

CHAPTER 237.

DESCENT.

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237.01 How to descend. When any person shall die seized of any lands, tenements or hereditaments or any right thereto or entitled to any interest therein, in fee simple, not having lawfully devised the same, they shall descend, subject to his debts, except as provided in section 237.02, in the manner following:

(1) In equal shares to his children and to the lawful issue of any deceased child by right of representation; and if there be no child of the intestate living at his death his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate they shall share the estate equally, otherwise they shall take according to the right of representation.

(2) If the intestate leave no lawful issue, to his or her widow or widower; if the intestate leave no such issue, widow or widower, to the parents of the intestate, if living, and if either parent shall not be living, to the survivor.

(3) If the intestate leave no lawful issue nor widow nor widower nor father nor mother the estate shall descend in equal shares to the intestate's brothers and sisters and to the lineal descendants of any deceased brother or sister by right of representation.

(4) If the intestate leave no lawful issue, widow, widower, father, mother, brother nor sister the estate shall descend to the intestate's next of kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote; provided, however,

(5) If any person shall die leaving several children or leaving one child and the issue of one or more other children, and any such surviving child shall die under age, not having been married, all the estate that came to the deceased child by inheritance or by testamentary gift from such deceased parent and all personal property which belongs to such deceased child by reason of distribution under subsection (1) of section 318.01 shall descend and be distributed in equal shares to the other children of the same parent and to the issue of any such other children who shall have died, by right of representation.

(6) If at the death of such child who shall die under age and not having been married all the other children of his said parent shall also be dead and any of them shall have left issue, the estate that came to said child by inheritance from his said parent shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

(7) If the intestate shall have no widow nor kindred his estate shall escheat to the state and be added to the capital of the school fund. [1941 c. 290; 1943 c. 316]

Note: If lands which have been sold for taxes escheat, the state merely succeeds to the right of redemption. *State v. Gether Co.*, 203 W 311, 234 NW 331.

Nieces and nephews of a decedent and constituting his next of kin take per capita rather than by right of representation. *Schneider v. Payne*, 205 W 235, 237 NW 103.

Under a will creating a trust, and directing that the income be paid to a daughter of the testator, and that the principal upon the death of the daughter be paid to her "issue," where the daughter died leaving surviving a son, and children and grandchildren of a deceased daughter, it is determined that the issue of the daughter of the testator took per stirpes and not per capita. *Will of Morawetz*, 214 W 595, 254 NW 345.

Where testatrix gave residuary estate in trust, income from which was to be paid to

testatrix' only son for life and upon his death to his wife, but remainder was not disposed of in case son died childless and survived by wife alone, which happened, testatrix died intestate as to such remainder and son's wife took it as son's only heir. Where one person had sole life interest in trust by will and took the remainder by inheritance, merger resulted which terminated the trust. *Will of Fitton*, 218 W 63, 259 NW 718.

The words "in the same degree" as used in 237.03, were not meant to limit the rights of lineal descendants of the half blood to take only when of equal degree with the other lineal descendants, and do not indicate an intention to deprive lineal descendants of a deceased half brother of an intestate, leaving nonancestral property, from taking by representation under 237.01 (3). *Estate of Curtiss*, 245 W 311, 13 NW (2d) 917.

237.02 Homestead, how to descend. When the owner of any homestead shall die, not having lawfully devised the same, such homestead shall descend, free of all judgments

and claims against such deceased owner or his estate except mortgages lawfully executed thereon and laborers' and mechanics' liens, in the manner following:

(1) If the decedent shall have no lawful issue, to the widow or widower.

(2) If the decedent shall leave a widow and issue or a widower and issue, to the widow or widower so long as not remarried, and upon marriage or death to the original decedent's heirs according to section 237.01, provided, that the limitation as to value of the homestead in section 272.20 (1) shall not apply between a widow or widower, so long as not remarried, and the heirs of the decedent.

(3) If the decedent shall leave issue and no widow or widower, to such issue according to section 237.01.

(4) If the decedent shall leave no issue or widow or widower, such homestead shall descend under section 237.01, subject to lawful liens thereon; provided, however, if there be no widow or widower or minor child of such deceased owner of any homestead living at the time of death such homestead shall be subject to and charged with the expenses of last sickness and funeral and the costs and charges of administration; and provided further, that if there be no widow or widower and no child and no child of any deceased child of such deceased owner of any homestead such homestead shall be subject to all the debts and liabilities of such deceased owner. [1943 c. 316]

Note: City property of an area of less than one quarter of an acre, on the front of which was a residence occupied by the decedent during his lifetime, and on the rear of which was a building the lower part of which was used by the decedent for the storage of automobiles and equipment for carrying on his business, and the upper part of which was rented for living quarters, constituted his "homestead." Will of Bresnahan, 221 W 51, 266 NW 93.

A homestead which descended to the adult son and sole surviving heir of the owner was

not subject to the deceased owner's "debts and liabilities" so as to entitle the administrator of the deceased owner's estate, under 312.04, to the possession of the homestead or the rent thereof. Curtis v. Gillie, 239 W 207, 300 NW 911.

The widow's dower and homestead rights, which came to her on the decedent's death, could not be used by the tortfeasor to offset the widow's pecuniary damages caused by the death. Schmutzler v. Brandenburg, 240 W 6, 1 NW (2d) 775.

237.03 Degrees of kindred, how computed. The degrees of kindred shall be computed according to the rules of the civil law; and kindred of the half blood shall inherit equally with those of the whole blood in the same degree unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance.

Note: This section, providing that kindred of the half blood shall inherit equally with those of the whole blood "in the same degree" unless the inheritance came to the intestate from one of his ancestors, in which case all those who are not of the blood of such ancestors shall be excluded from such

inheritance, abolished all distinction between the rights as to inheritance of kindred of the half blood and kindred of the whole blood, except as applied to ancestral property. Estate of Curtiss, 245 W 311, 13 NW (2d) 917.

237.04 Descent as to adopted persons. The right of descent from and to an adopted person shall be as prescribed in section 322.07. [1933 c. 159 s. 30]

Note: The statutes in force at the time of his death, as against statutes in force at a prior or subsequent date, govern the disposition of the estate; consequently 322.07, en-

acted after the adoption of a child but in force at his death, determines succession and inheritance. Estate of Hood, 206 W 227, 239 NW 448.

237.05 Property of illegitimate child. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother; or in case of her decease, to her heirs at law.

237.06 Heirship of illegitimates; issue of null marriage. Every illegitimate child shall be considered as heir of the person who shall, in writing signed in the presence of a competent witness, have acknowledged himself to be the father of such child or who shall be adjudged to be such father under the provisions of chapter 166, or who shall admit in open court that he is such father, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother any part of the estate of his or her kindred, either lineal or collateral, unless before his death he shall have been legitimated by the marriage of his parents in the manner prescribed by law. [1943 c. 275 s. 58]

Note: The legal presumption that devises to children are to legitimate children is rebutted by the fact that the testator must have intended that illegitimate children would take. In re Kaufer's Will, 203 W 299, 234 NW 504.

The evidence in this case sustained a finding that the illegitimate daughter of the decedent was acknowledged by him. Estate of Bailey, 205 W 648, 238 NW 845.

237.07 Right of representation. Inheritance, or succession by right of representation, takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken if living; posthumous children are considered as living at the death of their parents.

237.08 Curtesy or dower not affected. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy nor that of a widow as tenant in dower, nor shall the same affect any limitation of an estate by deed or will.

237.09 Title by descent; evidence of; inheritance tax. Whenever a person has died or shall die owning real estate in this state, or whenever a homestead claimant under the laws of the United States has died or shall die before the issuance of the patent to him, and the patent shall have issued to the widow or heirs of the homestead claimant, and it shall appear that the estate of such deceased person is not subject to an inheritance tax, or if subject to such tax that said tax has been paid, upon application by duly verified petition of the heirs of such person or homestead claimant, their guardian, or any person interested in such real estate or such homestead, to the county court of the county of which the deceased was an inhabitant at the time of his death, if a resident of this state, or to the county court of the county in which any real estate of such deceased person is situated, if a nonresident, the county judge may issue under the seal of the county court a certificate setting forth the names of such heirs, or widow, and the interest of each of them in the premises of which said deceased died seized, or in said homestead, giving a description of the same, which certificate or a certified copy thereof when recorded in the office of the register of deeds of the county in which such real estate is situated, shall be prima facie evidence of the facts therein recited.

237.10 Uniform simultaneous death act. (1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this section.

(2) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(3) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) This section shall not apply to the distribution of the property of a person who has died before it takes effect [June 26, 1941].

(6) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this section.

(7) This section shall be so construed as to make uniform the law in those states which enact it.

(8) This section may be cited as the Uniform Simultaneous Death Act. [1941 c. 284]

Note: One of the purposes of the presumption of death after an unexplained absence for a specified number of years has been to complete the chain of title to property and administer estates so that business may carry on. Estate of Langer, 243 W 561, 11 NW (2d) 185.

Where the circumstances of the disappearance of an absent one are unambiguous and there is no way to account for his not having been heard of without assuming his

death, the presumption of death from absence of 7 years is conclusive; but where the circumstances of his leaving are ambiguous and cast doubt on the probability of his communicating with his family, even though alive, it is for the jury to say whether under the circumstances he would naturally communicate with his family, relatives or friends, if alive. Swenson v. Kansas City Life Ins. Co. 246 W 432, 17 NW (2d) 584.

237.11 Decedent devolution of United States obligations in beneficiary form. Where any resident of this state shall die possessed of any bonds or certificates of indebtedness of the United States of America which are registered in his name, payable on death to another, the unqualified ownership thereof and of the proceeds which may be derived therefrom shall, on the death of the original owner, belong to such named alternate payee, any law of this state to the contrary notwithstanding. [1943 c. 369]