

THE INTESTATES' ESTATES AND PROPERTY
CHARGES ACT

ARRANGEMENT OF SECTIONS

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THE INTESTATES' ESTATES AND PROPERTY
CHARGES ACT

Cap. 166,
Acts
36 of 1976,
Sch.
1 of 1979,
1st Sch.
3 of 1988.

[1st June, 1937.]

Preliminary

1. This Act may be cited as the Intestates' Estates and Property Charges Act. Short title.

2.—(1) In this Act—

Interpreta-
tion.

(a) "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;

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

(c) "personal chattels" means furniture and effects, including, where relevant— 3/1988
S. 2(a).

(i) articles of household or personal use or ornament, plate, plated articles, linen, china, glass, books, pictures, prints, jewellery, musical and scientific instruments and apparatus, wines, liquors and consumable stores;

- (ii) bicycles, stables, horses and domestic animals; and
 - (iii) motor vehicles and accessories therefor; but not including—
 - (iv) furniture, motor vehicles or other effects, used at the time of the death of the intestate exclusively or principally for business purposes; or
 - (v) money or securities for money;
- (d) "spouse" includes—
- (i) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and
 - (ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death;
- (e) "single woman" and "single man" used with reference to the definition of "spouse" include a widow or widower, as the case may be, or a divorcee.

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S. 2 (b).

(2) Where for the purposes of this Act a person who is a single woman or a single man may be regarded as a spouse of an intestate then, as respects such intestate, only one such person shall be so regarded.

PART I. *Distribution of Estates of Intestates*

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 1st June, 1937, there shall be abolished—

[The inclusion of this page is authorized by L.N. 17/1989]

- (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 otherwise howsoever; 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.

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

4.—(1) The residuary estate of an intestate shall be distributed in the manner or held on the trusts specified in the following Table of Distribution—

Table of Distribution

Item 1. *The Surviving Spouse:*

The surviving spouse of the intestate shall take—

- (a) the personal chattels absolutely;
- (b) ten thousand dollars or a sum equal to ten per cent of the net value of the estate (excluding personal chattels), whichever is greater, free of death duties and costs;
- (c) interest at the rate of ten per cent per annum, or such other rate as may be fixed pursuant to subsection (4), on the sum payable under paragraph (b) until the sum is paid or appropriated; and

Succession
to real and
personal
estate on
intestacy,
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S. 3.

- (d) the whole or a proportion of the residue of the residuary estate (after making provisions pursuant to paragraphs (a), (b) and (c) apportioned on the following principles—
- (i) if there is no child or other issue and no parent surviving the intestate, the whole of the residue aforesaid, absolutely;
 - (ii) subject to subsection (5)—
 - (A) if there is only one child of the intestate, two-thirds of such residue, absolutely;
 - (B) if there is more than one child of the intestate, one-half of such residue, absolutely;
 - (iii) if there is no child or other issue surviving the intestate but a surviving parent or parents, as the case may be, two-thirds of such residue, absolutely.

Item 2. *The Issue:*

There shall be held upon the statutory trusts for the issue of the intestate—

- (a) if the intestate leaves no surviving spouse, the residuary estate;
- (b) if the intestate leaves a surviving spouse, the residuary estate after taking account of all entitlements of the surviving spouse under Item 1.

Item 3. *Parents:*

If the intestate leaves a parent or parents and—

- (a) leaves no surviving spouse or issue, the parents or surviving parent, as the case may be, shall take (where more than one survive the intestate, in equal shares) the residuary estate, absolutely;

- (b) leaves a surviving spouse but no issue, the parents or surviving parent, as the case may be, shall take (where more than one survive the intestate, in equal shares) the residue of the residuary estate after payment or appropriation of all entitlements of the surviving spouse under Item 1, absolutely.

Item 4. Other Eligible Relatives:

(1) If the intestate leaves no surviving spouse, issue or parents, the residuary estate shall devolve on the other relatives entitled under this Item who survive the intestate, in the following order and manner, namely—

- (a) firstly, be held under the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then
- (b) secondly, be held under the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then
- (c) thirdly, on the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then
- (d) fourthly, be held under the statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then
- (e) fifthly, be held under the statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the half blood of a parent of the intestate).

(2) Any persons who are eligible, pursuant to this Item or under the statutory trusts, to qualify for any interest in the residuary estate are hereinafter referred to as "other eligible relatives".

Item 5. *Bona Vacantia*:

If—

- (a) the intestate leaves no surviving spouse, issue, parents or other eligible relatives; or
- (b) for any other reason there is default of any person taking an absolute interest under the preceding Items of this Table,

then, subject to subsection (2) the residuary estate of the intestate shall devolve on the Crown as *bona vacantia*.

(2) The Crown, in accordance with existing practice, may provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision out of the whole or any part of the property devolving to the Crown under Item 5 of the Table of Distribution.

(3) A husband and wife shall for all purposes of distribution or division under this section be treated as two persons.

(4) The Minister may by order published in the *Gazette* vary the rate of interest specified in Item 1 (c) of subsection (1), so, however, that such order shall be subject to negative resolution.

(5) Where a child of an intestate predeceases the intestate and is survived by issue who survives the intestate the issue shall take the share to which that child would have been entitled, so, however, that the apportionment of the estate between the spouse and issue shall be on such basis as would apply if the child of the intestate had survived the intestate.

5.—(1) Where under this Part 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 trusts in favour of issue and other classes of relatives of intestate.

- (i) in trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of eighteen 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 eighteen 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;
- (ii) 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;
- (iii) 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

1/1979
1st Sch.

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;

- (iv) 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.

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A A

(1A) Notwithstanding subsection (1) and that the interest of an infant may not be vested, trustees or an administrator may from time to time pay or apply any capital money subject to the trust for the advancement or benefit of any infant beneficiary in such manner as they may, in their absolute discretion think fit, so, however, that—

- (a) the money so paid or applied for the advancement or benefit of the infant beneficiary shall not exceed in total an amount equal to one-half of the amount which would be payable had the interest of the infant beneficiary vested; and
- (b) if the interest of the infant beneficiary vests in the trust property the money so paid or applied shall be brought into account as part of the share of that beneficiary; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(1B) Subsection (1A) shall apply to all trusts existing at the 28th day of March, 1988.

(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 Part as if the intestate had died without leaving issue living at the death of the intestate;
- (b) references in this Part to the intestate “leaving no issue” shall be construed as “leaving no issue who attain an absolutely vested interest”;
- (c) references in this Part 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 Part 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. For the purposes of this Part 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 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

Meaning of the statutory trusts.

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.

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 Land Act.

Powers of personal representative to raise sums in the interest of a surviving spouse.

3/1988
S. 5.

7. The personal representative may, on the security of the whole or part of the residuary estate of the intestate (other than the personal chattels), raise—

- (a) the whole or any part of any amount payable to a surviving spouse pursuant to paragraphs (b) and (c) of Item 1 of the Table of Distribution; and
- (b) the amount, if any, properly required for the payment of the costs of the transaction.

Application to cases of partial intestacy.

8. Where any person dies leaving a will effectively disposing of part of his property this Part 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—

- (a) the requirements as to bringing property into account shall apply to any beneficial interests acquired by the surviving spouse and any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons; 3/1988
S. 6.
- (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 Part 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.

9.—(1) References to any Statutes or Laws of Distribution in an instrument *inter vivos* made or in a will coming into operation after the 1st June, 1937, shall be construed as references to this Part; and references in such 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 Part. Construction
of docu-
ments.

(2) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the 1st June, 1937, by reference to the Statutes or Laws of Distribution, shall, unless the contrary thereby appears, be construed as referring to the enactments (other than the Intestates Estates Law, 1906) relating to the distribution of effects of intestates which were in force immediately before the 1st June, 1937.

10.—(1) Where an infant dies after the 1st June, 1937, without having been married, and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will) to a vested Savings.

estate in fee simple or absolute interest in freehold land, such infant shall be deemed to have had an entailed interest, and the settlement shall be construed accordingly.

(2) This Part does not affect the devolution of an entailed interest as an equitable interest.

PART II. *[Repealed by Act 36 of 1976.]*

PART III. *Administration of Intestates' Estates in certain cases and Charges on Property*

Administra-
tor-General
to be Admi-
nistrator of
intestates'
estates not
exceeding
one
thousand
dollars
in value.

12. Notwithstanding anything contained in the Administrator-General's Act, or any enactment amending or substituted for the same, where the residuary estate of the intestate does not exceed one thousand dollars, or where it exceeds that sum and a minor is entitled to a share thereof, or where a testator does not appoint an executor or where the executor has died before the testator or renounces, it shall be the duty of the Administrator-General to apply for letters of administration to the estate and, unless the Court is satisfied that it would be for the benefit of the estate that letters of administration ought to be granted to some other person, letters of administration to such estate shall be granted to the Administrator-General.

Charges on
property of
deceased to
be paid
primarily out
of the pro-
perty
charged.

13.—(1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged, shall,

as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

14. Nothing in this Act shall affect any unrepealed *Savings.* enactment dispensing with probate or administration as respects personal estate not including chattels real.