



Singapore
Institute of Legal Education

Probate & Succession Planning

Intestate Succession Act

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Singapore's intestacy laws prior to 2nd June 1967

Statute of Distributions 1670 (22 & 23 Charles II C. 10)

Minister for Law, Mr E.W. Barker, :

"The law of distribution on intestacy applicable in Singapore at present for non-Muslims follows the provisions of the English law as contained in the Statute of Distribution - a 17th century statute in England which has, in fact, been repealed there. The rules relating to the distribution of the estate of a deceased person on intestacy as contained in that statute are outmoded, especially in regard to the shares of the respective spouses. Under these rules, if a woman dies intestate leaving a husband, the whole of her estate goes to him. But if a man dies intestate leaving a widow and issue, the widow is entitled to one-third of the estate. And if he leaves a widow and no issue, she is entitled to one-half of the estate. The Bill seeks to amend the existing law so as to give equal rights to the spouses. When a person dies intestate, his property will be distributed in the manner set out in clause 7 of the Bill..."

Scope of Intestate Succession

Act - 1

2. Application.

Nothing in this Act shall apply to the estate of any Muslim or shall affect any rules of the Muslim law in respect of the distribution of the estate of any such person.

Note to SILE WPA candidates: Muslim succession law is not part of the WPA syllabus

3. Interpretation.

In this Act —

"child" means a legitimate child and includes any child adopted by virtue of an order of court under any written law for the time being in force in Singapore, Malaysia or Brunei Darussalam;

"intestate" includes any person who leaves a will but dies intestate as to some beneficial interest in his property;

"issue" includes children and the descendants of deceased children.

Scope of Intestate Succession Act - 2

4. Law regulating distribution.

(1) The distribution of the ***movable property*** of a person deceased shall be ***regulated by the law of the country in which he was domiciled at the time of his death.***

- Lex domicilii

(2) The distribution of the ***immovable property*** of a person deceased ***shall be regulated by this Act wherever he may have been domiciled at the time of his death.***

- Lex situs

Scope of Intestate Succession

Act - 3

Section 5:

5. If a person dies intestate after 2 June 1967, he being at the time of his death —

(a) domiciled in Singapore and possessed beneficially of property, whether movable or immovable, or both, situated in Singapore, or

(b) domiciled outside Singapore and possessed beneficially of immovable property situated in Singapore,

that property or the proceeds thereof ... shall be distributed among the persons entitled to succeed beneficially thereto.

Rules of Construction

Persons held to be similarly related to deceased.

6. For the purpose of distribution —

- (a) there shall be no distinction between those who are related to a person deceased through his father and those who are related to him through his mother nor between those who were actually born in his lifetime and those who at the date of his death were only conceived in the womb but who have subsequently been born alive [in other words, *en ventre sa mere*]; and
- (b) those related to a person deceased by the half blood shall rank immediately after those of the whole blood related to him in the same degree.

See Chng Heng Tee v Estate & Trust Agencies (1927) Ltd [2010] 1 SLR 681

Distribution under intestacy succession rules: Section 7

Rule 1

If an intestate dies leaving a surviving spouse, no issue and no parent, the spouse shall be entitled to the whole of the estate.

Rule 2

If an intestate dies leaving a surviving spouse and issue, the spouse shall be entitled to one-half of the estate.

Distribution under intestacy succession rules: Section 7

Rule 3:

Subject to the rights of the surviving spouse, if any, the estate ... of an intestate who leaves issue shall be distributed by equal portions per stirpes to and amongst the children of the person dying intestate and such persons as legally represent those children, in case any of those children be then dead.

Two important provisos to Rule 3

Rule 3 proviso 1

Proviso No. (1) — The persons who legally represent the children of an intestate are their descendants and not their next-of-kin.

Meaning?

This clarifies that if a child (“X”) of the intestate had predeceased him, and X had descendants who survived him, those descendants are the ones who are entitled to inherit. X’s spouse (i.e. the intestate’s child-in-law) will not be entitled to inherit at all.

If X had no descendants, then Proviso 1 does not apply. The other surviving children (or their descendants, if any other child had also predeceased the intestate) will share equally the Rule 3 entitlement.

Rule 3 proviso 2

Proviso No. (2) — Descendants of the intestate to the remotest degree stand in the place of their parent or other ancestor, and take according to their stocks the share which he or she would have taken

Meaning?

This is the *per stirpes* rule and shows that the distribution to descendants, where applicable, can extend to the grandchildren, great grandchildren, etc of an intestate.

Rules 4 and 5

Rule 4

If an intestate dies leaving a surviving spouse and no issue but a parent or parents, the spouse shall be entitled to one-half of the estate and the parent or parents to the other half of the estate.

Rule

If there are no descendants the parent or parents of the intestate shall take the estate, in equal portions if there be two parents. 5

Interestingly, if the deceased was an illegitimate child, Rules 4 and 5 must be read with Legitimacy Act, Section 10(2), and only the mother is entitled.

Rule 6

Rule 6

If there are no surviving spouse, descendants or parents, the brothers and sisters and children of deceased brothers or sisters of the intestate shall share the estate in equal portions between the brothers and sisters and the children of any deceased brother or sister shall take according to their stocks the share which he or she would have taken.

Rule 7

Rule 7

If there are no surviving spouse, descendants, parents, brothers and sisters or children of such brothers and sisters but grandparents of the intestate the grandparents shall take the whole of the estate in equal portions.

Rule 8

Rule 8

If there are no surviving spouse, descendants, parents, brothers and sisters or their children or grandparents but uncles and aunts of the intestate the uncles and aunts shall take the whole of the estate in equal portions.

Whole blood v Half blood

What is “whole blood”.

The relationship existing between persons having the same two parents; unmixed ancestry.

What is “half blood”

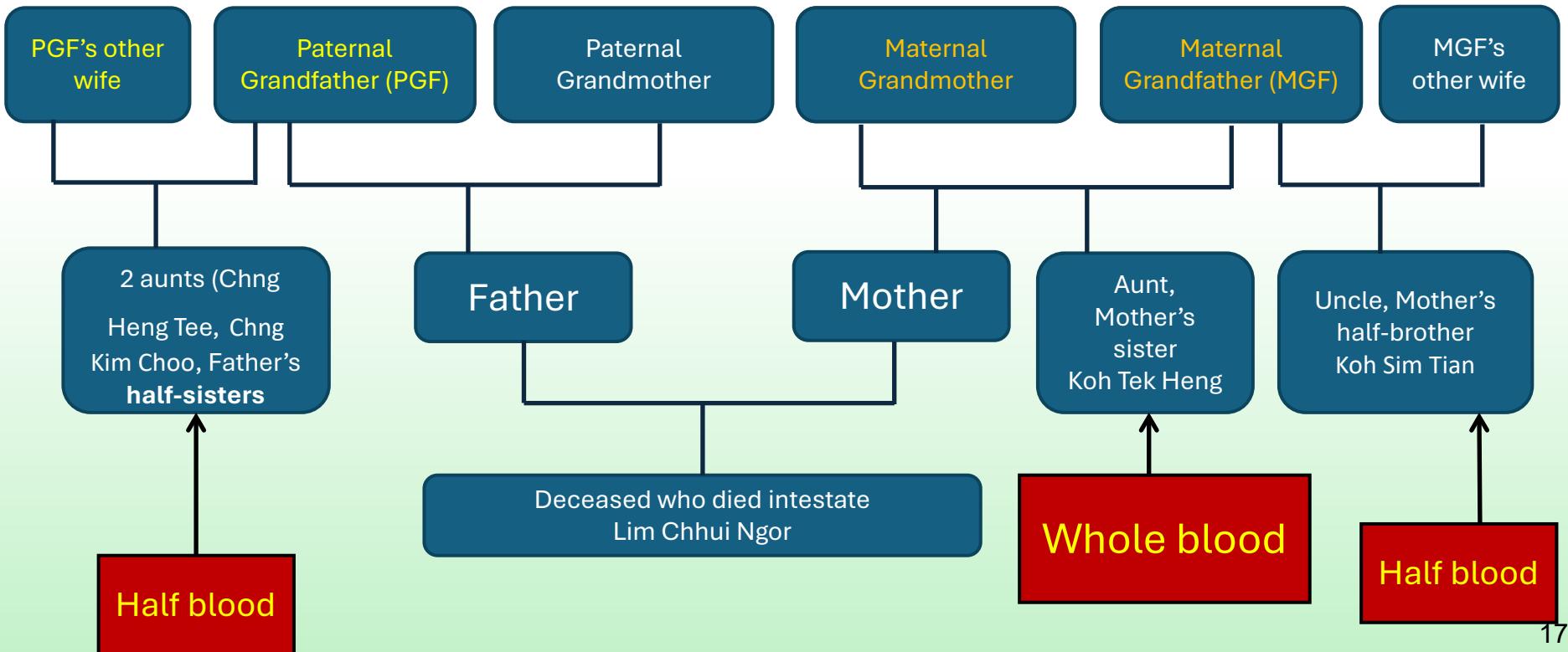
The relationship existing between persons having the same father or mother, but not both parents in common.

Battle of the “*Bloods*”

Chng Heng Tee (alias Cheng Kim Tee) and another v Estate & Trust Agencies (1927) Ltd [2010] 1 SLR 681

- Deceased died intestate
- No surviving spouse, descendants, parents, brothers and sisters or their children or grandparents.
- But there were competing aunts: whole blood aunt from the intestate's mother's blood relations v half blood aunts from the intestate's father's blood relations.

Chng Heng Tee's case



Chng Heng Tee's case - 1

Both Section 6 (a) and (b) apply:

6(a) For the purpose of distribution ... there shall be no distinction between those who are related to a person deceased through his father and those who are related to him through his mother ...

So, based on 6(a), it was a draw between the parties.

Chng Heng Tee's case –2

But S 6(b) states that for the purpose of distribution, “those related to a person deceased by the half blood shall rank immediately after those of the whole blood related to him in the same degree.”

So, the whole blood aunt won!

Chng Heng Tee's case

Section 7 r 8 of the ISA had to be interpreted in the light of, and subject to, s6(b) of the ISA. The aunt of the deceased who shared the same parents as the deceased's mother was the sole beneficiary of the deceased's estate to the exclusion of the plaintiffs as she was a whole blood aunt of the deceased, unlike the plaintiffs who were the half blood aunts and half blood uncle of the deceased.

Child – 6 situations

- Legitimate child; Legitimated child
- Illegitimate child
- Step-child
- Foster child
- Adopted child
- “Disowned” child

Illegitimate child

AAG v Estate of AAH [2010] 1 SLR 0769 (Court of Appeal)

Illegitimate child is not a “child” under the ISA

To permit an illegitimate child to claim for maintenance against his or her deceased parent’s estate would be to indirectly allow that child to claim for a share in the intestate parent’s estate, contrary to the ISA.

A child who remains illegitimate is entitled to the intestate estate of his mother in the event that the mother does not leave any legitimate children. The illegitimate child takes the estate as if he was the legitimate child of the mother. (Legitimacy Act, S. 10).

Quaere: what if the deceased woman had both legitimate and illegitimate children and died intestate?

Step-Children

Can a step child of a deceased claim from the estate of an intestate step-parent?

Low Guang Hong David & Ors v Suryono Wino Goei
[2012] 3 SLR 185

Competing claims between the step children and the deceased's single brother.

Low Guang Hong David & Ors v Suryono Wino Goei [2012] SGHC 93

Tay Yong Kwang J held that “child” under section 3 of the ISA cannot be interpreted as including a step child. The main meaning of “child” was “legitimate child” and the enlarged definition was “adopted child”. Taken as a whole and in its proper context, the ISA requires a legal and biological connection between parent and child and hence, the exception for lawfully adopted children who satisfy the legal but not the biological requirement.

The Court observed that it is therefore incumbent on step-parents wishing to provide for their step-children’s entitlement to their estate to expressly state so in a proper Will.

“Foster children”

Lim Weipin v. Lim Boh Chuan [2010] 3 SLR 423

A foster child is not a “child” under the ISA.

Exclusion of Hotchpot Rule

Children's advancement not to be taken into account.

9. Where a distributive share of the property of a person dying intestate is claimed by a child or any descendant of a child of that person no money or other property which the intestate may during his life have given, paid or settled to or for the advancement of the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

Note: This only applies to the entitlements of the child (or his descendants) but not to the others, eg spouse, parents, siblings, etc.

Partial Intestacy – ISA provision

Application to cases of partial intestacy

10. Where any person dies leaving a will beneficially disposing of part of his property, the provisions 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:

Provided that 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 entitled to take that part beneficially.

Curiously there is a similar provision in the Civil Law Act:

S. 24 -Executor deemed to be trustee for person entitled to residue on intestacy

When any person dies or has died, having by his will appointed any person to be his executor, such executor shall be deemed to be a trustee for the person, if any, who would be entitled to the estate in case the person died intestate in respect of any residue not expressly disposed of, unless it appears by the will that the person so appointed executor was intended to take such residue beneficially.

What's the difference btw S.10 (ISA) and S.24(CLA)?

Both appear practically identical, but S. 10 (ISA) helpfully provides that with regard to the intestate estate, “the provisions of the ISA shall have effect ..., subject to the provisions contained in the will”. This phrase is absent from the CLA.

Common mistake in partial intestacy cases

The executor of the will should simply apply for grant of probate of the will, notwithstanding the partial intestacy. The Executor does not need to apply for a separate grant of letters of administration, even if there are infant beneficiaries of the intestate portion of the estate. The Executor's powers and duties are spelled out in both S. 10 (ISA) and S.24 (CLA) and also the will, if applicable.

P.S. Note that ISA S.10 uses “personal representatives” whereas CLA S.24 refers to “executor”. Quaere: is there any difference in the applications of the provisions?

Rule 9 – *bona vacantia*

Rule 9 - In default of distribution under the foregoing rules the Government shall be entitled to the whole of the estate.

S. 27 – Civil Law Act

BONA VACANTIA

27.—(1)+(2) This section applies ... where a right to the estate of any person who dies intestate without next-of-kin has accrued to the Government... such estate, property or part thereof that is not land ... shall form part of the Consolidated Fund.

(3) If it appears to the Minister (of Law) that a right to any estate or property upon the death of a person as mentioned in ss (1) has accrued to the Government, it shall be lawful for the Minister, upon application being made to him or if he considers it reasonable to do so, disclaim and release in whole or in part that right to such estate or property in favour of such person or persons who establish to the satisfaction of the Minister any equitable or moral claim thereto; and to authorise or order the giving, conveyance, transfer, grant or payment, out of the whole or any part of such estate or property or (if sold) its proceeds, in such share, proportion and manner and upon such terms and conditions as the Minister thinks appropriate (whether or not including the payment of moneys) to that person or those persons, as the case may be.

| Spouse | Children | Parent(s)) | Siblings | Grand- parents | Uncles and aunts | Entitlement |
|---------------|-----------------|------------------------|-----------------|---------------------------|-----------------------------|--|
| ✓ | ✗ | ✗ | | | | Spouse entitled to 100% |
| ✓ | ✓ | | | | | Spouse entitled to 50% Children entitled to 50% |
| ✓ | ✗ | ✓ | | | | Spouse entitled to 50% Parents entitled to 50% |
| ✗ | ✗ | ✓ | | | | Parents entitled to 100% |
| ✗ | ✗ | ✗ | ✓ | | | Siblings/children of siblings entitled to 100% |
| ✗ | ✗ | ✗ | ✗ | ✓ | | Grandparents entitled to 100% |
| ✗ | ✗ | ✗ | ✗ | ✗ | ✓ | Uncles and aunts entitled to 100% |
| ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | Government entitled to 100% |

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