**THE LAW REFORM COMMISSION**
**OF WESTERN AUSTRALIA**

Project No 34 Part I

# Distribution on Intestacy

**WORKING PAPER**

**DECEMBER 1972**

# INTRODUCTION

The Law Reform Committee has been asked to consider and report on the law relating to the distribution of estates of persons dying intestate.

The Committee having completed its first consideration of the matter now issues this working paper. The paper does not necessarily represent the final views of the Committee.

Comments and criticisms are invited. The Committee requests that they be submitted by 1 April 1973.

Copies of the paper are being forwarded to –

the Chief Justice and Judges of the Supreme Court
the Judges of the District Court
the Solicitor General
the Under Secretary for Law
the Public Trustee
the Master of the Supreme Court
the Law Society
the Law School
the Magistrates Institute
the West Australian Trustee Executor and Agency Co. Ltd
the Perpetual Executors Trustees and Agency Co. (W.A.) Ltd
other Law Reform Commissions and Committees with which this Committee is in correspondence.

A notice has been placed in *The West Australian* inviting anyone interested to obtain a copy of this paper.

The research material on which this paper is based is at the offices of the Committee and will be made available on request.

## TERMS OF REFERENCE

1. To consider and report on the law relating to the distribution of estates of persons dying intestate.

## PRESENT LAW IN WESTERN AUSTRALIA

2. Section 13(1) of the *Administration Act 1903-71* (W.A.) provides that, subject to payment of duties and debts and to sections dealing with the entitlement of the surviving spouse, parents, brothers and sisters and their children –

> "... the administrator on intestacy, or, in case of partial intestacy, the executor or administrator with the will annexed shall hold the real and personal estate ...as to which any person dies intestate in trust for the persons who would be entitled thereto under the *Statute of Distributions*, and as to the real estate in trust for and as if the same had been devised to such persons as tenants in common".

3. Thus the rules of distribution on intestacy are those contained in the English *Statute of Distributions 1670*, modified as mentioned above by the *Administration Act* of this State.

4. Section 55(2) of the Commonwealth *Matrimonial Causes Act 1959-1966* also has some relevance. That subsection provides that "where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation, that property shall devolve as if that party had survived the other party to the marriage". No further comment is made on this provision in this paper.

5. The law can be briefly summarised as follows –

(a) **Spouse and issue:**

Spouse receives first $10,000 plus 5% interest per annum thereon from date of death to distribution plus one third residue. Balance to issue per stirpes.

(b) **Issue but no spouse:**

Issue take whole estate per stirpes.

(c) **Spouse but no issue:**

(i) Spouse and one or more of parent, brother, sister or issue of brother or sister:

Spouse receives first $15,000 plus 5% interest per annum from date of death to distribution plus half residue. From the other half of the residue the parent receives $2,000 plus half what is then left. If both parents survive, they share this entitlement equally. Balance to brothers or sisters and children of brothers or sisters, who take per stirpes. If no brothers or sisters or their children survive, then the balance goes to the parent or parents.

(ii) Spouse but no parent, brother, sister or issue of brother or sister:

Spouse takes whole estate.

**(d) No spouse or issue:**

Parent receives first $2,000 plus half residue. If both parents survive, they share this entitlement equally. Balance to brothers and sisters and children of deceased brothers and sisters, who take per stirpes. If no parent survives, the estate is shared by brothers and sisters and children of deceased brothers and sisters per stirpes.

(e) **No spouse, issue, parent, brother, sister or child of brother or sister:**

Next of kin as per *Statute of Distributions.*

6. A more detailed statement of the law in Western Australia is given in tabulated form in the first column of Appendix I to this paper.

7. A number of complicated rules exist for the determination of the entitlement of next of kin. For example, representation of collateral relatives does not extend beyond children of brothers and sisters (*Statute of Distributions 1670*, s.1) and at least one brother or sister must survive the intestate for children of deceased brothers and sisters to take by representation (*Lloyd v. Tench* (1750) 2 Ves. Sen. 213; 28 E.R. 138). This latter rule may not apply in the situations covered by s.15 of the *Administration Act* (see paragraph 5(c) (i) and (d) above).

8. In the absence of next of kin of any degree the estate passes to the Crown. Under s.4 of the *Escheat (Procedure) Act 1940*, the Crown can apply to the court for a declaration that the property has escheated to the Crown. Section 9 of that Act empowers the Governor to transfer any part of the estate to any person having a moral claim to it.

## THE LAW IN OTHER JURISDICTIONS

9. Summaries of the law in other Australian jurisdictions and in England and New Zealand are set out in tabulated form in Appendix I to this paper.

## THE COMMITTEE'S PROVISIONAL VIEWS

10. Although the law in Western Australia has been amended from time to time, to some degree it still reflects the social conditions of earlier times and a good case for a complete revision of the law can be made out. In any event, the law should be more readily ascertainable than it is at present. The report of the English Committee on the Law of Intestate Succession (the *Morton Report*, 1951, Cmd. 8310, paragraph 12) stressed that this is a field in which brevity and simplicity are particularly desirable.

11. The broad aim of the legislation should be to achieve a just distribution of the estate of an intestate in the light of prevailing social attitudes.

12. One factor which has influenced the Committee is that the great majority of intestate estates are small. Appendix 2 sets out the values of a representative sample (257) of estates filed during 1971-1972. It can be seen that 72% were worth $4,000 or less. It would seem preferable therefore to confine the sharing of the estate to the few best entitled, rather than to distribute it more widely.

13. It is probably impossible to frame rules of distribution which will do justice in all circumstances, but any hardship caused to a surviving spouse, child, grandchild or parent in a particular case can be alleviated by the court under the *Inheritance (Family and Dependants Provision) Act 1972.*

14. The most deserving relatives would usually be the spouse, the intestate's children and their issue and the intestate's parents. Paragraphs 15 to 26 set out the tentative views of the Committee as to the proper entitlement of these persons. In paragraphs 27 to 29 the Committee suggests the appropriate provision in respect of other relatives of the deceased.

**Spouse and issue**

15. Where a spouse and issue of the intestate survive, the following would seem to be the practical alternatives –

(a) the spouse receives the whole estate (no jurisdiction studied has such a provision);

(b) the spouse receives a statutory legacy (i.e. a specified lump sum) and either a proportion of the residue (as in Victoria, Tasmania, the Australian Capital Territory, New Zealand and this State) or a life interest in a proportion of the residue (as in England);

(c) the spouse receives a proportion of the estate only (as in New South Wales, Queensland and South Australia) .

16. The Committee favours the retention of the statutory legacy principle (see paragraph 15(b) above) to ensure that from a small estate the spouse gets an adequate sum.

17. In England the *Family Provision (Intestate Succession) Order 1972* increased the spouse's statutory legacy from £8,750 (approximately A$15,000) to £15,000 (approximately A$30,000). The object of the increase was to ensure that the wife's share of the estate was sufficient for her to retain the matrimonial home (see *Parl. Deb.* (Lords) Vol. 275, 1966, p.201).

18. The Committee thinks that the same policy should be followed here and that the statutory legacy should be increased from $10,000 to, say, $25,000. This is the limit of the amount which is free of State probate duty where the assets pass to a spouse.

19. In England, the Lord Chancellor is empowered under s.1 of the *Family Provision Act 1966* to increase the statutory legacy by Order (see paragraph 17 above), so that it can be adjusted to take account of any fall in the value of money (*Parl. Deb.* (Lords) Vol. 275, 1966, p.201). A similar power could be given the Governor in this State. This would ensure that the adequacy of the amount was kept under review.

20. In Western Australia at present the spouse receives in addition to the statutory legacy of $10,000 one third the residue irrespective of the number of children. In New South Wales, Queensland and the Australian Capital Territory the spouse's share depends on the number of children. In the Australian Capital Territory, if there is only one child or the issue of one child, the spouse receives one half of the residue, and in any other case the spouse receives one third. The Committee suggests the enactment in this State of a similar provision.

21. Other provisions which merit consideration in the English legislation are –

(a) The spouse has the right to acquire the interest of the deceased in the matrimonial home in satisfaction or part satisfaction of his or her entitlement or, when the entitlement is less than the value of the home, on making up the balance by a money payment (*Intestates' Estates Act 1952*, s.5 and 2nd Schedule).

(b) The spouse acquires the deceased's personal chattels, as defined, in addition to his or her other entitlement (*Administration of Estates Act 1925*, s.46).

However, the definition of personal chattels would include such valuable items as a collection of diamonds (*Re Whitby* [1944] Ch. 210) or a motor-yacht (*Re Chaplin* [1950] Ch. 507). If the spouse is to be given a right to chattels in addition to any other entitlement it may be preferable to confine it to "household" chattels (see the definition in the *Eire Succession Act 1965*, s.56(14)) with the right to purchase other items.

**Issue but no spouse**

22. It would be generally agreed that where there is issue but no surviving spouse, the issue should take the whole estate per stirpes. This is the present law in Western Australia. It is also the law in all other jurisdictions in Australia, in New Zealand and in England. In Tasmania, the Australian Capital Territory, New Zealand and England the right of a minor to take is conditional on his attaining full age or marrying (with power to the administrator to make advances for his maintenance) but the Committee does not think that a similar condition is necessary here.

**Spouse but no issue**

23. In this situation, the following are the alternatives –

(a) the spouse receives the whole estate, whether or not there are other relatives (as in Victoria and Tasmania);

(b) the spouse receives the whole estate only if there are no other specified relatives (as in most jurisdictions including Western Australia);

(c) the spouse takes a proportion of the estate only (as in South Australia).

24. The class of relatives with whom a spouse must share the estate differs among the different jurisdictions, the widest being in South Australia, where a spouse must share the estate with next of kin of any degree.

25. The Committee is at present of the view that, in the absence of issue of the deceased, the whole estate should go to the spouse.

**No spouse or issue**

26. If the parents survive, the alternatives would seem to be for them -

(a) to share the whole estate equally and if only one survives for that one to take the whole estate (as in all other jurisdictions mentioned in Appendix I);

(b) to share the estate with other relatives either with (as is the case in Western Australia) or without a statutory legacy.

The Committee favours the former alternative under which the parent or parents take the whole estate.

**Other relatives**

27. If no spouse, issue or parents survive, two approaches are possible –

(a) To limit those entitled to participate in the distribution to near relatives, and if no such relative survives, to give the estate to the Crown. This is the position in New South Wales, Queensland, the Australian Capital Territory, New Zealand and England. The general pattern in these jurisdictions is to confine the entitlement first to brothers and sisters and issue of deceased brothers and sisters, next to grandparents and finally to uncles and aunts and issue of deceased uncles and aunts.

(b) To retain the traditional approach under which next of kin continue without limit.

28. The Committee is provisionally of the view that it is not unreasonable to exclude relatives more remote than grandparents and their descendants.

29. There are often considerable difficulties in locating remote relatives and a good deal of time and money can be spent on enquiry. An application to the Supreme Court under s.66 of the *Trustees Act 1962* to exclude possible claimants appearing at a later date is possible, but this also involves time and money. It could also be argued that the general community should benefit rather than remote relatives, who would usually have had little or no contact with the deceased.

**Other matters: hotchpot and partial intestacies**

30. Under s.5 of the *Statute of Distributions* a child of a male intestate who had received property by settlement from the intestate, or who had been advanced by portion by him, must bring the value of the property so received into account as hotchpot in determining his share on the intestacy.

31. This provision has given rise to much litigation, the difficulties being to determine –

(a) what gifts must be brought into hotchpot;

(b) at what date the gifts must be valued;

(c) whether the provision applies to partial intestacies (the traditional view was that it did not, but on the authority of *In re Cornwall* (1910) 13 W.A.L.R. 40, it would appear to apply in this State).

32. The provision as to hotchpot has been abolished in Queensland and New Zealand and the Committee would favour a similar abolition here. The Committee says this notwithstanding that there is a similar rule of construction in regard to wills under which the making of a substantial gift to a child after the date of the making of a will is treated, in the absence of a contrary intention, as an advance of a legacy given by the will.

33. If a simple abolition is unacceptable, the Committee thinks the provision should be made to apply also on the intestacy of a mother and, possibly, to apply only to gifts made within a certain period before death and to gifts totalling a certain amount (as in the Australian Capital Territory - see the *Administration and Probate Ordinance 1929-1970*, s.49B). In any event the Committee thinks it should not apply to partial intestacies unless a corresponding provision is made requiring gifts to children under a will also to be brought into account (see paragraph 35 below).

34. In Queensland, Tasmania, the Australian Capital Territory, New Zealand and England, the value of the beneficial interest acquired by a surviving spouse under a will is deducted

from the statutory legacy in determining his or her share on intestacy. This would seem to produce a fair result and the Committee suggests such a rule should be adopted in this State.

35. Similarly, the Committee suggests that an interest received under the will by a child of the deceased should be brought into account in determining his share on intestacy. This is the position in the Australian Capital Territory.

**Summary**

36. The Committee's provisional views may be briefly summarised as follows –

| | **Where intestate survived by:** | **Entitlement:** |
|---|---|---|
| 1. | Spouse and issue | Spouse receives household chattels + first $25,000 + 5% interest + $^1/_3$rd residue (½ residue if only one child). Residue to issue per stirpes |
| 2. | Issue but no spouse | Whole estate to issue per stirpes |
| 3. | Spouse but no issue | Whole estate to spouse |
| 4. | Parents but no spouse or issue | Whole estate to parents. If only one parent, whole estate to that parent |
| 5. | Brothers and sisters or their issue, but no spouse, issue, parents | Whole estate to brothers and sisters and their issue per stirpes |
| 6. | Grandparents, but no spouse, issue, parents, brothers or sisters or their issue | Whole estate to grandparents |
| 7. | Uncles and aunts or their issue | Whole estate to uncles and aunts and their issue per stirpes |

8. If none of the above survives, the estate passes to the Crown.

# APPENDIX 1

| | **Western Australia**<br>*Administration Act 1903-1971* | **New South Wales**<br>*Wills, Probate and Administration Act 1898-1965* | **Victoria**<br>*Administration and Probate Act 1958-1969* |
|---|---|---|---|
| **1. DECEASED SURVIVED BY:**<br>**(a) Spouse and Issue** | Spouse gets first $10,000 (last increased in 1965) + 5% p.a. thereon from the date of death to distribution + 1/3rd residue. Balance to issue per stirpes. | Spouse gets 1/3rd estate if 2 or more children but ½ estate if only one child. Balance to issue per stirpes. | Spouse gets personal chattels + first $10,000 (last increased in 1967) + 4% p.a. thereon from date of death to distribution + 1/3rd residue. Balance to issue per stirpes. |
| **(b) Issue but no spouse** | Issue get whole estate per stirpes. | Issue get whole estate per stirpes. | Issue get whole estate per stirpes. |
| **(c) Spouse but no issue**<br>(i) One or more of parent, brother, sister or issue of brother or sister | Spouse gets first $15,000 + 5% p.a. thereon from date of death to distribution + ½ residue. Balance to parent(s) if no brothers or sisters or child thereof. Otherwise parent(s) get first $2,000 + ½ residue, remainder to brothers and sisters and their children per stirpes. If no brother or sister, balance to next of kin. | Spouse gets first $6,000 + 4% p.a. thereon from date of death to distribution + ½ residue (total intestacy only) or gets ½ estate (if partial intestacy). Residue to relatives in the following order –<br>1. Parent(s);<br>2. Brothers and sisters of whole blood and issue;<br>3. Brothers and sisters of half blood and issue. | Spouse gets whole estate irrespective of whether there is any parent, brother, sister, or issue of brother or sister. |
| (ii) No parent, brother, sister or issue of brother or sister | Whole to spouse. | Whole to spouse (if no issue, parent, brother, sister, issue of brother or sister, grandparent, uncle or aunt). | |
| **(d) Parent but no spouse or issue** | Parent(s) get first $2,000 + ½ residue. Balance to brothers and sisters and their children per stirpes. If no brother or sister, balance to next of kin. | Parent(s) get whole estate. | Parent(s) get whole estate. |
| **(e) Brothers and sisters and their children but no spouse, issue or parent** | Brothers and sisters and their children take whole estate per stirpes. If no brother or sister, then to next of kin. | Brothers and sisters of whole blood and their issue take whole estate per stirpes. If none, brothers and sisters of half blood and their issue take whole estate per stirpes. | Brothers and sisters and their children take whole estate per stirpes. If no brother or sister, then to next of kin. |

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| **(f) Others** | To next of kin (Statute of Distributions). | If no issue, parent, brother, sister or issue of brother or sister, estate goes to –<br>1. grandparents; if none<br>2. uncles and aunts of whole blood; if none<br>3. uncles and aunts of half blood; if none<br>4. spouse. | To next of kin. |
| **2. OTHER MATTERS:**<br>**(a) Escheat and bona vacantia to the Crown** | In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown (and see *Escheat (Procedure) Act 1940)*. | In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacentia. | Escheat abolished. In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacantia. |
| **(b) Limitation of blood** | Relatives of the half blood may take. | Relatives of the half blood may take to the extent in 1(c) (i), 1(e) and 1(f) above. | Relatives of the half blood may take. |
| **(c) Hotchpot** | Advances by father to child must be brought into hotchpot (Statute of Distributions). Applies to total and partial intestacy (*In re Cornwall* [1910] 13 W.A.L.R. 40). | Advances by either parent to child must be brought into hotchpot. Applies to total intestacy only. | Advances by either parent to child must be brought into hotchpot. Applies to total and partial intestacy. |
| **(d) Partial intestacy** | No separate provision. Above rules apply to total and partial intestacy. | See paragraph 1(c)(i) above. | No separate provision (but see s.53). |
| **(e) Miscellaneous** | No representation of collaterals after children of brothers or sisters (Statute of Distributions). Brothers and sisters preferred to grandparents. | Representation continues to the remotest degree amongst issue of brothers and sisters both whole and half blood (see 1(c) above). | No representation of collaterals after children of brothers and sisters. Brothers and sisters preferred to grandparents. |

| | **Queensland**<br>*Succession Acts Amendment Act 1968* | **South Australia**<br>*Administration and Probate Act 1919-1972* | **Tasmania**<br>*Administration and Probate Act 1935-1967* |
|---|---|---|---|
| **1. DECEASED SURVIVED BY:**<br>**(a) Spouse and Issue** | Spouse gets 1/3rd estate if 2 or more children but ½ estate if only one child. Balance to issue per stirpes. | Spouse gets 1/3rd estate. Balance to issue per stirpes. | Spouse gets first $17,000 (last increased in 1967) + 4% p.a. thereon from date of death to distribution + 1/3rd residue. Balance to issue who attain 21 years or marry per stirpes. |
| **(b) Issue but no spouse** | Issue get whole estate per stirpes. | Issue get whole estate per stirpes. | Issue who attain 21 years or marry get whole estate per stirpes. |
| **(c) Spouse but no issue**<br>(i) One or more of parent, brother, sister or issue of brother or sister | Spouse gets first $20,000 + ½ residue. Balance to parent(s). If no parent, balance to brothers and sisters and their children per stirpes. | Spouse gets first $10,000 (last increased in 1956) + 8% p.a. thereon form the date of death to distribution + ½ residue. Balance to the next of kin. | Spouse gets whole estate irrespective of whether there is any parent, brother, sister, or issue of brother or sister. |
| (ii) No parent, brother, sister or issue of brother or sister | Whole to spouse (if no issue, parent, brother, sister, or *child* (cf. W.A.) or brother or sister. | | |
| **(d) Parent but no spouse or issue** | Parent(s) get whole estate. | Parent(s) get whole estate (but see 2(e) (ii) below). | Parent(s) get whole estate. |
| **(e) Brothers and sisters and their children but no spouse, issue or parent** | Brothers and sisters and their children take whole estate per stirpes. | Brothers and sisters and their children take whole estate per stirpes. If no brother or sister, then to next of kin. | Brothers and sisters and their issue who attain 21 years or marry, take whole estate per stirpes. |
| **(f) Others** | If no issue, parent, brother, sister or issue of brother or sister, estate goes to –<br>1. grandparents; if none<br>2. uncles and aunts and their children per stirpes. | To next of kin (Statute of Distributions). | If no issue, parent, brother, sister or issue of brother or sister, estate goes to –<br>1. grandparents; if none<br>2. uncles and aunts and their issue who attain 21 years or marry per stirpes; if none<br>3. next of kin. |
| **2. OTHER MATTERS:**<br>**(a) Escheat and bona vacantia to the Crown** | In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacantia. | In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown. | In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacantia. |
| **(b) Limitation of blood** | Relatives of the half blood may take. | Relatives of the half blood may take. | Relatives of the half blood may take. |

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|---|---|---|---|
| **(c) Hotchpot** | No provision. | Advances by father to child must be brought into hotchpot (Statute of Distributions). | Advances by either parent to child must be brought into hotchpot. Applies to total and partial intestacy. May apply to "issue" on partial intestacy. |
| **(d) Partial intestacy** | Spouse's interest under will is deducted from statutory legacy (see 1(c) (i) above). | No separate provision. Above rules apply to total and partial intestacy. | Spouse's interest under will is deducted from statutory legacy (see 1(a) above). |
| **(e) Miscellaneous** | No representation of collaterals after children of brothers or sisters and children of uncles or aunts. It is not necessary for one brother or sister, or one uncle or aunt to survive to bring representation into effect (see (1968) 7 Uni. Qld. L.J. 80). | (i) No representation of collaterals after children of brothers or sisters (Statute of Distributions). Brothers and sisters preferred to grandparents. (ii) Where a mother but not a father survives, and there is no spouse or issue, the mother shares with brothers and sisters under I James II c.17. | (i) Representation continues to the remotest degree amongst issue of brothers and sisters and issue of uncles and aunts. (ii) In 1(b) above, in addition to the power of advancement, personal representative may permit minor contingently interested to use personal chattels. |

| | **Australian Capital Territory**<br>*Administration and Probate Ordinance 1929-1970* | **England**<br>*Administration of Estates Act 1925* (as amended by the *Intestates' Estates Act 1925* and the *Family Provision Act 1966*). | **New Zealand**<br>*Administration Act 1969-1970* |
|---|---|---|---|
| **1. DECEASED SURVIVED BY:**<br>**(a) Spouse and Issue** | Spouse gets personal chattels + $10,000 (last increased in 1967) 1/3rd residue if 2 or more children or predeceased children leaving issue. If only one child or one predeceased child leaving issue, spouse gets ½ residue. Balance to issue who attain 21 years or marry per stirpes. | Spouse gets personal chattels + first £15,000 or such larger sum as is fixed by Lord Chancellor (last increased in 1972) free of duty + 4% p.a. thereon from date of death to distribution + a life interest in ½ residue which spouse can elect to redeem. Remainder to issue who attain 18 years or marry per stirpes. | Spouse gets personal chattels + first $12,000 + 5% p.a. (or other prescribed rate) thereon from the date of death to distribution + 1/3rd residue. Balance to issue who attain full age or marry per stirpes. |
| **(b) Issue but no spouse** | Issue who attain 21 years or marry get whole estate per stirpes. | Issue who attain 18 years or marry get whole estate per stirpes. | Issue who attain 21 full age or marry get whole estate per stirpes. |
| **(c) Spouse but no issue**<br>(i) One or more of parent, brother, sister or issue of brother or sister | Spouse gets personal chattels + first $50,000 + ½ residue. Balance to parent(s). If no parent, balance to brothers and sisters and their issue who attain 21 years or marry per stirpes. | Spouse gets personal chattels + first £40,000 or such larger sum fixed by the Lord Chancellor free of duty + 4% p.a. thereon from date of death to distribution + ½ residue. Balance to parent(s). If no parent, balance to brothers and sisters of whole blood and their issue who attain 18 years or marry per stirpes. If no brother or sister or whole blood or issue thereof, whole estate to spouse. | Spouse gets personal chattels + first $12,000 + 5% p.a. (or other prescribed rate) thereon from date of death to distribution + 2/3rds residue. Balance to parent(s). If no parent, whole estate to spouse. |
| (ii) No parent, brother, sister or issue of brother or sister | Whole to spouse. | Whole to spouse (if no issue, parent, brother or sister of whole blood or issue of brother or sister of whole blood). | Whole to spouse. |
| **(d) Parent but no spouse or issue** | Parent(s) get whole estate. | Parent(s) get whole estate. | Parent(s) get whole estate. |
| **(e) Brothers and sisters and their children but no spouse, issue or parent** | Brothers and sisters and their issue who attain 21 years or marry, take whole estate per stirpes. | Brothers and sisters of whole blood and their issue who attain 18 years or marry take whole estate per stirpes. If none, then estate to brothers and sisters of half blood and their issue per stirpes. | Brothers and sisters and their issue who attain full age or marry, take whole estate per stirpes. |

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|---|---|---|---|
| **(f) Others** | If no issue, parent, brother, sister or issue of brother or sister, estate goes to –<br>1. grandparents; if none<br>2. uncles and aunts and their issue who attain 21 years or marry per stirpes. | If no issue, parent, brother, sister or issue of brother or sister, estate goes to –<br>1. grandparents; if none<br>2. uncles and aunts of whole blood and issue who attain 18 years or marry per stirpes; if none<br>3. uncles and aunts of half blood and issue who attain 18 years or marry per stirpes. | If no issue, parent, brother, sister or issue of brother or sister, estate goes to –<br>1. grandparents; if none<br>2. uncles and aunts and their issue who attain full age or marry per stirpes. |
| **2. OTHER MATTERS:**<br>**(a) Escheat and bona vacantia to the Crown** | In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacantia. | Escheat abolished. In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacantia. | Escheat abolished. In the absence of relatives mentioned in 1(a) to (f) inclusive above, estate passes to Crown bona vacantia. |
| **(b) Limitation of blood** | Relatives of the half blood may take. | Relatives of the half blood may take to the extent in 1(c), 1(e) and 1(f) above. | Relatives of the half blood may take. |
| **(c) Hotchpot** | Advances by either parent to child within 5 years of death must be brought into hotchpot unless contrary intention expressed or appears from circumstances or unless total of advances does not exceed $1,000. Applies to total and partial intestacy. | Advances by either parent to child must be brought into hotchpot on total intestacy. Advances by either parent to "issue" on partial intestacy must be brought into hotchpot. | No provision. |
| **(d) Partial intestacy** | Spouse's interest under will is deducted from statutory legacy (see 1(a) and 1(c) (i) above). A child of an intestate must bring his interest under the will into account in calculating his interest on intestacy. | Spouse's interest under will is deducted from statutory legacy (see 1(a) and 1(c) (i) above. Where spouse gets life interest by will, on partial intestacy he or she is entitled to immediate payment of statutory legacy (*Re Bowen* [1971] 3 All. E.R. 636). | Spouse's interest under will (excluding personal chattels) is deducted from statutory legacy (see 1(a) and 1(c) (i) above). |

| | | | |
|---|---|---|---|
| **(e) Miscellaneous** | (i) Representation continues to the remotest degree amongst issue of brothers and sisters and issue of uncles and aunts.<br>(ii) Spouse may elect to acquire the matrimonial home at valuation in satisfaction or part satisfaction of his or her interest (see 1(a) and 1(c) (i) above). | (i) Representation continues to the remotest degree amongst issue of brothers and sisters and issue of uncles and aunts both whole and half blood.<br>(ii) Spouse may elect to acquire the matrimonial home at valuation in satisfaction or part satisfaction of his or her interest (see 1(a) and 1(c) (i) above).<br>(iii) In 1(b) above, in addition to the power of advancement, personal representative may permit minor contingently interested to use personal chattels. | (i) Representation continues to the remotest degree amongst issue of brothers and sisters and issue of uncles and aunts.<br>(ii) In 1(b) above, in addition to the power of advancement, personal representative may permit minor contingently interested to use personal chattels. |

# APPENDIX 2

## Value of Intestate Estates

| Value | Number | Percentage of total |
|---|---|---|
| Insolvent | 3 | 1.2 |
| Negligible in value | 33 | 12.8 |
| Under $2,000 | 113 | 44.0 |
| 2,001 - 4,000 | 36 | 14.0 |
| 4,001 - 6,000 | 9 | 3.5 |
| 6,001 - 8,000 | 9 | 3.5 |
| 8,001 - 10,000 | 10 | 3.9 |
| 10,001 - 12,000 | 12 | 4.7 |
| 12,001 - 14,000 | 3 | 1.2 |
| 14,001 - 16,000 | 9 | 3.5 |
| 16,001 - 18,000 | 1 | 0.4 |
| 18,001 - 20,000 | - | - |
| 20,001 - 25,000 | 3 | 1.2 |
| 25,001 - 30,000 | 3 | 1.2 |
| 30,001 - 40,000 | 2 | 0.8 |
| 40,001 - 60,000 | 4 | 1.4 |
| 60,001 - 80,000 | 2 | 0.8 |
| 80,001 - 100,000 | 3 | 1.2 |
| 100,001 - 200,000 | 2 | 0.8 |
| 200,001 - 300,000 | - | - |
| Over $300,000 | - | - |
| TOTAL: | 257 | |