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SUBSTANTIAL CHANGES IN THE INTESTATE LAW
EFFECTIVE JANUARY 1, 1948

By Robert W. Evans, Jr.

THE BACKGROUND

An analysis of the substantial changes in the intestate law of this Commonwealth necessarily involves a comparison of the Intestate Acts of 1917 and 1947. However, it is important to pause, before initiating such a comparison, to examine the background in which the Act of 1947 had its origin. Senate Resolution Serial No. 46 of the regular session of the Legislature of 1945 directed the Joint State Government Commission of the General Assembly to "study, revise, and prepare for reenactment the Orphans' Court Partition Act, the Orphans' Court Act, the Revised Price Act, the Wills Act, the Register of Wills Act, the Intestate Act, and the Fiduciaries Act."

In order to attain this objective, the Commission established a special "Committee on Decedents' Estates Laws."

This Committee, realizing the need for assistance from those familiar with the problems involved in administering the existing laws, appointed and enlisted the aid of an "Advisory Committee," which consists of Orphans' Court judges and skilled practitioners in the field of decedents' estates laws.

When the Advisory Committee had finished its draft of the proposed new Intestate Act, it was submitted to the Committee on Decedents' Estates' Laws. The latter, in turn, distributed the proposed legislation to the bench, the bar, and the general public for consideration and study.

From these sources, additional suggestions and recommendations for further revisions were submitted, some of which were adopted in the final draft of the Intestate Act of 1947.

THE PURPOSE OF NEW LEGISLATION

The Intestate Act of 1917 has been frequently criticized as too complicated and cumbersome in its language to be uniformly practicable and workable. The primary objective of the writers of the new legislation has been to simplify the structure of the intestate laws, and in so doing, to use the greatest care to avoid the impairment of the authority of decisions under the old legislation.

THE SUBSTANTIAL CHANGES

It is suggested that the substantial changes in the law as rendered by the operation of the Intestate Act of 1947, effective January 1, 1948, are fourteen in number.
Change I.

Section 2 (3) of the new Act\(^1\) increases the allowance of the surviving spouse to $10,000 plus one-half of the estate when there are no issue. Two reasons support the increase from $5000 under the 1917 Act to $10,000:\(^2\)

A. In these days of post-war inflation, $10,000 has a purchasing power equal to, or perhaps less than, $5000 had in 1909, when the $5000 allowance first made its appearance on the Statute books of Pennsylvania;\(^3\)

B. Present-day public opinion is inclined to favor the surviving spouse.

It should be noted that Section 2 of the new Act supplants sections 1, 2, and 17 of the Act of 1917. As the new Act is written, the shares of surviving spouses are specified clearly and logically, progressing from a share of one third in paragraph (1) to the entire estate in paragraph (4).\(^4\) This Provision of the new Act, therefore, presents a distinct advantage to the practitioner, because it sets forth in a single section the shares of the spouses in four separate circumstances.

Change II.

The proviso in section 2(a) of the 1917 Act, that the allowance of the surviving spouse does not apply to situations wherein there is an election to take against the will, has been omitted in the 1947 Act because it is not properly within the scope of the law of intestacy. To cover these situations, the codifiers of the new laws have made an appropriate provision in the Wills Act of 1947.\(^5\)

Change III.

A comparison of section 17 of the Act of 1917 with Section 2(4) of the Act of 1947, reveals that under the latter, the surviving spouse is given the entire estate in the absence of near relatives — when the decedent is survived by "no issue, parent, brother, sister, child of a brother or sister, grandparents, uncle or aunt." In short, the surviving spouse inherits the entire estate before first cousins.

Section 17 of the Act of 1917 provides that the surviving spouse is entitled to the entire estate "in default of known heirs or kindred." Two reasons are advanced to justify this change:

A. It is deemed to be more equitable and in line with the public partiality toward the surviving spouse;

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\(^1\)Intestate Act of 1947, sec. 2, par. (3), Act No. 37
\(^3\)Act of April 1, 1909, P. L. 87
\(^4\)Intestate Act of 1947, sec. 2; Act No. 37
\(^5\)Wills Act of 1947, sec. 8; Act No. 38
B. It undoubtedly reduces and simplifies the problems of administration by eliminating the necessity of searching for remote relatives.

Change IV.

Section 3 of the Act of 1947 is intended to supplant sections 7, 8, 9, 10, 11, 12, and 19 of the Act of 1917. In connection with Section 3 of the new Act, the following changes occur:

A. The issue of deceased brothers and sisters take without limitation. Thus, great grandnephews as well as more remote descendants share in the estate prior to grandparents.7

B. Grandparents take their shares by the entireties, maternal and paternal, with a right of representation extending to and including grandchildren surviving, where both grandparents on one side are deceased and a grandparent on the other side survives.8 Section 3, paragraph (4) of the 1947 Act which sets forth this rule takes the place of Sections 10 and 12 of the 1917 Act.

1. Thus, if the decedent is survived by both paternal grandparents and one maternal grandparent and issue of the maternal grandparents, under the Act of 1917, the estate is divided into four equal shares. The paternal grandparents and the surviving maternal grandparent each takes one-fourth of the estate, and the issue of the maternal grandparents take per stirpes. Under the Act of 1947, the paternal grandparents take one-half by the entireties and the surviving maternal grandparent takes the other entire half to the exclusion of the issue of the maternal grandparents.

2. Under the Act of 1947, if both grandparents on one side are deceased and they have no descendants, then the entire estate accrues to the grandparents by the entireties on the other side, or if one grandparent is deceased, then to the sole surviving grandparent on the latter side.

3. Again, under the Act of 1947, if the decedent is survived by both grandparents on one side, and only the issue of deceased grandparents on the other side, the following distribution is made: One-half by the entireties to the surviving grandparents on the one side, and one half to the issue of the deceased grandparents on the other side, the right of representation extending only as

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7Intestate Act of 1947, sec. 3 (3)
8Intestate Act of 1947, sec. 3 (4)

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far as the surviving grandchildren. It should be noted that the surviving grandchildren in this instance are first cousins to the decedent.

4. Also, under the Act of 1947, when the decedent is survived by a single paternal grandparent and a single maternal grandparent, each takes an entire one-half of the decedent's estate.

Section 10 of the 1917 Act has been criticized by the Supreme Court of Pennsylvania in the following manner:

"... vague and indefinite; it fails either to say or suggest what possible group of the persons indicated are to inherit, how these groups are to be ascertained, and whether those composing them take as individuals, per stirpes or per capita."

C. The Commonwealth received the entire estate prior to relations more distant than first cousins. A corollary to this rule is that the Commonwealth does not receive the entire estate prior to the indefinite issue of a brother or sister.

Change V.

By statute, this Commonwealth has long recognized the right of aliens to dispose of and receive Pennsylvania property by will or descent. The Supreme Court of Pennsylvania, in its interpretation of this act, has made no distinction between the nationals of enemy or of friendly countries, except as they may reside in enemy-occupied territory.

The Intestate Act of 1947 in Section 4, paragraph (7) embodies the essence of the old Act of 1791, with regard to the right of aliens to take property by descent, and the old act is repealed in so far as it applies to intestate descent.

Change VI.

Section 4, paragraph (8) of the new Intestate Act entitled "Person Related to Decedent Through Two Lines," provides:

"A person related to the decedent through two lines of relationship shall take one share only which shall be the larger share."

This provision is based on Section 28 of the Model Probate Code, but there is no similar provision in Pennsylvania law, and it appears that there are no

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9Miles Estate 272 Pa. 329, 332 (1924)
10Intestate Act of 1947, sec. 3 (6)
11Note 10, supra.
12Act of Feb. 23, 1791, (68 P. S. 22 et seq.)
13Gregg's Estate 266 Pa. 189 (1920), cert. den. 252 U. S. 588
14Intestate Act of 1947, sec. 16, paragraph (1)
Pennsylvania cases directly on point. The inclusion of this provision was therefore deemed advisable by the draftsmen of the new Intestate Act. Situations where the question might arise are:

A. A and B, brothers, marry C and D, sisters. A and C have a child X; a third brother O, has a child Y. Suppose a child of B and D dies leaving only first cousins as next of kin? X would be a first cousin both through his father and mother. Y would be a first cousin through one line only, that of his father; or

B. A, husband, and B, his wife, have children C and D. Upon the death of A, B marries A’s father F, and they have two children X and Y who are half brothers of C and D and also their uncles, since they (X and Y) are also half brothers of A. Upon the death of Y his closest kin are C, D, and X who share equally as half brothers. C and D do not take the share of their father A by representation.

Change VII.

Section 9(a) entitled “Advancements,” of the Act of 1947 provides:

“If any person, other than the surviving spouse taking real or personal estate from the decedent, shall have received any estate by settlement or advancement of the decedent, in either real or personal estate, the value of such settlement or advancement shall be charged against the share of the person who shall have received it, so that the total share received by him, including the value of such settlement or advancement, shall not exceed the share received by each of the other persons who take equally from the decedent.”

Section 9(a) closely follows Section 22 of the old Act.

But it should be noted, that Section 9(b) entitled “Valuation” of the Act of 1947 is an entirely new provision. It is in accord with Section 29 of the Model Probate Code and with Gore Estate, 7 Beaver L. J. 143 (1945); but there is no known appellate case to the same effect.

Section 9(b) provides:

“The settlement or advancement shall be considered as of its value when the advancee came into possession or enjoyment of it or at the death of the decedent, whichever occurred first.”

Change VIII.

Section 10, Paragraph (a), “Spouse’s Allowance; Procedure,” of the Act of 1947, changes the rule which was embodied in Section 2 of the Act of 1917; the

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15 Note 2, supra.
16 Note 2, supra.
procedure in Section 10 restricts the right of selection of the allowance to real estate; its procedure in Section 10(a) restricts the right of selection of the allowance to real estate in the following manner:

"(a) Right of Selection: Subject to the rights of creditors and to existing liens, the surviving spouse, or his successor in interest, shall have the right to claim all or part of his ten thousand dollar allowance out of the real estate of the decedent."

The draftsmen of the new act recognized the fact that when the allowance or a part thereof is requested from personal estate "this becomes a mere matter of distribution — the same as any share of the estate. It is believed no special procedure should be provided to give a right of selection in personal estate to the surviving spouse."17

Change IX.

Section 10, paragraph (b) of the Act of 1947 changes the procedure set forth under the Act of 1917. Under the new Act, all jurisdiction is retained by the court of the county where letters testamentary or of administration were or could be granted "or should no letters have been granted then of the county within which was the family or principal residence of the decedent"; and if the decedent is a non-resident of the Commonwealth, then jurisdiction may be obtained by any orphans' court of a county wherein any of the decedents real estate is located. This rule simplifies the procedure under Section 17, 2(g) of the old Act.

Change X.

Section 10(e) of the Act of 1947 takes the place of Section 2(f) of the Act of 1917.

Section 10(e) of the 1947 Act provides:

"(e) Income, When the spouse's allowance does not exhaust the entire real and personal estate, the income therefrom shall be equitably prorated between the surviving spouse and the others taking the estate."

Section 2(f) of the 1917 Act provides:

"(f) In all cases where the appraisement of property, real or personal, or both, is confirmed, and the property set apart to the surviving spouse under the provisions of this section, said surviving spouse shall be entitled to receive, for his or her own use, the net rents, income, interest, and dividends thereof from the date of the death of such intestate. Where the property set apart shall consist of real estate appraised at a sum in

17 Note 2, supra.
excess of five thousand dollars, or such part thereof as may be claimed out of the real estate, and the surviving spouse shall fail to pay the excess over the amount so claimed as provided in clause (d) of this section, and the property shall thereupon be sold, there shall be deducted from the sum to be paid to said surviving spouse out of the proceeds of such sale a proportionate part of the rents and income of such real estate received by such surviving spouse."

The Committee on Decedents' Estates Laws, in its report made the following comment: "Any attempt to define (in section 10 (e) of the new Act) more definitely what is to be received can only result in confusion. Each estate will be a separate problem and the equitable method will appear clearly in most instances."

Change XI.

Paragraph (g) of Section 10 of the Act of 1947 is a new provision.

"(g) Other Remedies. The surviving spouse may also collect the allowance out of real and personal estate, together with income thereon, in the manner provided by law for the collection of legacies."

The inclusion of this new subsection is a manifestation of the intention of the draftsmen to make the surviving spouse's allowance a lien upon real estate even though not claimed in kind. They also desired to make it unmistakeably clear that all usual remedies are available to the surviving spouse in the collection of the allowance out of personal property.18

Change XII.

Paragraph (h) of Section 10 of the Act of 1947 provides:

"(h) Costs and Expenses. All costs, appraisers' fees, and expenses of recording and registering incurred in claiming the spouse's allowance shall be part of the general administration expenses of the estate."

Section 2 (h) of the Act of 1917 places charges for recording and registering upon the surviving spouse. Under the Act of 1947 the placing of costs on the estate seems more equitable since it is a general administration expense — the burden should be borne by all interested parties and not by the surviving spouse alone.19

Change XIII.

The Act of 1947 in Section 13, paragraph (a) covers "Limitations of Claims" and reads as follows:

"(a) Shares Not Claimed Within Seven Years. Any person entitled under this act to a share of the estate of the

18Note 2, supra.
19Note 2, supra.
decendant must make legal claim to his share of the personal estate within seven years of the death of the decedent or be debarred from claiming such share thereof as shall have been distributed pursuant to adjudication or decree: . . ."

This Section is similar to Section 21 of the 1917 Act as amended. But paragraph (a), quoted above, limits the application of the section to cases where the personal estate "shall have been distributed pursuant to adjudication or decree." This restriction of the applicability of Paragraph (a) was considered necessary to encompass the situation where it is difficult to liquidate the assets of the estate, thus requiring the extension of the administration period beyond seven years. The draftsmen of the new act properly deemed it inadvisable, where the estate has not been distributed as a result of an order of the court, to bar next of kin who in reliance upon the administrator or the court have not made "legal claim."21

Change XIV.

Any analysis of the substantial changes in the law of intestacy in Pennsylvania would be incomplete if it failed to call the readers' attention to Section 16. "Repealer," of the Act of 1947. That Section provides:

"Section 16. Repealer — This Act is intended as an entire and complete system regulating the descent of the real and personal estates of persons dying wholly or partially intestate on or after the first day of January, one thousand nine hundred forty-eight. The following acts and parts of acts and all amendments of each are hereby repealed as respectively indicated, but so far only as relates to the real and personal estates of persons dying intestate on or after the first day of January, one thousand nine hundred forty-eight:

(1) The act approved the twenty-third day of February, one thousand seven hundred ninety-one (three Smith's Laws four), entitled "A supplement to the act, entitled 'An act to declare and regulate escheats,' " in so far as it relates to inheritance.

(2) The act approved the seventh day of June, one thousand nine hundred seventeen (Pamphlet Laws 429), entitled "An act relating to the descent and distribution of the real and personal property of persons dying intestate; and to provide for the recording and registering of the decrees of the Orphans' Court in connection therewith, and the fees therefor," absolutely.

(3) The act approved the twenty-fourth day of April, one thousand nine hundred thirty-one (Pamphlet Laws 46), entitled "An act making the surviving spouse competent to

20Act of June 4, 1943, P. L. 872
21Note 2, supra.
testify in all cases where the right of such spouse to share in a deceased spouse's estate is disputed because of alleged de-
sertion or non-support of the decedent, whether decedent died
testate or intestate," in so far as it relates to inheritance.

(4) All other acts and parts of acts inconsistent here-
with are hereby repealed."

CONCLUSION

The preliminary report of the drafting Committee in regard to the Intestate Act of 1947, set forth its approach to the general problems of revision and re-
enactment in the following manner: 22

"All proposals have been made with the realization that the burden of proof is upon those who propose a change. The following tests have been applied to every change:

(1) Is it fair?
(2) Will it carry out the wishes of the average person?
(3) Does it tend toward simplification?
(4) Will it be workable in actual practice?
(5) Will it increase or decrease litigation?
(6) Will the value of established case law be lost? . . ."

Whether the objectives of the codifiers, as reflected in their approach to the writing of the new Intestate Act, will be attained is a question which only the trend of events in the future can answer with exactness. But it is the writer's opinion that at least the first three questions above will command answers un-
equivocably affirmative in nature.

First, a close scrutiny of the new Act conveys the impression that, on its face at least, its provisions are fair and equitable, notwithstanding a pronounced tendency to favor the surviving spouse.

Secondly, it is probable that the new Act will carry out the wishes of the average person. Certainly, no effort has been spared by the Committee 23 to feel the public pulse and to consider the problems from the standpoint of the bench, the bar, and "the average man in the street." A determined and commendable attempt has been made by the codifiers to promote the common good of all to be affected by the operation of the new Act.

In the third place, the new Act assures greater simplification—simplification in phraseology, simplification in topical arrangement, simplification in regard to coherence and clarity.

However, with respect to the last three questions noted above, it is more difficult to ascertain what the probable answers will be. Whether the pro-

22 Note 2, supra.
23 Note 2, supra.
visions of the new Act will be workable in actual practice, whether the new act will increase or decrease litigation, and whether the value of established case law will be lost — all are propositions which must await and survive a reasonable time after January 1, 1948 — the date the act becomes effective.

Just how the new Intestate Act and the established case law will survive the interpretation by the courts in the light of the Community Property Act of 1947, is also a moot question. Suffice it to say, there will probably be a scintillating display of legal fireworks in store for the practitioner until these new pieces of legislation become fully integrated with our established law.

ROBERT W. EVANS, JR.
Intestate Descent In Pennsylvania
Intestate Act of April 24, 1947, No. 37

The following chart, which appeared in the May 1947 issue of the Fiduciary Review, facilitates a comprehension of the scope of the new Intestate Act. It is reprinted here through the courtesy of the Editor of that Review, M. Paul Smith.
Intestate Descent In Pennsylvania

INTESTATE ACT OF APRIL 24, 1947, NO. 37
(EFFECTIVE JANUARY 1, 1948)

Share and Interest of Each Group is Subject to Share of Spouse and to Priority of Preceding Groups

SPouse

- No issue, parent, brother, sister, child of a brother or sister, grandparent, uncle or aunt
  - Entire Estate

- One child only, or issue of an only deceased child
  - One-Half

- No issue, but a parent, brother, sister, child of a brother or sister, grandparent, uncle or aunt
  - $10,000 (4) Plus One-half of Balance

- Two or more children, living, or precedessed leaving issue
  - One-third

Share of the Estate, if any, Not Distributable to the Surviving Spouse, Descends to

ISSUE

- All in same degree of relationship to decedent
  - Per Capita

- Different degrees of relationship to decedent (6)
  - Per Stirpes

If no issue, then to

PARENTS

To Both by Entireties, or To Survivor
If no parents, then to
BROTHERS, SISTERS, OR THEIR ISSUE

All in same degree of relationship
to decedent

Per Capita

Different degrees of relationship to
decedent (6)

Per Stirpes

If no brothers, sisters, or their issue, then to
GRANDPARENTS

Paternal Grandparents

If a maternal grandparent, child or
grandchild of a maternal grand-
parent

One-half to both by enti-
tieties, or to survivor.

If no maternal grandparent, child or
grandchild of a maternal grand-
parent

Entire estate to both by enti-
tieties, or to survivor.

If no paternal grandparent, child or
grandchild of a paternal grand-
parent

Entire estate to both by enti-
tieties, or to survivor.

If a paternal grandparent, child or
grandchild of a paternal grand-
parent

One-half to both by enti-
tieties, or to survivor.

Maternal Grandparents

If a paternal grandparent, child or
grandchild of a maternal grand-
parent

Entire estate to both by enti-
tieties, or to survivor.

If no maternal grandparent, child or
grandchild of a maternal grand-
parent

Entire estate to both by enti-
tieties, or to survivor.

If no paternal grandparent, child or
grandchild of a paternal grand-
parent

Entire estate to both by enti-
tieties, or to survivor.

One-half to both by enti-
tieties, or to survivor.

UNCLES, AUNTS AND COUSINS

If a maternal grandparent and no
paternal grandparent

One-half to paternal uncles and
aunts and to children of deceased
uncles and aunts, per stirpes (6)

If no grandparent

Uncles and aunts and children of
decased uncles and aunts, per
stirpes (6)

If a paternal grandparent and no
maternal grandparent

One-half to maternal uncles and
aunts and to children of deceased
uncles and aunts, per stirpes (6)

If no uncle or aunt, then to
Children of Uncles and Aunts Per Capita

If none of the foregoing, then to
COMMONWEALTH

Entire Estate

Annotations on next page
EXPLANATION OF CHART

1. No distinction is made between descent of real or personal property: §1; between whole and half blood: §4(2); between citizen and alien: §4(7); or concerning the source of ownership: §4(4). Persons begotten before decedent's death take as if born in his lifetime: §4(3). Persons related to decedent through two lines of relationship take one share only, which is the larger share: §4(8). Parents and grandparents receive shares by entireties, others as tenants in common: §4(6). Act passes only interest of decedent: §4(5). It does not apply to personal property of non-resident: §14. Shares of others than the surviving spouse are subject to advancements: §9. Shares may be lost by a wilful and unlawful killing (§6) or by failure to claim within 7 years: §13.

2. The surviving spouse's statutory share is given in lieu of common law dower and curtesy and applies to present and future estates: §5. The respective intestate rights of widower and widow are the same. The widow's and children's exemption of $500 is, of course, a separate and unrelated matter. A surviving spouse's share may be lost by desertion, and in addition a widower's share may be lost because of non-support: §6.

3. A special procedure is available to confirm the surviving spouse's title to real estate when entire estate is claimed: §11.

4. The $10,000 is allowed whether the intestacy is entire or partial. It is a vested right which does not have to be claimed. A procedure is available where the claim affects real estate: §§2 and 10. Intestate share given by will [Wills Act of 1947 §14(4)] or by inter vivos transfer [Estates Act of 1947, §14(1)] does not always include the $10,000 allowance.

5. Illegitimates, in absence of marriage of parents, are considered issue in the family of the mother only: §7. Adopted children are considered issue of the adopting parents and not issue of natural parents, except that the status of a natural parent married to an adopting parent does not change: §8.

6. The shares going to persons in different degrees of relationship to decedent are calculated by dividing the entire share so descending “into as many equal shares as there shall be persons in the nearest degree of consanguinity to the decedent living and taking shares therein and persons in that degree who have died before the decedent and have left issue to survive him who take shares therein. One equal share shall descend to each such living person in the nearest degree and one equal share shall descend” per stirpes to the issue of each such deceased person but not so as to include persons more remote than first cousins: §4(1).

7. Share of Commonwealth must be reduced to cash after notice to Attorney General: §12.