



Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

1968 CHAPTER 70

PART I

SUCCESSION, CONSTRUCTION OF DEEDS, ETC., IN CASES OF ILLEGITIMACY

Construction of deeds, etc.

5 Construction of references to relationship in certain circumstances

- (1) In deducing any relationship for the purpose of ascertaining the person or persons entitled to benefit under a provision contained in any deed, persons shall, unless the contrary intention appears, be taken to be or, as the case may be, to have been, related to each other notwithstanding that the relationship existing between them is or was an illegitimate one only; and any rule of law to the contrary shall cease to have effect.
- (2) In this section—
 - (a) " deed " includes any disposition, contract, instrument or writing whether inter vivos or mortis causa,
 - (b) " relationship " includes relationship of the whole and of the half blood, and relationship by affinity, and " related " shall be construed accordingly.
- (3) This section shall apply only in relation to deeds executed after the commencement of this Act, and in the case of a deed made in the exercise of a special power of appointment shall apply only where the deed creating the power is executed after such commencement.
- (4) This section shall apply in relation to a provision made after the commencement of this Act otherwise than by deed as it applies in relation to a provision made in a deed.
- (5) Nothing in this section shall—
 - (a) affect the construction of any enactment, or

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- (b) apply in relation to the succession to or devolution of any title, coat of arms, honour or dignity, and where the terms of any deed provide that any property or interest in property shall devolve along with a title, honour or dignity, nothing in this section shall prevent that property or interest from so devolving.

6 Application of certain presumptions in cases of illegitimacy

- (1) Where in the construction of any deed either—
 - (a) the principle known as *conditio si institutus sine liberis decesserit* (in accordance with which the issue of a deceased person may in certain circumstances become entitled to the rights under a deed to which the deceased person would have become entitled if he had not died), or
 - (b) the principle of accretion (in accordance with which, if provision is made in any deed in favour of a number of persons jointly, the share in that provision of any one of those persons may in certain circumstances accrete on his death to the other person or persons in whose favour the provision was made),would apply for the benefit of any person if it were not for the fact that that or any other person is or was illegitimate, then, unless the contrary intention appears, that principle shall nevertheless apply for the construction of the deed as if the illegitimate person were or had been born legitimate.
- (2) The application in relation to any testamentary writing of the principle known as *conditio si testator sine liberis decesserit* (in accordance with which a testamentary writing may in certain circumstances be held to be revoked by the birth of a child to the testator after the execution of the testamentary writing) shall not be excluded by reason only of the fact that any child born to the testator after the execution of the testamentary writing is or was illegitimate.
- (3) Subsection (2)(a) and subsections (3) to (5) of section 5 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.