

LAW OF SUCCESSION

FIDUCIARY SERVICES



FOR PROFESSIONALS
SINCE 1941



AGENDA

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- 02 Types of Succession

- 03 Testamentary Succession

- 04 Intestate Succession

- 05 Renunciation of benefits

- 06 Spouse per Intestate Succession

- 07 Limited Interests





INTRODUCTION

- The Law of Succession consists of:
- Legal rules; and
- Common law principles

....which regulates the devolution of the estate of a deceased person to beneficiaries.



TYPES OF SUCCESSION

TESTAMENTARY SUCCESSION

Occurs when a person has a valid will

INTESTATE SUCCESSION

Occurs when a person dies without a will

CONTRACTUAL SUCCESSION

Lawful succession by contract – only ANC
Also known as Pactum Successorium

TESTAMENTARY SUCCESSION



Many good reasons for having an up-to-date and valid will, including the ability of the client to:

- Choose his executor
- Negotiate executor fees
- Choose his heirs & beneficiaries
- Nominate trustees for the testamentary trust
- Make use of the various estate duty concessions and deductions
- Include special instructions and directions in his will

INTESTATE SUCCESSION



TOTAL INTESTACY:

- Deceased never made a will
- Previous will was revoked
- Valid will but heirs & legatees have predeceased, are incapable of inheriting, disqualified from inheriting
- Will invalid due to non-compliance of formalities

PARTIAL INTESTACY:

- Deceased didn't deal with all the assets
- Bequest to residual heir fails



INTESTATE SUCCESSION: ROLEPLAYERS

ASCENDANTS:

Ancestors of the deceased, i.e. mother, father, grandmother and grandfather

DESCENDANTS:

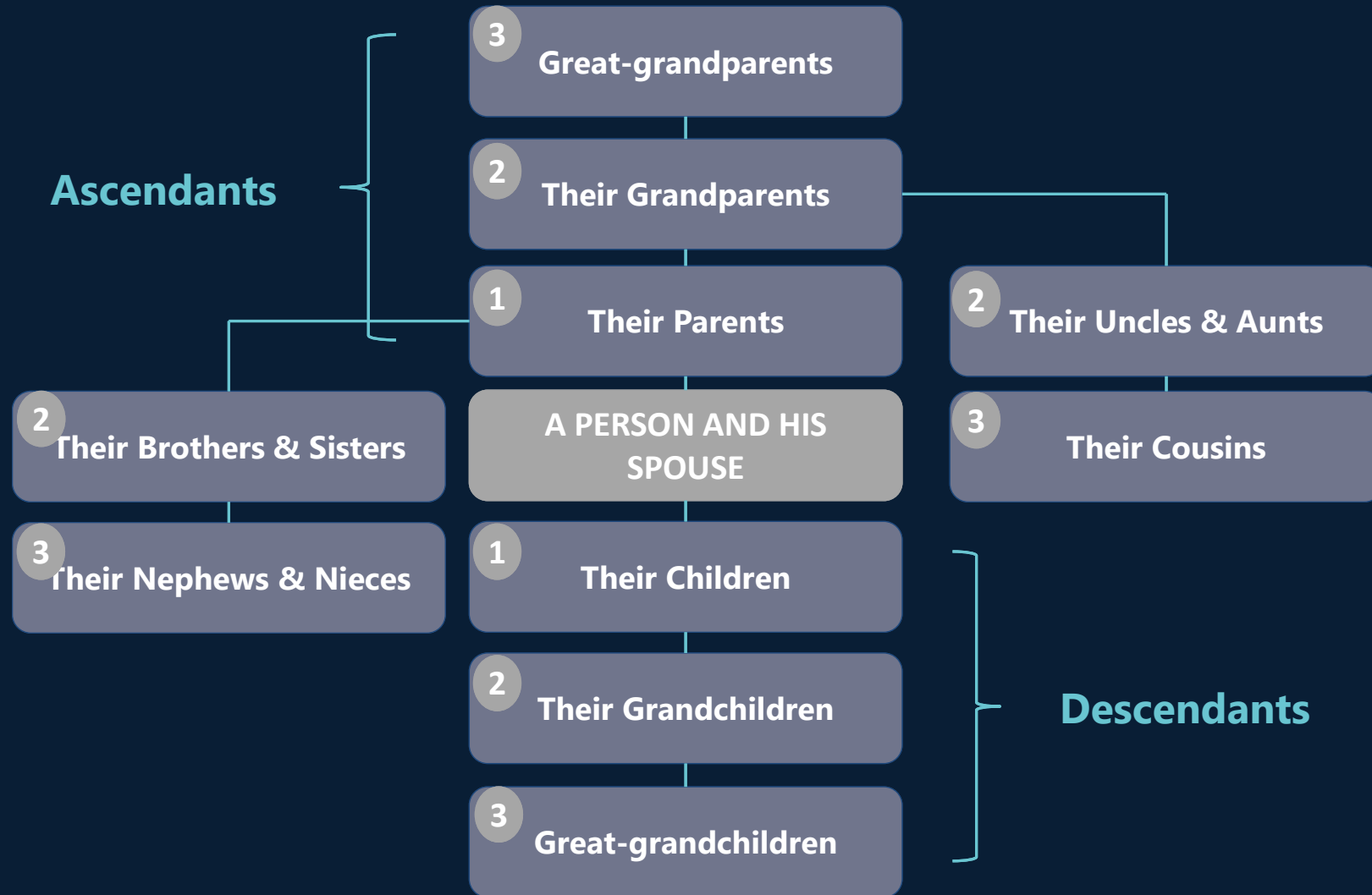
(NOT Dependents) of the deceased, i.e. children included adopted children

COLLATERALS:

Persons related to the deceased through at least one common ancestor or ascendant, i.e. brother, sisters and cousins

CONSANGUITY: Degree of relationships between blood relations

INTESTATE SUCCESSION: CONSANGUINITY



INTESTATE SUCCESSION: RULES OF DIVISION

1. 1st Priority is to benefit the surviving spouse and the children of the deceased;

2. Heirs are always looked for below the deceased in the family tree first (i.e. descendants) before looking above the deceased (i.e. ascendants);

3. Intestate succession is limited to blood relations, with the only two exceptions being the surviving spouse and adopted children;

4. When ascendants do come into play, a 50/50 split is always done between the parents of the deceased before any further division is done;

5. Division is done per stirpes whenever descendants and descendants of parents are involved

**Underlying
philosophy of
Intestate Succession:**

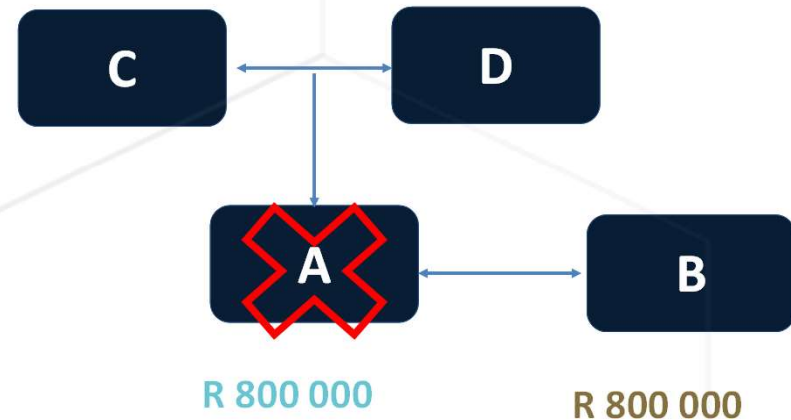
INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 1: SPOUSE BUT NO DESCENDANTS

A died with no descendants but with a surviving spouse (B) and parents. His estate is valued at R 800 000.

A didn't have a valid will at the time of his death, how will his estate be distributed

Surviving spouse inherits all



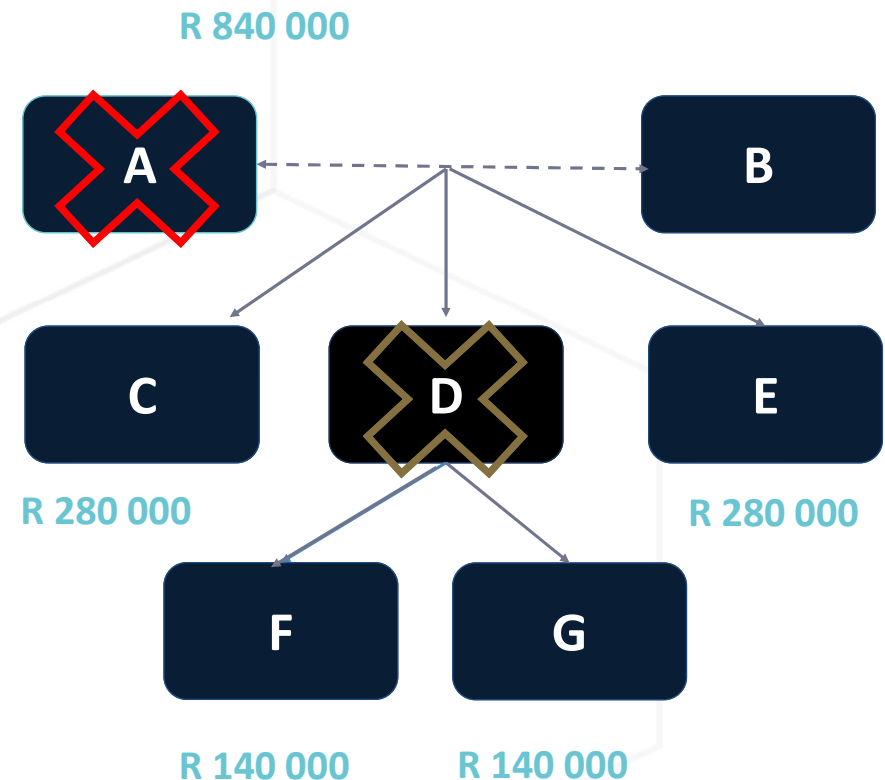
INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 2: NO SPOUSE BUT DESCENDANTS

A dies and is survived by his 2 children C & E. He also has a predeceased child, D, who was survived by 2 children, F & G. His estate is valued at R 840 000.

A didn't have a valid will at the time of his death, how will his estate be distributed?

The descendants inherit everything with representation per stirpes.

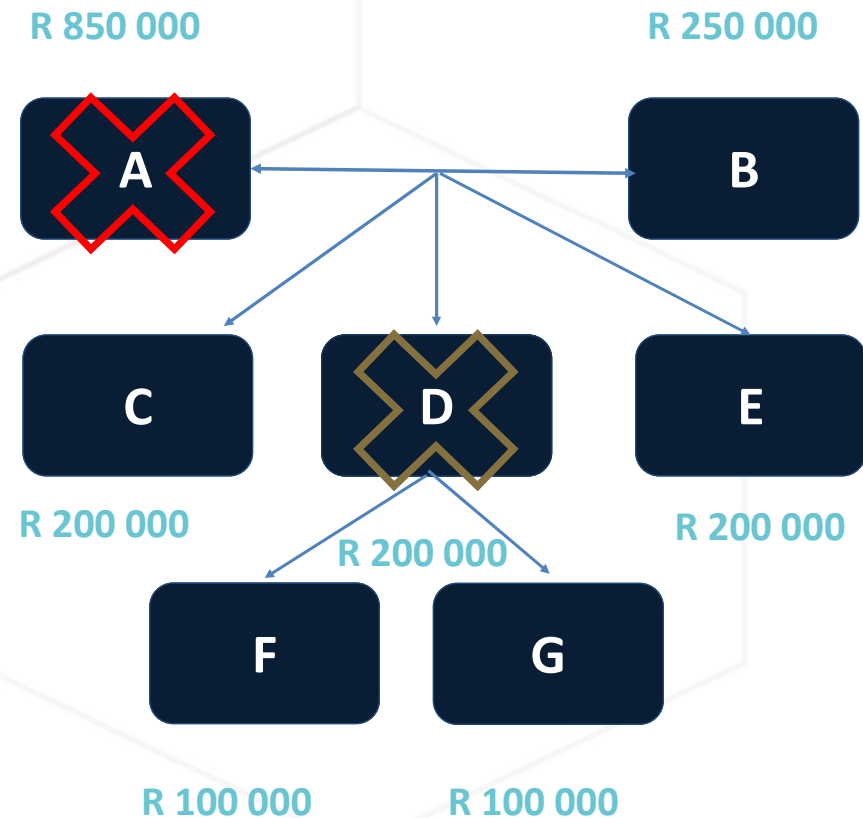


INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 3: SPOUSE AND DESCENDANTS

A dies with an estate of R 850 000, and leaves a spouse, B, and children C and E. A didn't have a valid will at the time of his death, how will his estate be distributed?

Spouse inherits the greater of a child's share or R 250 000



WHAT ABOUT THE MATRIMONIAL PROPERTY REGIME APPLICABLE?



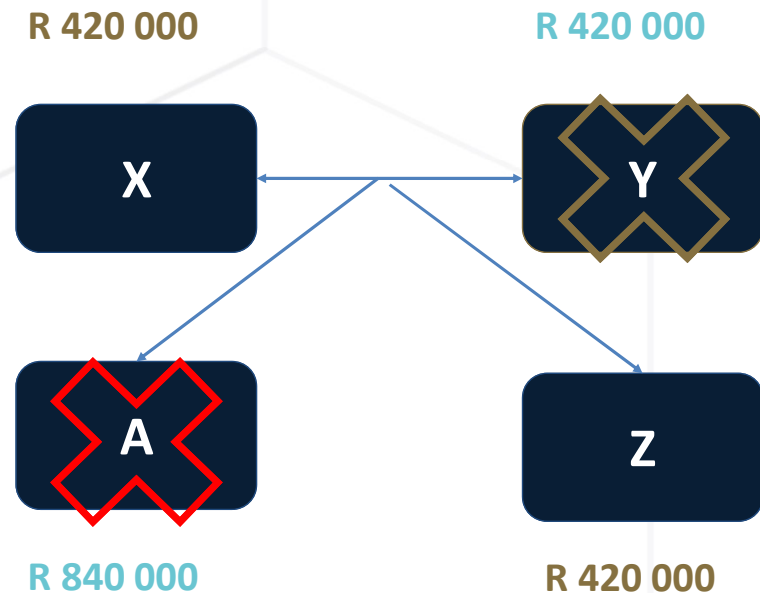
INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 4: NO SPOUSE, NO DESCENDANTS BUT A SURVIVING PARENT(S)

A dies with an estate value of R 840 000, without a spouse or descendants. A is however survived by both his parents and brother, Z.

A didn't have a valid will at the time of his death, how will his estate be distributed?

Each parent will inherit one half of the estate

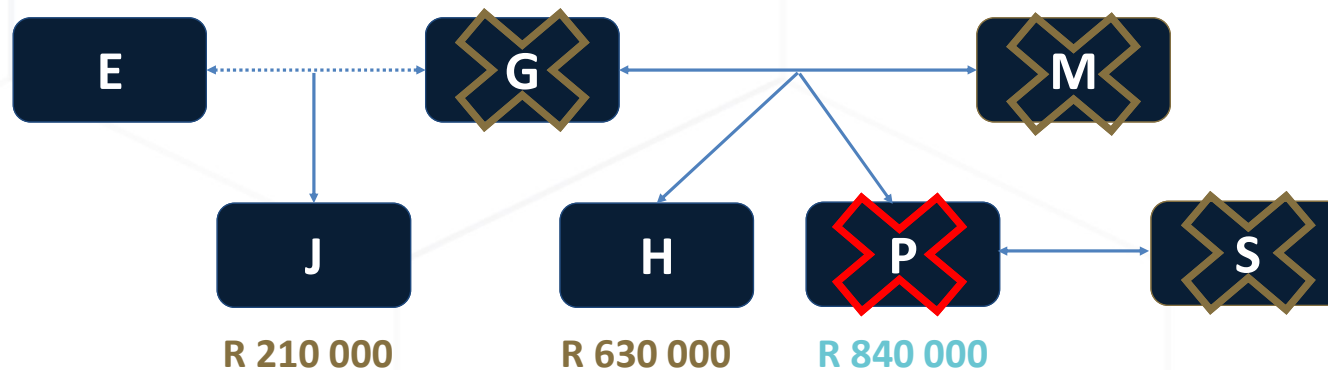


INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 5:

NO SPOUSE, NO DESCENDANTS & NO SURVIVING PARENT BUT DESCENDANTS OF A PARENT(S)

P dies with an estate valued at R 840 000. He has no surviving spouse, no descendants and both his parents are predeceased. P has however 2 siblings, one in full blood (H) and one in half blood (J). P didn't have a valid will at the time of his death, how will his estate be distributed?



Deceased's estate will be split into 2 halves. These halves will each go to the descendants of each parent.
How does siblings' relations affect the distribution?



**What about adopted children & children
born out of wedlock?**

INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 6:

NO SPOUSE, NO DESCENDANTS & NO SURVIVING PARENT OR DESCENDANTS OF A PARENT(S)

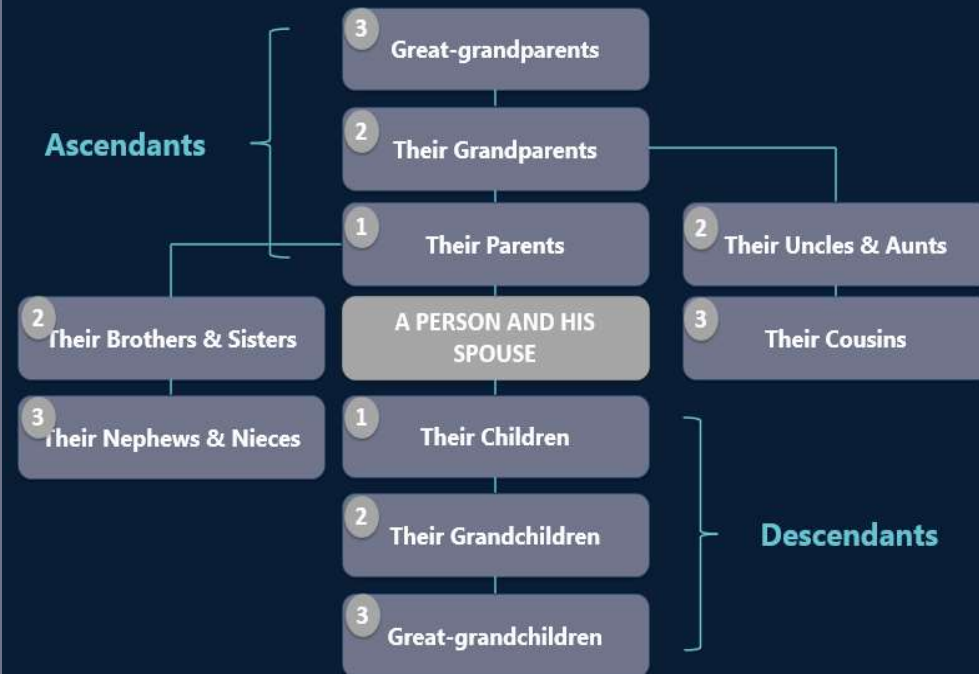
Entire estate will devolve upon the closest blood relatives of the deceased in equal shares.

How will you determine who is the closest blood relatives?

Determine the degrees of blood relationship per consanguinity table

Note:

- All blood relations who are equally close to the deceased will inherit in equal shares.
- Representation by a descendant of such closest relatives shall not be allowed. Representation per stirpes is limited to descendants of descendants, and descendants of parents of the deceased.



INTESTATE SUCCESSION: RULES OF DIVISION

SCENARIO 7: NO SPOUSE OR BLOOD RELATIVES

Executor must **convert all assets to cash** that he/she has been unable to distribute and pay it over to the Master within **2 months** after the estate became distributable, for deposit in the **guardian's fund** on behalf of persons who may be entitled thereto.

Unclaimed money in the guardian's fund shall be forfeited to the state after a period of **30 years** after it became claimable

INTESTATE SUCCESSION : RENUNCIATION

RENUNCIATION BY DESCENDANTS:

If a descendant, who is entitled to a benefit together with the surviving spouse, renounces his right to the benefit, the benefit will vest in the surviving spouse

DISQUALIFICATION AND RENUNCIATION BY HEIRS OTHER THAN DESCENDANTS:

Any heir who renounces or is disqualified is deemed to have died before the deceased and deemed not to have been disqualified, if applicable.

Therefore, any benefit that such a person would have received will go to his descendants or will accrue to the remaining members of the class.

INTESTATE SUCCESSION: SPOUSE

"SPOUSE" =

Same-sex Partnership: Gory v Kolver NO

Partner in permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support will qualify as "spouse"

Monogamous Muslim Marriage: Daniels v Campbell

"Spouse" apply to partners to monogamous Muslim marriages

Polygynous Muslim Marriage: Hassam v Jacobs NO

"Spouse" should include partners in polygamous Muslim marriages

Monogamous Hindu Marriage: Govender v Ragavayah

"Spouse" apply to partners to monogamous Hindu marriages

Heterosexual Life Partnership: Volks NO v Robinson

Lived as husband and wife for 16 years
R sued for maintenance – only received small legacy
Claim rejected –does not fall within "spouse"

INTESTATE SUCCESSION: LIMITED INTERESTS

USUFRUCT

Right to use property that is owned by another person (bare dominium). The usufructuary is entitled to the fruits of the property. On expiry of the usufruct the property must be returned to the owner. The usufructuary must preserve the substantial quality of the property.

FIDEICOMMISSUM

Testator leaves his estate or an asset to an heir/legatee and directs that the property so bequeathed is to go to another heir/legatee after the expiry of a certain period or the occurrence of a certain event.

OTHER

HABITATIO

The right to live in a house owned by another person. The person who enjoys the right of habitation may let the house.

USUS

Right of one person to use the property of another. Right is strictly personal.

QUESTIONS?

