



Administration of Estates Act 1925

1925 CHAPTER 23

PART IV

DISTRIBUTION OF RESIDUARY ESTATE

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

- (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 by the custom of gavelkind or borough english or by any other custom of any county, locality, or manor, 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; and
 - (c) Dower and freebench 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 by custom or otherwise: Provided that where a right (if any) to freebench or other like right has attached before the commencement of this Act which cannot be barred by a testamentary or other disposition made by the husband, such right shall, unless released, remain in force as an equitable interest; and
 - (d) Escheat to the Crown or the Duchy of Lancaster or the Duke of Cornwall or to a mesne lord for want of heirs.
- (2) Nothing in this section affects the descent or devolution of an entailed interest.

46 Succession to real and personal estate on intestacy

- (1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

Status: This is the original version (as it was originally enacted).

- (i) 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 one thousand pounds, 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 five pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—
 - (a) If the intestate leaves no issue, upon I trust for the surviving husband or wife during his or her life;
 - (b) 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:
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) 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:—
 - First, on 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
 - Secondly, on 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
 - Thirdly, for 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
 - 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); 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); but if no person takes an absolutely vested interest under such trusts; then
 - Sixthly, for the surviving husband or wife of the intestate absolutely;
- (vi) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as bona vacantia, and in lieu of any right to escheat.

Status: This is the original version (as it was originally enacted).

The Crown or the said Duchy or the said Duke may (without prejudice to the powers reserved by section nine of the Civil List Act, 1910, or any other powers), out of the whole or any part of the property devolving on them respectively, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

- (2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

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

- (1) Where under this Part of 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 :—
- (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 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;
 - (ii) The statutory power of advancement, and 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 of 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;
 - (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.
- (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 of this Act as if the intestate had died without leaving issue living at the death of the intestate;

Status: This is the original version (as it was originally enacted).

- (b) references in this Part of 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 Part of 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 Part of 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.

48 Powers of personal representative in respect of interests of surviving spouse

- (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 of one thousand pounds 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.

49 Application to cases of partial intestacy

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

50 Construction of documents

- (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 Part of 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 Part 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 (other than the Intestates' Estates Act, 1890) relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.

51 Savings

- (1) Nothing in this Part of this Act affects the right of any person to take beneficially, by purchase, as heir either general or special.
- (2) The foregoing provisions of this Part of this Act do not apply to any beneficial interest in real estate (not including chattels real) to which a lunatic or defective living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death, and any such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land, and that law shall, notwithstanding any repeal, apply to the case.

For the purposes of this subsection, a lunatic or defective who dies intestate as respects any beneficial interest in real estate shall, not be deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged.

- (3) Where an infant dies after the commencement of this Act 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 estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such infant shall be deemed to have had an entailed interest, and the settlement shall be construed accordingly.
- (4) This Part of this Act does not affect the devolution of an entailed interest as an equitable interest.

52 Interpretation of Part IV

In this Part of this Act " real and personal estate " means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will.