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Wills, Trusts, and Estates for
Legal Assistants

Sixth Edition



Wolters Kluwer

Part One

INTESTATE SUCCESSION

Chapter 2

DESCENT AND DISTRIBUTION

Chapter Objectives

- Understand why most people die intestate
- Describe how surviving spouses are protected under common law and under modern statutory systems
- Explain the various mechanisms used to determine the shares of decedents
- Distinguish between civil law and canon law degree of relationship systems
- Discuss the process of escheat

Reasons Most Individuals Die Intestate

- Lack of property
- Unaware of importance
- Indifference
- Cost
- Time and effort
- Complexity
- Admission of Mortality
- Reluctance to Reveal Private Facts

Intestacy

- Intestate
 - To die without a will
 - Law of intestate succession: how intestate property passes
 - Law of the state where decedent is domiciled determines how personal property is passed
 - Law of the state where property is located determines how real property is passed
 - State laws differ



Other Important Terms in Intestacy and Probate

- **Decedent:** The person who died; whose property comprises the estate that is begin administered due to death.
- **Descendant:** The decedent's children, grandchildren, after-born generations; the lineal blood relatives in decedent's "downline" of relatives



Passing of property by Intestate Succession

- Probate property
 - Passes after expenses with court supervision
- Nonprobate property
 - Passes directly to heirs without court supervision; no intestate succession applies



Passing of Property in Intestacy

- Property not included in will passes according to law of intestate succession
 - Will drawn without residuary clause
 - Person(s) named in residuary clause die before testator
 - Children omitted unintentionally from parents' will
 - Person refuses to accept gift



Passing of Property in Intestacy

- **Simultaneous death**
 - When family members, usually husband and wife, die at the same time and it is impossible to determine who died first
 - **Uniform Simultaneous Death Act**
 - Allows property of each person to be distributed as if he or she had survived, unless a will or trust provides otherwise



Basic Procedure for Determining Shares of Descendants

- **Step One:** identify intestate's children
- **Step Two:** determine if any predeceased child left a descendant who outlived intestate
- **Step Three:** ascertain state's method of handling multi-generation succession

Per Stirpes

- **Per stirpes distribution:** A system for distributing property in which distributees take shares by right of representation at the generation closest to the decedent.



Per Capita with Representation

- A system for distributing property in which distributees take shares by right of representation at the generation with living members closest to the decedent.

Note: also known as modern per stirpes. Virginia seems to follow this form; similar to per stirpes



Explanation of how to determine Modern Per Stirpes

- Following the family tree and the statute for descent and distribution (using Virginia statute for this example), find the first surviving family member(s):
 - Surviving Spouse of decedent?
 - Children of decedent?
 - Are any from prior relationship? (only if spouse survives too)
 - Mother and/or father of decedent?
 - Siblings of decedent?
 - Parents or Parents of decedent? Moiety for each?
 - And more, if needed to arrive at generation to determine shares



Per Capita at Each Generation

- A system for distributing property in which distributees of the same generation take equal portions of a share determined by right of representation at the generation with living members closest to the decedent.

Parentelic Systems

- A system of distributing shares of intestate property equally between maternal ancestors and collaterals and paternal ancestors and collaterals.

Degree-of-Relationship System

- A method for determining heirs by counting degrees of kinship between an heir and a decedent.



Civil Law Degree-of-Relationship System

- Determining degree-of-relationship by counting the steps from a decedent to an heir through a common ancestor and using the total number of steps.

Canon Law Degree-of-Relationship System

- Determining degree-of-relationship by counting the steps from a decedent to an ancestor and from an heir to that ancestor and using the larger number of steps.

Escheat

- **Escheat:** A process by which the property of an intestate passes to the state government.
- If the intestate dies without an heir who is entitled to take under the jurisdiction's intestacy statutes, the intestate's property reverts to the state government through the escheat process.

Note: very rare in Per Stirpes or Modern per stirpes as long as family tree can be followed to determine a living heir.

