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or otherwise howsoever; and

(d) escheat to the Crown for want of heirs.

(2) Nothing in this section affects the descent or devolution of an entailed interest.

Succession to real and personal estate on intestacy.

4. (1) Subject to subsection (2) the residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely—

(a) If the intestate dies leaving a husband or wife and no issue or next-of-kin, the residuary estate shall be held on the statutory trusts for the husband or wife.

(b) If an intestate dies leaving a husband or wife and no issue but next-of-kin, in trust as to two-thirds of the residuary estate for the husband or wife and the remainder on the statutory trusts for the next-of-kin in equal shares.

(c) Subject to paragraph (4, if an intestate dies leaving

(i) a husband or wife and one child, two thirds of the residuary estate of the intestate shall be held on the statutory trusts for the husband or wife and the remainder shall be held on the statutory trusts for the child;

(ii) a husband or wife and children, one third of the residuary estate shall be held on the statutory trusts for the husband or wife and the remainder shall be held in trust for the children in equal shares.

(4 If any child of the intestate has predeceased him leaving issue and such issue is alive at the date of the intestate's death, the husband or wife shall take the same share of the estate as if that child had been living at that date, and the issue of that child shall take, in the manner provided for in paragraph (f), the share which that child would have taken if he had survived the intestate.

(e) If an intestate dies leaving issue and no husband or wife, his residuary estate shall be distributed among the issue in accordance with paragraph (f).

(f) If all the issue are in equal degree of relationship to the deceased person, the distribution shall be in equal shares among them; if they are not, it shall be *per stirpes*.

(g) If an intestate dies leaving neither husband or wife nor issue, the residuary estate of the intestate shall be held on the statutory trusts for his mother and father in equal shares if both survive the intestate, but, if only

one of them survives the intestate, upon trust for the survivor.

(*h*) If an intestate dies leaving neither husband or wife nor issue nor mother nor father, his residuary estate shall be held on the statutory trusts for his brothers and sisters in equal shares, and, if any brother or sister does not survive the intestate, the surviving children of the deceased brother or sister shall where any other brother or sister of the deceased person survives him take in equal shares the share that his mother or father would have taken if she or he had survived the intestate.

(*i*) If an intestate dies leaving neither husband or wife nor issue nor mother nor father nor brother nor sister, his residuary estate shall be held in trust for the children of his brothers and sisters in equal shares.

(*j*) If an intestate dies leaving neither husband or wife nor issue nor mother nor father nor brother nor sister nor children of any deceased brother or sister, his residuary estate shall, subject to subsections (3) and (5), be held on the statutory trusts in equal shares for his next-of-kin.

(2) If the intestate leaves a husband or wife (with or without issue or next-of-kin) the surviving husband or wife shall in every case take the personal chattels.

(3) Subject to subsection (4), the person who, at the date of the death of the intestate, stands nearest in blood relationship to him shall be taken to be his next-of-kin.

(4) Degrees of blood relationship shall be ascertained by counting the number of steps between the intestate and the relative in question counting directly in the case of those related lineally and through the nearest common ancestor in the case of those who are issue of an ancestor of the intestate but are not themselves ancestors of the intestate; but where a direct lineal ancestor and any other relative are so ascertained to be within the same degree of blood relationship to the intestate, the other relative shall be preferred to the exclusion of the direct lineal ancestor.

(5) If the intestate dies leaving—

(a) a husband or wife but no issue; or

(b) neither husband or wife nor issue,

relatives of the half-blood shall be treated as, and shall succeed equally with relatives of the whole blood in the same degree.

(6) In default of any person taking the estate of an intestate the residuary estate of the intestate shall vest in the Crown as *bona vacantia*.

(7) The Minister responsible for legal affairs may, if he thinks fit, waive in whole or in part and in favour of such person and upon such terms (whether including or not including the payment of money) as he thinks proper having regard to all the circumstances of the case, the right of the Crown under this Section.

5. (1) Where under this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts namely—

Statutory trust in favour of issue and other classes of relatives of intestate.

(a) in trust, in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;

(b) the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries, such infant shall be entitled to give valid receipts for the income of the infant's share or interest;

(c) where the property held on the statutory trusts for issue is divisible into shares, then any money or

property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;

(d) the personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss;

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—

(a) the residuary estate of the intestate and the income thereof and all statutory accumulations if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Act as if the intestate had died without leaving issue living at the death of the intestate;

(6) references in this Act to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest".

(c) references in this Act to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest".

(3) Where under this Act the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other

than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

6. (1) For the purposes of this Act the residuary estate of the intestate, or any part thereof, directed to be held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon the trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.

Meaning of the statutory trusts.

(2) Where—

(a) an undivided share was subject to a settlement; and

(b) the settlement remains subsisting in respect of other property; and

(c) the trustees thereof are not the same persons as the trustees for sale,

then the statutory trusts include a trust for the trustees for sale to pay the proper proportion of the net proceeds of sale or other capital money attributable to the share to the trustees of the settlement to be held by them as capital money arising under the Settled Estates Act.

Cap. 398.

7. Where any person dies leaving a will effectively disposing of part of his property, this Act shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications—

Application to cases of partial intestacy.

(a) The requirements as to bringing property into account shall apply to any beneficial interests acquired

by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons;

(b) The personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

Construction of documents.

8. (1) References to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, after the commencement of this Act, shall be construed as references to this Act; and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Act.

(2) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the commencement of this Act by reference to the Statutes of Distribution, shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.

Statute of Distribution (22 & 23 Chas. II, C. 10) not applicable to Antigua and Barbuda.

9. The Statute of Distribution, 22 & 23 Charles II c. 10 shall, in so far as the same may have hitherto had the force of law in Antigua and Barbuda, cease to have such force.

Exclusion from succession.

10. A person who has been found guilty of an offence against the intestate punishable by imprisonment for a maximum period of at least two years or by a more severe penalty, shall be precluded from taking any share in the estate of the intestate.

Non-application. Schedule.

11. The enactments specified in the Schedule do not apply in respect of the intestate estate of a person dying before the first day of January, 1987.

SCHEDULE

Section 11

1. In section 2 of this Act, the definitions of "brother" or "sister", "child" or "issue" and "father".

2. Section 4 of this Act as substituted by section 3 of the Intestates Estates (Amendment) Act 1986.

No. 35 of 1986.

3. Section 4 of the Intestates Estates (Amendment) Act 1986.

4. Section 10 of this Act.
