Study Day on Dying,Death and Bereavement

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A Brief Guide to the Succession (Scotland) Act 1964

(A) Where the deceased person did not leave a Will (Intestacy)

1. Prior Rights

After debts and other liabilities have been met, a widow, widower or a surviving civil partner has certain prior rights in the deceased person's estate, where no Will has been left.

He or she, is entitled to the dwellinghouse, up to the value of £300,000 of the deceased in which the surviving spouse or civil partner was resident at the time of the deceased's death, plus up to the value of £24,000 any furnishings and furniture of that house. (In certain cases, eg where the house is a farmhouse or part of a shop, or where the house is worth more than £300,000 the entitlement is not to the house itself but to its value up to £300,000.)

The surviving spouse or civil partner is also entitled to the first £42,000 out of the estate if the deceased left children or descendants of children or to the first £75,000 if the deceased left no children or descendants.

Prior Rights are a first claim on the estate, before legal rights **(see below.)**

2. Legal Rights

A surviving spouse or civil partner and children are entitled to certain "Legal Rights" out of the deceased person's moveable estate. In Scots Law heritable property means land and buildings while moveable property includes such things as money, shares, cars, furniture and jewellery.

The surviving spouse or civil partner is entitled to one-third of the deceased's moveable estate if the deceased left children or descendants of children, or to one-half of it if the deceased left no such children or descendants.

The children are collectively entitled to one-third of the deceased's moveable estate if the deceased left a spouse or civil partner, or to one-half of it if the deceased left no spouse or civil partner. Each child has an equal claim. Where a child would have had a claim had he or she not died before his or her parent his or her descendants may claim his or her share by the principle known as representation.

3. Other Rights on Intestacy

After any Prior Rights and Legal Rights have been satisfied the remainder of the intestate estate both heritable and moveable devolves (without distinction between heritable and moveable estate) in the following order, any surviving relatives in an earlier group taking precedence, thereby precluding any surviving relatives in a later group from succeeding to any part of the estate, viz

(a) Children take the whole.

(b) Either or both parents and brothers and sisters - half to parent or parents and half to brother and sisters.

(c) Brothers and sisters take the whole.

(d) Either or both parents take the whole.

(e) Husband or wife or civil partner - surviving spouse or civil partner takes the whole.

(f) Uncles or aunts (on either parent's side) take the whole.

(g) Grandparent or grandparents (on either side) take the whole.

(h) (h) Brothers and sisters of any grandparents (on either side) take the whole.

(i) Ancestors of intestate remoter than grandparents, on both paternal and maternal sides generation by generation successively take the whole, but if no ancestors survive in any generation their brothers and sisters come before ancestors of the next more remote generation.

(j) Finally, the Crown as *ultimus haeres,* failing any relatives in the foregoing categories takes the whole.

The application of the foregoing order of succession is subject to three general principles:-

1. There is no preference for male persons, or in regard to age. For instance, brothers do not rank before sisters, or elder brothers before younger (except in relation in succession to such things as titles and coats of arms).

2. There is representation in all branches of succession ie where any relative who would, if alive have been entitled to succeed to the whole or any part of the intestate estate has predeceased leaving children, such children take equally among them the share which their deceased parent would have received if in life. If, however, the persons taking by representation are all in the same degree of relationship to the deceased, each individual takes an equal share.

3. In the case of collaterals ie brothers and sisters of the deceased or of an ancestor of the deceased, both those of the full blood and those of the half blood are entitled to succeed, but collaterals of the full blood have preference. If there are no collaterals of the full blood the collaterals of the half blood rank without distinction as between those related through the father or mother.

(B) **Where the deceased left a valid Will.**

Where a Will has been left the Prior Rights described in Note 1 above do not apply. However, the Legal Rights described in Note 2 may be claimed by a surviving spouse or civil partner or a child, although any person who has rights under a Will as well as Legal Rights has to choose between them; he or she

cannot have both.

The terms "child", "children" and "issue" or other similar terms in Wills are understood to include both the legitimate and the illegitimate unless there is an express exclusion of the one or the other.

(C) **Adopted Children**

The position of adopted children is the same as that of natural children for the purposes of succession. Thus an adopted child has the same rights of succession in relation to his or her adoptive parents' estate as a natural child, and adoptive parents have the same rights of succession that they would have, had they been in natural parents of the child.