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CHAPTER I30

INTESTATES ESTATES ACT

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INTESTATES ESTATES ACT

TABLE OF CONTENTS

SECTION

1. Interpretation
2. Abolition of descent to heir, curtesy, dower and escheat
3. Succession to real and personal estate on intestacy
4. Statutory trusts in favour of issue and other classes of relatives of intestate
5. Meaning of the statutory trusts
6. Powers of personal representative in respect of interest of surviving spouse
7. Application to cases of partial intestacy
8. Construction of documents
9. Citation

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INTESTATES ESTATES ACT

Interpretation

1. In this 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

2. (1) With regard to the real estate and personal inheritance of every person dying after 11th December, 1945 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;

(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 howsoever;

(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

3. (1) 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 leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattels absolutely and in addition the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of $240 or a sum equal to 10% of the net value of the estate, whichever may be greater, free of death duties and costs, to the surviving husband or wife, with interest thereon from the date of the death at the rate of 5% per annum until paid or appropriated, and subject to providing for such sum and the interest thereon the residuary estate (other than the personal chattels) shall be held—

(i) if the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life, or

(ii) if the intestate leaves issue, upon trust, as to one-half for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate; and, as to the other half, on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the lifetime of a surviving husband or wife of the intestate, then upon trust for the surviving husband or wife during the residue of his or her life;

(b) if the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;

(c) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;

(d) if the intestate leaves no issue but one parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;

(e) if the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely—

(i) first, on the statutory trusts for the brothers and sisters of the whole blood of the intestate,

(ii) but if no person takes an absolutely vested interest under such trusts, then, secondly, on the statutory trusts for the brothers and sisters of the half-blood of the intestate,

(iii) but if no person takes an absolutely vested interest under such trusts, then thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares,

(iv) but if there is no member of this class, then fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate),

(v) but if no person takes an absolutely vested interest under such trusts, then fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half-blood of a parent of the intestate),

(vi) but if no person takes an absolutely vested interest under such trusts, then sixthly, for the surviving husband or wife of the intestate absolutely; and

(f) in default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown as *bona vacantia*, and in lieu of any right to escheat.

(2) The Crown may, out of the whole or any part of the property devolving on the Crown under paragraph (1)(f), provide, on such terms and conditions as it may think fit, for dependants, whether kindred or not of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(3) A husband and wife shall for all purposes of distribution or division under this section be treated as 2 persons.

Statutory trusts in favour of issue and other classes of relatives of intestate

4. (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—

(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 18 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 18 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;

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

(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.

Meaning of the statutory trusts

5. (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 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

encumbrancer of a former undivided share or whose encumbrance is not secured by a legal mortgage) interested in the land.

(2) Where—

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

(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.

Powers of personal representative in respect of interest of surviving spouse

6. (1) Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof, the personal representative may, either with the consent of any such tenant for life (not being also the sole personal representative) or, where the tenant for life is the sole personal representative, with the leave of the Court, purchase or redeem such life interest (while it is in possession) by paying the capital value thereof (reckoned according to tables selected by the personal representative) to the tenant for life or the persons deriving title under him or her and the costs of the transaction, and thereupon the residuary estate of the intestate may be dealt with or distributed free from such life interest.

(2) The personal representatives may raise—

(a) the net sum arrived at in accordance with the provisions of section 3(1)(a) or any part thereof and the interest thereon payable to the surviving husband or wife of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by an appropriation under the statutory power available in that behalf; and

(b) in like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving husband or wife of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate;

and in either case the amount, if any, properly required for the payment of the costs of the transaction.

(3) In subsection (1) the expression "according to tables" means according to tables which may be selected by a personal representative under section 48 of the Administration of Estates Act, 1925, 15 Geo. V. c.23 (UK).

Application to cases of partial intestacy

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—

(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 11th December, 1945, 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 11th December, 1945 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 11th December, 1945.

Citation

9. This Act may be cited as the Intestates Estates Act, Revised Statutes of Anguilla, Chapter I30.

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