

INTESTATE SUCCESSION ACT 81 OF 1987

[ASSENTED TO 30 SEPTEMBER 1987] [DATE OF COMMENCEMENT: 18 MARCH 1988]

(English text signed by the State President)

as amended by

Law of Succession Amendment Act 43 of 1992

also amended by

Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of
2009

[with effect from a date to be proclaimed - see PENDLEX]

ACT

To regulate anew the law relating to intestate succession; and to provide for matters connected therewith.

Cases

1 Intestate succession *

Cases

(1) If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and-

(a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;

(b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;

(c) (c) of the Intestate Succession Act, the following subparagraph must be regarded as having been added to that section:

"(iii) where the intestate estate is not sufficient to provide each surviving spouse and woman referred to in paragraphs (a) , (b) and (c) of section 2 (2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008, with the amount fixed by the Minister, the estate shall be divided equally between such spouses;".'

* is survived by a spouse as well as a descendant-

(i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the *Gazette* , whichever is the greater; and

(ii) such descendant shall inherit the residue (if any) of the intestate estate;

(d) is not survived by a spouse or descendant, but is survived-

(i) by both his parents, his parents shall inherit the intestate estate in equal shares; or

(ii) by one of his parents, the surviving parent shall inherit one half

of the intestate estate and the descendants of the deceased parent the other half, and if there are no such descendants who have survived the deceased, the surviving parent shall inherit the intestate estate; or

(e) is not survived by a spouse or descendant or parent, but is survived-

(i) by-

(aa) descendants of his deceased mother who are related to the deceased through her only, as well as by descendants of his deceased father who are related to the deceased through him only; or

(bb) descendants of his deceased parents who are related to the deceased through both such parents; or

(cc) any of the descendants mentioned in subparagraph (aa) , as well as by any of the descendants mentioned in subparagraph (bb) ,

the intestate estate shall be divided into two equal shares and the descendants related to the deceased through the deceased mother shall inherit one half of the estate and the descendants related to the deceased through the deceased father shall inherit the other half of the estate; or

(ii) only by descendants of one of the deceased parents of the deceased who are related to the deceased through such parent alone, such descendants shall inherit the intestate estate;

(f) is not survived by a spouse, descendant, parent, or a descendant of a parent, the other blood relation or blood relations of the deceased who are related to him nearest in degree shall inherit the intestate estate in equal shares.

(2) Notwithstanding the provisions of any law or the common law, but subject to the provisions of this Act and section 5 (2) of the Children's Status Act, 1987, illegitimacy shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation.

[NB: Sub-s. (2) has been substituted by s. 8 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, a provision which will be put into operation by proclamation. See PENDLEX .]

(3) A notice mentioned in subsection (1) (c) (i) shall not apply in respect of the intestate estate of a person who died before the date of that notice.

(4) In the application of this section-

(a) in relation to descendants of the deceased and descendants of a parent of the deceased, division of the estate shall take place *per stirpes* , and representation shall be allowed;

(b) '**intestate estate**' includes any part of an estate which does not devolve by virtue of a will or in respect of which section 23 of the Black Administration Act, 1927 (Act 38 of 1927), does not apply;

[NB: Para. (b) has been substituted by s. 8 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, a provision which will be put into operation by proclamation. See PENDLEX .]

(c)

[Para. (c) deleted by s. 14 (a) of Act 43 of 1992.]

- (d) the degree of relationship between blood relations of the deceased and the deceased-
 - (i) in the direct line, shall be equal to the number of generations between the ancestor and the deceased or the descendant and the deceased (as the case may be);
 - (ii) in the collateral line, shall be equal to the number of generations between the blood relations and the nearest common ancestor, plus the number of generations between such ancestor and the deceased;
- (e) an adopted child shall be deemed-
 - (i) to be a descendant of his adoptive parent or parents;
 - (ii) not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child; and

[NB: A para. (e A) has been inserted by s. 8 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, a provision which will be put into operation by proclamation. See PENDLEX .]

- (f)
 - (f) of section 1 (4) of that Act must be regarded to read as follows:
- " (f) a child's portion, in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of children of the deceased who have either survived the deceased or have died before the deceased but are survived by their descendants, plus the number of spouses and women referred to in paragraphs (a) , (b) and (c) of section 2 (2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008.".'.

* a child's portion, in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of children of the deceased who have either survived him or have died before him but are survived by their descendants, plus one.

(5) If an adopted child in terms of subsection (4) (e) is deemed to be a descendant of his adoptive parent, or is deemed not to be a descendant of his natural parent, the adoptive parent concerned shall be deemed to be an ancestor of the child, or shall be deemed not to be an ancestor of the child, as the case may be.

[NB: A sub-s. (5A) has been inserted by s. 8 of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, a provision which will be put into operation by proclamation. See PENDLEX .]

(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with the surviving spouse of the deceased, is entitled to a benefit from an intestate estate renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.

[Sub-s. (6) added by s. 14 (b) of Act 43 of 1992.]

(7) If a person is disqualified from being an heir of the intestate estate of the deceased, or renounces his right to be such an heir, any benefit which he would have received if he had not been so disqualified or had not so renounced his right shall, subject to the provisions of subsection (6), devolve as if he had died immediately before

the death of the deceased and, if applicable, as if he was not so disqualified.

[Sub-s. (7) added by s. 14 (b) of Act 43 of 1992.]

2 Repeal of laws

The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

3 Short title and commencement

This Act shall be called the Intestate Succession Act, 1987, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette* .

Schedule LAWS REPEALED

No and Year of law	Title, subject or heading	Extent of repeal
The Political Ordinance of 1 April 1580 ('Groot Placaet-Boek', Part 1)	'Ordonnantie van die Policien binne Hollandt.'	Section 19 to 28, inclusive
Interpretation of 13 May 1594 ('Groot Placaet-Boek', Part 1)	'Verklaring van de Heeren Staten van Hollandt en de Wes-Vrieslandt op de Ordonnantie van de Successien.'	The whole
Octrooi op 10 January 1661 ('Groot Placaet-Boek', Part 2)	'Octroy, by haer Hoog Mog: Verleent aende Oost-Indische Compagnie deser Landen op 't recht van de Successien <i>ab intestato</i> in Oost-Indien, ende op de reyse gints ende herwaerts'	The whole
Act 13 of 1934	Succession Act, 1934	The whole
Act 93 of 1962	General Law Further Amendment Act, 1962	Section 15
Act 44 of 1982	Succession Amendment Act, 1982	The whole
Act 88 of 1984	Matrimonial Property Act, 1984	Section 27

PENDLEX: Intestate Succession Act 81 of 1987 after amendment by the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

Section 1 (2)

Notwithstanding the provisions of any law or the common or customary law, but subject to the provisions of this Act and sections 40 (3) and 297 (1) (f) of the Children's Act, 2005 (Act 38 of 2005), having been born out of wedlock shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation.

Section 1 (4) (b)

' **intestate estate** ' includes any part of an estate which does not devolve by virtue of a will;' and

Section 1 (4) (e A)

A person referred to in paragraph (a) of the definition of 'descendant' contained in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, shall be deemed-

- (i) to be a descendant of the deceased person referred to in that paragraph;
- (ii) not to be a descendant of his or her natural parent or parents, except in the case of a natural parent who is also the parent who accepted that person in accordance with customary law as his or her own child, as envisaged in the said definition, or was, at the time when the child was accepted, married to the parent who so accepted the child; and

Section 1 (5A)

If a person referred to in paragraph (a) of the definition of 'descendant' contained in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, is deemed to be a descendant of the deceased person referred to in that paragraph, or is deemed not to be a descendant of his or her natural parent, the deceased person shall be deemed to be an ancestor of the person referred to in that paragraph, or shall be deemed not to be an ancestor of that person, as the case may be.