

### a) Survived by Spouse but no descendants

The surviving spouses will inherit the entire estate even if the deceased is survived by parents/siblings

If there is more than one spouse - they will share the estate equally.

### b) Survived by descendants, but no spouse

Descendants inherit the entire net estate.

Note: In the 1st Parentela division of an intestate estate between multiple descendants occurs per stirpes. (*ISA s1(4)(a)*)

A has 3 kids (B; C; D dead w 2 kids). B and C will get a third each. D's kids has 1/6 each

### c) Survived by spouses and descendants

#### Died after 24 Nov 2014

Spouse/s inherits child's portion OR amt determined from time to time by Minister of Justice & Correctional Services through the Gov Gazett - whichever amount is greater.

The amount stipulated for after 24/11/14 = R250K. Before = R125K

**Child's portion:** Net monetary value of estate/(no. of stirpes + no. of spouses)

Residue is spread among descendants

Note *ISA s 1(4)(a)* in terms of first parentela

*Example:* A - 2 spouses (X and Y); 3 children (B; C dead w 1 kid G; D Dead w 2 kids E & F). 5 Stripes.

$950K/5 = 190K$ .  $250K > 190K$ . Therefore X and Y get 250K each = 500K. Residue = 450K divided between As descendants per stirpes with representation.  $450K/3 = R150K$ . G gets R150K; E & F get R75K each.

### Effect of Disqualification/Renunciation by Heir

#### ISA s1(7)

Any benefit which they would have received if they hadn't been disqualified/hadn't renounced shall devolve as if they died immediately before the death of deceased and, if applicable, as if they was weren't disqualified

Applies only if s 1(6) is not applicable on the facts at hand

The disqualified or renouncing heir is regarded as having predeceased the deceased

*Example* E's estate = R600K. \$ kids (A, B C (dead) and D (murdered E - disqualified - 2 kids G & F).

S 1(7) directs that D must be treated as if D had predeceased E.

Three Stripes: (A, B, D). A & B get 600K x 1/3 each. G & F get 600 x 1.6 each. If D had no descendants, A&B would share).

#### ISA s1(6)

If a descendant of deceased, excl. a minor/-mentally ill descendant, who, together with the surviving spouse of the deceased, is entitled to a benefit from an intestate estate renounces his/her right to receive such a benefit, such benefit shall vest in the surviving spouse.

Applies only when:

1. a major and mentally healthy descendant of the deceased
2. renounced his/her right to inherit intestate from the deceased and
3. that descendant and the deceased's surviving spouse are both be entitled to benefit from the deceased's intestate estate
4. that descendant and the deceased's surviving spouse are both be entitled to benefit from the deceased's intestate estate

### Effect of Disqualification/Renunciation by Heir (cont)

*Example:* E's estate = R1.2mil. Has wife V. Same child situation as before. 3 stripes + wife

V, A, B and D each inherits a child's portion of R300 000. D renounced.

S 1(6): the renounced share vests in V as the surviving spouse and will not go to G and H by representation

### D) Only Survived by both parents

Parents inherit net estate in equal shares.

Authority: 2nd parentela division of an intestate estate between multiple descendants occurs per stirpes with representation (*ISA s 1(4)(a)*)

### e) 1 parent & descendant of deceased parent

Surviving parent inherits half the estate and descendants of deceased parent inherit the other half.

If deceased parent is not survived by a descendant, the surviving parents inherit the entire net estate.

*Example:* E's parent = M(dead) & P. M survived by A from 1st marriage; B & C from marriage with P. R750K go to P. M has 3 stripes =  $R750 \times 0.33$ .

### f) Only descendants of deceased parents

Net estate if split into 2 equal parts (one for descendants of each parents).

Authority *ISA s 1(4)(a)* in terms of 2nd parentela

*Example:* E's parents = P & M (2nd marriage). P has 4 children: C (dead with children D&F), B, H (prev marriage), E is dead.

M has children 4: C (dead with children D&F), B, G (prev marriage), E is dead. estate worth R1.2M

R600K divided amg P & M's descendants respectively.



### f) Only descendants of deceased parents (cont)

P has 3 stripes: H (from prev marriage); B surviving child; C deceased with descendants

H & B get R200K (1/3 x 600K). D & F (1/3 x R600K)/2

M has 3 stripes: G(prev marriage); B; C.

G & B get R200K (1/3 x 600K). D & F (1/3 x R600K)/2

G = R200K; D = R200K; F = R200K; B = R400K; H = R200K

### g) Descendant of one deceased parent.

The descendants of the deceased parent inherit the entire intestate estate.

Note **ISA s 1(4)(a)** in terms of 2nd parentela

### h) Only relatives in 3rd parental/further

Net estate divided equally among those most closely related by degree to the deceased.

In the 3rd/further parentela an intestate estate isn't divided per stirpes but per capita according to the Roman-Dutch principle 'die naaste bloed erf die goed' (the nearest blood relative(s) inherit(s) the estate)

*Example:* E's Cousin I and deceased cousin's (K) child L. I inherits E's entire estate because I is related to E by one degree less than L. If K was alive, I and K would split inheritance.

### Child Born Out of Wedlock

**ISA S 1(2):** [H]aving been born out of wedlock shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation

This is thus treated the same as other intestate inheritance cases, with the exception adoption.

### Position of the Adopted Child

Their position is determined through a reading - together of **s 1(4)(e) and 1(5) of the Intestate Succession Act** with **s 242(3) of the Children's Act 38 of 2005**

These provisions instruct that an adopted child is regarded as the child of the adoptive parent and not their biological parent..

Therefore, an adopted child can inherit intestate from his/her adoptive parent and vice versa. This relationship does not exist between the bio parents

**Exception in ISA s 1(4)(e)(ii) :** An adopted child remains a descendant of his/her natural parent for purposes of intestate inheritance if: (i) the natural parent is also the adoptive parent or (ii) the natural parent was married to the adoptive parent at the time of the adoption.

*Example:* M is divorced with a child (E) and marries X. X then adopts E while married. If E dies, both parents inherit due to exception.

