Administration of Wills, Trusts and Estates, Fourth Edition

GORDON BROWN & SCOTT MYERS
CHAPTER OUTLINE

§ 4.1 Intestacy
§ 4.2 The Passing of Intestate Property
§ 4.3 Rights of Surviving Spouse
§ 4.4 Rights of Other Heirs
§ 4.5 Escheat
§ 4.6 Intestate Succession: An Example Statute

CHAPTER OUTCOMES

• Contrast the law that governs the passing of real property with the law that governs the passing of personal property when someone dies intestate.
• Describe when property passes according to the law of intestate succession.
• State the share that a surviving spouse inherits under the law of intestate succession in your state.
• Identify the people, other than a surviving spouse, who will inherit and the share each will receive under the law of intestate succession in your state.
• Indicate, under the law of your state, the disposition of property owned by people who die intestate survived by no spouse and no ascertainable kindred.

JOB COMPETENCIES

• Be able to determine the state law that controls when probating an estate containing property located in two or more states.
• Be able to identify the persons who must be given notice when filing a probate petition with the court.
• Be able to determine the persons who will inherit when preparing the final account of an intestate estate.
• Be able to calculate the approximate amount each heir will inherit when preparing the final account of an intestate estate.

A DAY AT THE OFFICE . . .

Diane Sherman, a paralegal intern, had been given the task of closing the office and was just about to leave for the day when an obviously upset woman appeared in the waiting room looking for Attorney McKay.

“Mr. McKay has left for the day,” Diane told her politely. “May I make an appointment for you to see him?”

“Yes,” the woman responded excitedly. “Make it as soon as possible, please. I buried my husband, Will, today and everything we owned was in his name—the checkbook, our bankbooks, the car, even the house.”

“Oh, I’m sorry,” Diane replied, reaching for a note pad. “What is your name?”

“Gertrude Nullius. You probably read about my husband in the paper. He was murdered by his own son.”

“Oh, my heavens. What a tragedy!”

“I still can’t believe it! He wasn’t my son, thank God. He told me he was going to use the inheritance from his father to hire a good defense lawyer. Can you imagine that? How much do you think he’ll inherit?”

“Did your husband have a will?” Diane asked.

“No. He kept putting it off. He was always going to have one made but never got around to it.”

“How many children did you have?”

“My husband and I were both married before. I had a daughter by my first husband, and Will had a son—that no-good murderer—by his first wife. We were very happy until this happened. My husband loved my daughter. He treated her just like one of his own. He often said that when he died, he wanted her to share in his estate along with his own children.”

“Did your husband have other children?”

“Will and I, we, uh, also had a son of our own who was born a year before we were married. We never told anyone that Will was the real father, you know, because I was still married to my first husband. But Will and I knew the child was ours. In fact, I named him Phil because it rhymes with his father’s name, Will. Phil turned out to be a wonderful boy. He can sure use his father’s inheritance, too.”

“Let me look at Mr. McKay’s calendar, Mrs. Nullius. Maybe we can squeeze you in for an appointment early tomorrow morning.”
Queries: How should Diane Sherman respond to:

1. Gertrude Nullius’s question about how much the son who murdered his father will inherit?
2. Gertrude’s statement that her husband wanted her daughter to inherit from him?
3. Gertrude’s statement that her son, Phil, can use his father’s inheritance?

§ 4.1 INTESTACY

Presidents Abraham Lincoln, Ulysses S. Grant, James A. Garfield, and Andrew Johnson are among the millions of Americans who died without a will. Reasons for postponing the preparation of a will are numerous. Some people may want to avoid the expense of consulting a lawyer. Others may dread any discussion of death or may assume that their assets are not worth enough to require a will. Still others may be well intentioned, but are too busy or too preoccupied with the responsibilities of daily life.

As discussed in Chapter 1, an individual is entitled to make a will at age 18; however, at so young an age, few are motivated to do so. Not until assets increase, or families are formed, or loved ones die, does the need to prepare a will become more apparent to the average person.

When people die without a will, it is said that they die intestate. The law of the state where the decedent is domiciled determines how his personal property will pass. In contrast, the law of the state where the property is located determines how real property will pass. Thus, because state laws differ, it is possible for an intestate’s real property that is located within the state to pass differently from real property that is located outside the state.

In the past, the rules determining the passing of intestate property were known as the law of descent and distribution. Technically, descent refers to the passage of real property, and distribution refers to the passage of personal property. Although the words descent and distribution are still in use today, the more commonly used terminology to describe how intestate property passes is the law of intestate succession or intestacy. Paralegals who work in the probate field will use these terms frequently.

§ 4.2 THE PASSING OF INTESTATE PROPERTY

It is important for paralegals to know how intestate property passes. This knowledge will be useful when assisting the law firm in settling testate estates as well as intestate estates. This is because in all estates, whether testate or intestate, the heirs (those who would have inherited under the law of intestate succession) must be listed on the court petition for probate of a will or administration of an
heirs

Persons who inherit property; persons who have a right to inherit property; or those who have a right to inherit property only if another person dies without leaving a valid, complete will.

In addition, the heirs must be notified of the court procedure and given an opportunity to appear if they wish to do so. This is explained further in Chapter 12.

Probate property, as discussed in Chapter 3, passes according to the law of intestate succession when there is property remaining after the decedent’s debts, taxes, and administration expenses are paid and the owner dies without a will. In contrast, nonprobate property passes directly to the joint owner or owners and does not pass according to the law of intestate succession.

Even when a person dies with a will, some property may not be included under the terms of the will. That property passes as intestate property according to the state law of intestate succession. This occurs, for example, when a will is drawn without a residuary clause, which distributes all of the testator’s property that is not disposed of in other clauses of the will. The Jackson case involves a will that did not include such a clause.

Property may also pass by intestacy when the persons named in the residuary clause of a will die before the testator. The residuary clause is explained more fully in Chapter 6. Similarly, as will be discussed in Chapter 7, children who are omitted unintentionally from their parent’s will may be able to take the share they would have received had their parent or grandparent died intestate. The Dorn case involves a granddaughter omitted from her grandmother’s will.

Property can also pass by intestacy when someone named to receive a gift in a will refuses to accept it as discussed in Chapter 2.

Simultaneous Death

Sometimes a husband and wife, a parent and child, or other relatives die in a common disaster, and it is impossible to determine who died first. The Uniform Simultaneous Death Act, which has been adopted by almost every state (see Table 10–1 in Chapter 10), allows the property of each person to be distributed as if he had survived, unless a will or trust provides otherwise. For example, if a husband and wife die together in a car accident and each owns separate property, (1) the husband’s property will pass to his heirs as though his wife were not living at the time of his death, and (2) the wife’s property will pass to her heirs as though her husband were not living at the time of her death.

In the case of property owned jointly by both decedents, the property is distributed equally. Thus, in the preceding example, half of the jointly owned property of the husband and wife will pass to the husband’s heirs as though his wife were not living at the time of his death, and the other half will pass to the wife’s heirs as though her husband were not living at the time of her death.
CASE STUDY  

**In Re Estate of Jackson**

793 S.W.2d 259 (TN)

**FACTS:** Dorothea Jackson’s will established a system for relatives to select desired items of tangible personal property and stated that relatives were to receive nothing more. The will also read: “In the event there is any of said personal property remaining, my Executor is directed to sell the remaining property at public or private sale, as deemed most appropriate by my Executor, and the proceeds therefrom shall be paid to the Eastminster Presbyterian Church, hereinabove referred to.” The will contained no residuary clause. A $102,000 certificate of deposit, not specifically bequeathed, was included among the assets of the estate.

**LEGAL ISSUE:** How will property not specifically bequeathed pass when a will has no residuary clause?

**COURT DECISION:** According to the law of intestate succession.

**REASON:** When a will contains no residuary clause, the will makes no disposition of the personal property of the estate other than that which is specifically bequeathed. When there is no residuary clause, property not specifically bequeathed in the will passes as if the deceased had died intestate. A testator can disinherit heirs only by giving his property to others; instructions to exclude the heirs will not be enough to disinherit them unless others are named as the recipients of the property.

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CASE STUDY  

**Matter of Estate of Dorn**

787 P.2d 1291 (OK)

**FACTS:** Laura Mae Dorn’s will stated: “I am a widow and my family consists of my son, Richard D. Dorn, presently residing at Oklahoma City, Oklahoma.” The will further provided: “I give and bequeath all of my estate, real property, personal or mixed property of whatever character and wheresoever situated of which I die seized or possessed, or which I may own to Richard D. Dorn, my son, to be his forever.” The will made no mention of Laura’s two deceased children, Kenneth and Jacqueline, nor did it mention her granddaughter, Lynn Mark, the daughter of Jacqueline, who was alive.

**LEGAL ISSUE:** May the daughter of a testator’s deceased child, who is not named in the will, take the share she would have taken had the testator died intestate?

**COURT DECISION:** Yes. (continues)
When the beneficiary of an insurance policy dies simultaneously with the insured, the proceeds of the policy are payable as if the insured had survived the beneficiary. Thus, if a parent names a child as the beneficiary of a life insurance policy, and the parent and child die together in an accident, the child will be regarded as deceased at the time of the parent’s death. The proceeds of the policy will go to the parent’s heirs unless an alternate beneficiary is named in the policy. The Uniform Simultaneous Death Act is discussed in more detail in Chapter 10.

In states that have adopted the Uniform Probate Code (see Exhibit 4–1), a specific time period must pass to establish that someone has “survived” an intestate. If someone does not survive the intestate by 120 hours (5 days), she is considered to have died before the intestate. [UPC § 2–104]

When the beneficiary of an insurance policy dies simultaneously with the insured, the proceeds of the policy are payable as if the insured had survived the beneficiary. Thus, if a parent names a child as the beneficiary of a life insurance policy, and the parent and child die together in an accident, the child will be regarded as deceased at the time of the parent’s death. The proceeds of the policy will go to the parent’s heirs unless an alternate beneficiary is named in the policy. The Uniform Simultaneous Death Act is discussed in more detail in Chapter 10.

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Homicide by Heir or Devisee

A murderer inheriting from her victim is a repulsive thought. To ensure that people do not benefit from their own wrongdoings, state laws provide that one who is convicted of murdering another cannot inherit from the victim’s estate. In the opening “A day at the office” scenario, Gertrude’s stepson would not be able to inherit from his father.

Some states, including those that have adopted Uniform Probate Code § 2-803, have passed laws, called slayer statutes, to this effect. Other states reach the same conclusion through court decisions. Some courts use a constructive trust theory to prevent killers from inheriting from their victims. Under this theory, an heir who murders an intestate takes the inheritance as trustee for the benefit of the persons who would have been heirs if the murderer had died before the victim.

§ 4.3 RIGHTS OF SURVIVING SPOUSE

The first step in determining who will inherit from someone who dies without a will is to find out whether a spouse survived the decedent. When a spouse survives the decedent, the amount that goes to the spouse is determined first, and this amount varies widely from state to state. Some states give only dower or curtesy rights; others merely allow a life estate in real and personal property; still others give property to the surviving spouse and children during widowhood and afterward to the children. Some states give the surviving spouse an absolute interest in the property up to a specified amount; other states deduct an amount from the surviving spouse’s share, depending upon the extent of her separately owned assets.

Often, the portion of the estate given to a surviving spouse depends upon who else is alive; that is, if parents, children, grandchildren, or other descendants of the deceased are still living. States adjust the amount given to the surviving spouse according to the existence or absence of parents, children, grandchildren, and descendants of the deceased spouse. Table 4–1 demonstrates the varied approaches to what is considered an appropriate share for the surviving spouse when other relatives are taken into account.

Because a divorce ends a marriage, a divorce also terminates the right of a former spouse to inherit under the laws of intestate succession. (See UPC § 2–802.) A decree of separation (sometimes called a divorce from bed and board) does not terminate a marriage. The right of either spouse to inherit from the other spouse is not affected by a legal separation. Often, however, written separation agreements contain clauses in which the separated spouses renounce their right to elect. That is, they mutually agree to waive their right of election.
Table 4-1  Rights of a Surviving Spouse of One Who Dies Intestate

This general summary of state laws illustrates the wide differences among the states in the laws of intestacy. The summary does not include all variations in every state. Because of the tendency of these laws to change, up-to-date statutes must be checked when looking up a state’s intestacy law.

<table>
<thead>
<tr>
<th>State</th>
<th>Issue of the Marriage</th>
<th>Issue Not of the Marriage</th>
<th>No Issue But by Parents</th>
<th>No Issue No Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>$50,000 + 1/2</td>
<td>1/2</td>
<td>$100,000 + 1/2</td>
<td>All</td>
</tr>
<tr>
<td>Alaska</td>
<td>All</td>
<td>$100,000 + 1/2</td>
<td>$200,000 + 3/4</td>
<td>All</td>
</tr>
<tr>
<td>Arizona</td>
<td>All</td>
<td>1/2 of separate property</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Dower, Curtesy, and Homestead</td>
<td>Dower, Curtesy, and Homestead</td>
<td>All if married 3 yrs., otherwise 1/2</td>
<td>All if married 3 yrs., otherwise 1/2</td>
</tr>
<tr>
<td>California</td>
<td>1/2 if one child 1/2 if more than one child</td>
<td>1/2 if one child 1/3 if more than one child</td>
<td>1/2</td>
<td>All</td>
</tr>
<tr>
<td>Colorado</td>
<td>All</td>
<td>$150,000 + 1/2 if issue are adults</td>
<td>$200,000 + 3/4</td>
<td>All</td>
</tr>
<tr>
<td>Connecticut</td>
<td>$100,000 + 1/2</td>
<td>1/2</td>
<td>$100,000 + 3/4</td>
<td>All</td>
</tr>
<tr>
<td>Delaware</td>
<td>$50,000 + 1/2 pp Life estate rp</td>
<td>1/2 pp Life estate rp</td>
<td>$50,000 + 1/2 pp Life estate rp</td>
<td>All</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1/3 Life estate rp 1/3 pp</td>
<td>1/3 Life estate rp 1/3 pp</td>
<td>1/3 Life estate rp 1/2 pp</td>
<td>1/3 Life estate rp 1/2 pp</td>
</tr>
<tr>
<td>Florida</td>
<td>$60,000 + 1/2</td>
<td>1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Georgia</td>
<td>Child’s share; not less than 1/3</td>
<td>Child’s share; not less than 1/3</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Hawaii</td>
<td>All</td>
<td>$100,000 + 1/2</td>
<td>$200,000 + 3/4</td>
<td>All</td>
</tr>
<tr>
<td>Idaho</td>
<td>1/2</td>
<td>1/2</td>
<td>1/2</td>
<td>All</td>
</tr>
<tr>
<td>Illinois</td>
<td>1/2</td>
<td>1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Indiana</td>
<td>1/2</td>
<td>1/2</td>
<td>3/4</td>
<td>All</td>
</tr>
</tbody>
</table>

(continues)
## Table 4–1 Rights of a Surviving Spouse of One Who Dies Intestate (continued)

**AMOUNT A SURVIVING SPOUSE RECEIVES**
If an Intestate Is Survived by:

<table>
<thead>
<tr>
<th>State</th>
<th>Issue of the Marriage</th>
<th>Issue Not of the Marriage</th>
<th>No Issue But by Parents</th>
<th>No Issue No Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iowa</td>
<td>All</td>
<td>$50,000 + $½</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Kansas</td>
<td>$½</td>
<td>$½</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$7,500 + $½ pp</td>
<td>$7,500 + $½ pp</td>
<td>$7,500 + $½ pp</td>
<td>$½</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Life estate</td>
<td>Life estate</td>
<td>Community property</td>
<td>Community property</td>
</tr>
<tr>
<td>Maine</td>
<td>$50,000 + $½</td>
<td>$½</td>
<td>$50,000 + $½</td>
<td>All</td>
</tr>
<tr>
<td>Maryland</td>
<td>$½ if minor child</td>
<td>$½ if minor child</td>
<td>$15,000 + $½</td>
<td>All</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$150,000 + $½</td>
<td>$½</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Child’s share</td>
<td>Child’s share</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Missouri</td>
<td>$20,000 + $½</td>
<td>$½</td>
<td>$20,000 + $½</td>
<td>All</td>
</tr>
<tr>
<td>Montana</td>
<td>All</td>
<td>$100,000 + $½</td>
<td>$200,000 + $¾</td>
<td>All</td>
</tr>
<tr>
<td>Nebraska</td>
<td>$50,000 + $½</td>
<td>$½</td>
<td>$50,000 + $½</td>
<td>All</td>
</tr>
<tr>
<td>Nevada</td>
<td>$½ *</td>
<td>$½ *</td>
<td>$½</td>
<td>$½</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$50,000 + $½</td>
<td>$½</td>
<td>$50,000 + $½</td>
<td>All</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$50,000 + $½</td>
<td>$½</td>
<td>$50,000 + $½</td>
<td>All</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$½</td>
<td>$½</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>New York</td>
<td>$50,000 + $½</td>
<td>$50,000 + $½</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$½ if one child rp; $30,000 + $½ pp; if more than one child: $½ rp; $30,000 + $½ pp</td>
<td>$½ if one child rp; $30,000 + $½ pp; if more than one child: $½ rp; $30,000 + $½ pp</td>
<td>$½ rp; $50,000 + $½ pp</td>
<td>All</td>
</tr>
</tbody>
</table>

(continues)
### Table 4–1 Rights of a Surviving Spouse of One Who Dies Intestate (continued)

#### AMOUNT A SURVIVING SPOUSE RECEIVES

*If an Intestate Is Survived by:*

<table>
<thead>
<tr>
<th>State</th>
<th>Issue of the Marriage</th>
<th>Issue Not of the Marriage</th>
<th>No Issue But by Parents</th>
<th>No Issue No Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Dakota</td>
<td>$150,000 + 1/2</td>
<td>$100,000 + 1/2</td>
<td>$200,000 + 3/4</td>
<td>All</td>
</tr>
<tr>
<td>Ohio</td>
<td>All</td>
<td>$20,000 + 1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>1/2</td>
<td>1/2 acquired by joint industry; remainder equal with children</td>
<td>All acquired by joint industry; 1/3 of remainder</td>
<td>All</td>
</tr>
<tr>
<td>Oregon</td>
<td>All</td>
<td>1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$30,000 + 1/2</td>
<td>1/2</td>
<td>$30,000 + 1/2</td>
<td>All</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Life estate rp 1/2 pp</td>
<td>Life estate rp 1/2 pp</td>
<td>Life estate rp 50,000 + 1/2 pp</td>
<td>Life estate rp 50,000 + 1/2 pp</td>
</tr>
<tr>
<td>South Carolina</td>
<td>1/2</td>
<td>1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>South Dakota</td>
<td>All</td>
<td>$100,000 + 1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Greater of 1/3 or child’s share</td>
<td>Greater of 1/3 or child’s share</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Texas</td>
<td>Life estate 1/3 rp 1/3 pp</td>
<td>Life estate 1/3 rp 1/3 pp</td>
<td>1/2 rp All pp</td>
<td>1/2 rp All pp</td>
</tr>
<tr>
<td>Utah</td>
<td>All</td>
<td>$50,000 + 1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Vermont</td>
<td>Dower or curtesy Household goods + 1/3 pp</td>
<td>Dower or curtesy Household goods + 1/3 pp</td>
<td>1/3 rp or $25,000 + 1/2</td>
<td>1/3 rp or $25,000 + 1/2</td>
</tr>
<tr>
<td>Virginia</td>
<td>All</td>
<td>1/3</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Washington</td>
<td>1/2</td>
<td>1/2</td>
<td>3/4</td>
<td>All</td>
</tr>
<tr>
<td>West Virginia</td>
<td>All unless spouse has child, then 3/5 1/2</td>
<td>All</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>All</td>
<td>1/2</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1/2</td>
<td>1/2</td>
<td>All</td>
<td>All</td>
</tr>
</tbody>
</table>

* One-third when the deceased is survived by two or more children
  rp = real property pp = personal property
The Marshall G. Gardiner case illustrates the conflict between present-day society and long-established legal rules. In the Gardiner case, the court quoted the Supreme Court of Vermont, which wrote: “It is not the courts that have engendered the diverse composition of today’s families. It is the advancement of reproductive technologies and society’s recognition of alternative lifestyles that have produced families in which a biological, and therefore a legal, connection is no longer the sole organizing principle.” [In re B.L.V.B, 628 A.2d 1271]
§ 4.4 RIGHTS OF OTHER HEIRS

After determining the amount that goes to the surviving spouse, if there is one, the next step is to determine the rights of other heirs to inherit from the intestate.

Historically, the terms heirs and next of kin have different meanings. Years ago, under common law, when someone died intestate, the heirs were those who inherited the real property, and the next of kin inherited the personal property. Modern laws have largely eliminated that distinction, but the two terms are still uniquely different. In most jurisdictions today, heirs are defined as those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent. [UPC § 1–201(17)] Sometimes the term heirs is used in an even broader sense, referring to anyone who inherits property, whether by will or by intestate succession. In contrast, next of kin are those persons who are nearest of kindred to the decedent, that is, those most nearly related by blood. Spouses are not lineally related by blood and are therefore not considered next of kin.

Consanguinity and Affinity

Kindred—people related by blood—are said to be related by consanguinity, which means kinship or blood relationship. The relationship may be either lineal or collateral. Lineal consanguinity is the relationship between people who are related in a direct line either downward, as between child, grandchild, and great-grandchild, or upward, as between parent, grandparent, and great-grandparent. Collateral consanguinity, however, is the relationship between people who have the same ancestors but who do not ascend or descend from each other. Collateral relatives include brothers and sisters, aunts and uncles, nieces and nephews, and cousins. Adopted children are treated identically to blood-related children.

People who are related by marriage are said to be related by affinity. They include stepparents, stepchildren, parents-in-law, and daughters- and sons-in-law. Because they are not related by blood to a decedent, they usually do not inherit from the decedent under the laws of intestate succession. A few states have exceptions. Under the Ohio statute (§ 2105.06) for example, intestate property passes to “stepchildren or their lineal descendants per stirpes” when there are no next of kin of the decedent.

Half Blood

People who are related by half blood, such as a half-brother or half-sister, have the same mother or father in common, but not both parents. The laws of intestate succession differ among the states as to relatives of the half blood. Many states allow half-blood kindred to take equally with whole-blood kindred. For
example, the Massachusetts statute reads: “the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.” [Mass. Gen. Laws Ann. ch. 190, § 4 (West 1990)]. Similarly, Uniform Probate Code § 2–107 reads: “Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.”

ART OBJECTS GALORE

When he died without a will in 1973 at age 91, artist Pablo Picasso had produced an astounding number of artworks, making him one of the world’s richest men. His estate included 1,885 paintings, 1,228 sculptures, 7,089 drawings, 30,000 prints, 150 sketchbooks, and 3,222 ceramic works, as well as 5 homes, cash, gold, and bonds. Settling the estate involved an intricate network of lawyers, appraisers, catalogers, government-appointed art experts, officials of several government ministries, and even the president of France. After six years of wrangling among Picasso’s six heirs, the estate was finally settled—at a cost of over $30 million. The six heirs were: Jacqueline Roque Picasso, the artist’s widow (30% or $70 million); Marina and Bernard (20% or $47 million each), the children of Paulo, who was the only one of Picasso’s four children born in wedlock; Maya Picasso Widmaier (10% or $23.4 million); and Claude and Paloma (10% or $23.4 million each), the children of Françoise Gilot. To pay the estate tax on this vast wealth of art works, the estate contributed paintings, sculptures, and pottery to France. These works can be seen in the Picasso Museum in Paris.

A FAIR COMPROMISE?

When his 15-year-old daughter died in a car crash in August 1991, James Brindamour did not attend her funeral. However, he did return to Rhode Island three months later to claim one-half of her estate—a $350,000 award to settle a wrongful death suit brought by her mother.

When Brindamour arrived in Rhode Island, he was arrested for failing to pay $66,695 in back child support and interest that had accrued since he had left his wife and daughter a decade earlier. The family court ruled that Brindamour would have to remain in jail until he paid the full amount. Brindamour’s solution to his predicament was to request that his share of his daughter’s estate be used to pay his debt. After spending 59 days in jail, he was finally released when he agreed to renounce his claim to his daughter’s estate. In turn, however, he was relieved of any responsibility for the thousands of dollars he owed in child support.
Some states permit brothers and sisters of the half blood to inherit only if there are no brothers or sisters of the whole blood. Other states give to the half blood only half as much as is given to the whole blood. For example, the Florida Probate Code, Fla. Stat. Ann. § 732.105, reads: “When property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part are of the halfblood, those of the halfblood shall inherit only half as much as those of the whole blood; but if all are of the halfblood they shall have whole parts.”

**Degrees of Kindred**

Under state intestacy laws, the amount remaining after the surviving spouse’s share is deducted goes to the next of kin. The method most commonly used in the United States to determine the relatives who are most nearly related by blood is the civil law method. Under this method, each relationship to the decedent is assigned a number called a **degree of kindred** (see Exhibit 4–2). In general, the lowest numbered living kindred inherit the estate to the exclusion of all others. For example, second-degree kindred inherit only when there are no first-degree kindred alive. Similarly, third-degree kindred inherit only when there are no second- or first-degree kindred alive, and so forth.

The degree of kindred of a relative is calculated by counting upward from the decedent to the nearest common ancestor, then downward to the nearest relative. Each generation is called a degree. For example, parents and children of a decedent are related to the decedent in the first degree. Grandparents, grandchildren, brothers, and sisters are related to the decedent in the second degree. Uncles, aunts, nephews, nieces, and great-grandparents are third-degree relatives. First cousins, great-uncles, great-aunts, and great-great-grandparents are fourth-degree relatives. First cousins’ children (first cousins once removed) are fifth-degree relatives, and first cousins’ grandchildren (first cousins twice removed) are sixth-degree relatives. Second cousins are persons who are related to each other by descending from the same great-grandparents and are also sixth-degree relatives.

A few states follow the common law, or canon law, method of computing degrees of kinship. Under this method, the degree of kinship is determined by counting the nearest common ancestor down to the decedent, and then by taking the longer of the two lines when they are unequal.

Within the degrees of kindred, certain priorities are recognized. For example, the decedent’s children receive preference over the decedent’s parents, although they are both in the same degree. Similarly, the decedent’s brothers and sisters are favored over the decedent’s grandparents.
EXHIBIT 4–2  Degrees of Kindred
Edward W. Hart decided to store his sperm for future use when doctors told him that the treatment for his cancer would leave him sterile. Upon learning of his pending death, Hart instructed his wife, Nancy, to have the sperm implanted so that she could bear his child. Nancy did so three months after his death, and Judith Hart was born. The Social Security Administration denied survivor’s benefits for Judith, arguing that she was not her father’s dependent because her father had died before she was conceived. An administrative law judge ruled in 1995, however, that Hart was the girl’s legitimate father and that she is entitled to Social Security benefits. In a separate case, the court has been asked to decide whether Judith is Hart’s legal heir.

In another case, William Kane bequeathed his frozen sperm to Deborah Hecht, the woman with whom he lived before he committed suicide. Kane’s adult children challenged the will. The California court ruled in 1993 that sperm could be defined as property and could be bequeathed in a will. Hecht received 20 percent (three of fifteen vials) of Kane’s sperm.

The first American court of last resort to consider the question of posthumously conceived genetic children’s inheritance rights under a state statute was the Massachusetts Supreme Judicial Court in 2002 (Woodward v. Commissioner of Social Security, 760 N.E.2d 257). In that case, Warren Woodward had a quantity of his semen stored in a sperm bank before undergoing radiation treatment for leukemia. He passed away from the illness shortly thereafter. Two years after Warren died, his widow, Lauren, gave birth to twin daughters, Michayla and Mackenzie, having been artificially inseminated with her late husband’s sperm.

A probate court judge ruled that Warren was the girls’ legal father and ordered that his name be placed on their birth certificates. The Social Security Commissioner, however, refused to pay benefits even though a state statute reads, “Posthumous children shall be considered as living at the death of their parent.” [Mass. Gen. L. ch. 190, § 8] The commissioner took the position that the statute does not apply to posthumous conception.

When the case was appealed to United States District Court, that court asked the Massachusetts Supreme Judicial Court to answer the following question:

If a married man and woman arrange for sperm to be withdrawn from the husband for the purpose of artificially impregnating the wife, and the woman is impregnated with that sperm after the man, her husband, has died, will children resulting from such pregnancy enjoy the inheritance rights of natural children under Massachusetts’s law of intestate succession?

(continues)
Lineal Descendants

As discussed earlier, a lineal relationship exists between a person’s children, grandchildren, and great-grandchildren. They all descend from a common ancestor and are referred to as issue or descendants. When someone dies intestate, the decedent’s children receive what remains after the surviving spouse receives her share. If no surviving spouse exists, the children share the entire estate.

Grandchildren take their parent’s share per stirpes, that is, by right of representation, when their parents are dead; children stand in place of their deceased parents for purposes of inheritance (see Exhibit 4–3). Under some state laws, when all of the intestate’s children have predeceased the intestate, grandchildren inherit per capita (by the heads) rather than per stirpes. In this method, the number of grandchildren are counted, and each receives an equal share. For example, the Massachusetts statute reads, “if all such descendants are of the same degree of kindred to the intestate, they shall share the estate equally; otherwise, they shall take according to the right of representation.” [Mass. Gen. L. ch. 190, § 3].

The law also provides for issue who are not yet alive at the time of the decedent’s death. Lineal descendants who are conceived before, but born after, the decedent’s death are called posthumous issue, or after-born children, and inherit as if they had been born during the lifetime of the decedent. [UPC § 2–108] States are still deciding the question of whether children conceived with frozen sperm after their father’s death can inherit from their father.

Adopted Children

For inheritance purposes, modern state statutes generally treat adopted children as kindred or blood relatives of the adopting parents and as strangers to their former blood relatives. Under the Uniform Probate Code, for the purposes of intestate succession, an adopted person is the child of an adopting parent and not of a natural parent. When a child is adopted by the spouse of a natural parent, the relationship between the child and that natural parent remains the
same. [UPC § 2–109] Thus, if Alice, the daughter of Janis Akerson, is adopted by Mr. and Mrs. Babson, Alice (adopted child) will inherit from Mr. and Mrs. Babson (adopting parents), not from Janis Akerson (natural mother). If instead Janis Akerson (natural mother) marries John Burns and he adopts Alice, Alice will be able to inherit from both her natural mother, Janis, and her adoptive father, John. The Carlson case illustrates this distinction.

The Massachusetts statute regarding the rights of an adopted child reads: “A person shall by adoption lose his right to inherit from his natural parents or kindred, except when one of the natural parents of a minor child has died and the surviving parent has remarried subsequent to such parent’s death, subsequent adoption of such child by the person with whom such remarriage is contracted shall not affect the right of such child to inherit from or through the deceased parent or kindred thereof.” [Mass. Gen. L. ch. 210, § 7] In 1994, the Appeals Court of Massachusetts held, in Shroeder v. Danielson, 640 N.E.2d 495 (Mass. App. Ct. 1994), that language in a trust leaving property to children of the body had the effect of excluding adopted children and their issue as beneficiaries. The trust contained a sentence providing: “The terms grandchild or grandchildren wherever used in this agreement shall include only the children of the body of [certain named children].” The person who established the trust had no adopted children or grandchildren when the trust was created.
Nevertheless, the court said that “a trust should be construed to give effect to the intention of the settlor as ascertained from the language of the whole instrument considered in the light of the attendant circumstances.” In the Lockwood case, the court held that the Massachusetts adoption statute applies only when a person dies intestate, not when a person leaves a will.

Illegitimate Children

The terminology and rights relating to illegitimate children have changed greatly over time. Under the English common law, children who were born out of wedlock, known as **bastards**, could not be anyone’s heir or have any heirs of their own except the heirs of their own body. In those early days, a child born out of wedlock was referred to as a **filius nullius**, which means a child of nobody. Today, such children are referred to as **illegitimate children**, or **nonmarital children**.

In contrast to the English common law, most states in the United States have traditionally had statutes allowing illegitimate children to inherit from their mothers and their maternal ancestors. The rationale was that it is unjust to “visit the sins of the parents upon their unoffending offspring.” The right of illegitimate children to inherit from their fathers, however, was not widely acknowledged until 1977. In that year, the United States Supreme Court held that an Illinois law allowing children born out of wedlock to inherit by intestate succession only from their mothers, and not their fathers, violated the equal protection clause of the Fourteenth Amendment to the United States

### CASE STUDY: In Re Estate of Carlson

**FACTS:** Russell Carlson was four years old when he and his two younger brothers were placed in an orphanage after the death of their parents in 1920. Russell went to live with the Klug family but was never adopted. Both of his brothers, however, were adopted by the families with whom they lived. Over the years, the brothers maintained contact with one another through telephone calls, letters, and visits. Russell never married and was childless when he died intestate in 1988. A first cousin once removed claims to be Russell’s closest relative for inheritance purposes.

**LEGAL ISSUE:** Are adopted-out brothers entitled to inherit from a natural brother’s estate?

**COURT DECISION:** No.

**REASON:** The statutes explicitly provide that adoption eliminates the rights of inheritance from natural relatives. The only exception is when a child is adopted by a spouse of a natural parent.

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**bastards**
A child born out of lawful wedlock.

**filius nullius**
A child of nobody.

**illegitimate children**
Describes a child born to an unmarried mother.

**nonmarital children**
A child born out of lawful wedlock.
Constitution. Since then, most state laws allow nonmarital children to inherit from and through their fathers who have either acknowledged paternity or have been adjudicated to be their fathers in paternity proceedings, as well as from and through their mothers.

Under the Uniform Probate Code, a person born out of wedlock is a child of the mother, and also a child of the father if (1) the natural parents participated in a marriage ceremony before or after the birth of the child, or (2) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof. The paternity is ineffective, however, to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child. [UPC § 2–109]

### CASE STUDY  
**Lockwood v. Adamson**

566 N.E.2d 96 (MA)

**FACTS:** William P. Wharton executed a will leaving a certain amount of money in trust to his nephew, Dr. Smith, “or his issue by right of representation if he is not living on the date of distribution.” Dr. Smith was not living on the date of distribution, but he was survived by four children and one grandchild who was the son of a deceased fifth child. The fifth child divorced his wife and died shortly after his wife remarried. The grandchild was later adopted by the wife’s new husband. The exception in the adoption statute [quoted in the text] did not apply because the natural mother remarried before the natural father’s death.

**LEGAL ISSUE:** Does the statute, which states that a person shall by adoption lose the right to inherit from natural parents or kindred, apply to testate cases?

**COURT DECISION:** No.

**REASON:** Mass. Gen. L. ch. 210, § 7 applies only to the inheritance of property through intestate succession. The word *inherit*, as a legal term of art, though not necessarily in its popular sense, has been defined as referring to intestate succession by an heir and not to transfers of property by will or trust. The Massachusetts Uniform Statutory Will Act provides that “an individual adopted by the spouse of a natural parent is also the child (or issue) of either natural parent” for purposes of construing those terms in wills. Thus, the grandchild is entitled to take his natural father’s share of the trust.
INTESTATE SUCCESSION

DNA TESTING PROVIDES VINDICATION

No one in the rural town of Adrian, Michigan, believed the 18-year-old live-in housekeeper when she said her employer had raped her one afternoon in 1943. Scorned and ostracized for having an illegitimate daughter, Genevieve Lowery Rindfield moved away, married, and raised five other children.

In 1992, when John Brooks, the employer (and alleged rapist), died at 92 without any children, his relatives assumed the $180,000 estate would be theirs. Instead, Rindfield’s daughter, Dianne Burkhard, had the coffin exhumed under a court order. DNA testing of two ribs and muscle tissue proved that Brooks was her father.

Under Michigan law, Burkhard was not entitled to an inheritance from Brooks’s estate because Brooks had never acknowledged her as his daughter. Publicity about the case, however, prompted a change in the law in 1993, giving inheritance rights to unacknowledged children. In 1994, a judge awarded $90,000 to Burkhard, $40,000 to be divided among other relatives, and the rest to pay court costs and taxes. For the two women, the victory was far more than monetary; both were vindicated after years of shame.

In 1998, the Pentagon used DNA testing to discover the identity of the “unknown” Vietnam War casualty entombed at Arlington Cemetery. He was Air Force pilot First Lt. Michael Blassie. That same year, the results of DNA tests indicated a probable conclusion (challenged by some critics) that Thomas Jefferson was the father of the child of his slave, Sally Heming.

DNA testing began in the late 1980s. By 2001, according to the Innocence Project, courts nationwide had exonerated, through DNA testing, approximately 90 people who had been wrongfully convicted of serious crimes. Genealogists also use DNA testing to verify family heritage.

Text not available due to copyright restrictions
Lineal Ascendants

We have learned that lineal descendants “descend” from the individual and include a person’s children, grandchildren, great-grandchildren, and so on. In the same way, lineal ascendants “ascend” from the individual, include parents, grandparents, and so forth, and have their own distinctive inheritance rights under intestate succession. When no issue of an intestate are alive, both parents, or the surviving parent if one is deceased, inherit what remains after the surviving spouse receives her share (Exhibit 4–4). Parents are entitled to inherit from their child’s estate whether or not the parents supported or cared for the deceased child during the child’s minority. Even a mother who abandons her infant is entitled to inherit under the laws of intestate succession, as demonstrated by the Hotarek case.

EXHIBIT 4–4 Rights of Parents of Intestate Decedent
CASE STUDY  Matter of Estate of Schneider

441 N.W.2d 335 (WI)

FACTS: David was born to Mary Ann while she was married to Jack Seng. The birth certificate listed his name as Seng. A few years after David’s birth, Mary Ann eloped with Arthur Schneider, taking David with her. David, who now goes by the last name of Schneider, is seeking to inherit Arthur Schneider’s estate as a nonmarital child who has been acknowledged as Arthur’s son in writings signed by Arthur.

LEGAL ISSUE: Is a husband presumed to be the natural father of his wife’s child who is born or conceived during their marriage?

COURT DECISION: Yes.

REASON: This presumption is one of the strongest presumptions known to law. The evidence offered tended to show a strong emotional bond between David and Arthur, but no absence of a biological bond between David and Jack Seng. The evidence was insufficient to rebut the presumption that David is a marital child. David cannot inherit from Arthur’s estate as a nonmarital child.

CASE STUDY  Hotarek v. Benson

557 A.2d 1259 (CN)

FACTS: Paul Hotarek’s parents were divorced when he was two years old. His mother abandoned him at the age of three, allegedly having no contact with him after that time. At the age of 15, Paul was killed in a motor vehicle accident. His estate received $300,000 in damages. Seventeen months after Paul was killed, his mother was located in a small town in Utah by a private investigator and told of her son’s death. She claimed half of his estate.

LEGAL ISSUE: Is a parent who abandons a three-year-old child entitled to inherit from the child’s estate under the laws of intestate succession?

COURT DECISION: Yes.

REASON: By statute, if a person dies intestate leaving no spouse or children, the residue of the intestate’s estate shall be distributed equally to the decedent’s parent or parents. In the absence of statutory provisions to the contrary, the fact that a parent has abandoned and neglected a deceased minor child does not bar the right of that parent to inherit from the child’s estate under the statutes governing descent and distribution.
Some states do, however, have laws that prohibit parents from inheriting from their children if the parents have neglected to support those children. For example, the Pennsylvania statute, 31 Pa. Cons. Stat. § 2106(b), reads:

Any parent who, for one year or upwards previous to the death of the parent’s minor or dependent child, has willfully neglected or failed to perform any duty of support owed to the minor or dependent child or who, for one year, has willfully deserted the minor or dependent child shall have no right or interest ... in the real or personal estate of the minor or dependent child.

Although many state statutes give the decedent’s entire estate to the parents or surviving parent when no surviving spouse, child, or descendant of a child exists, some states divide the estate among parents and brothers and sisters.

**Siblings**

When someone dies intestate survived by no issue and no father or mother, the part of the estate not passing to the surviving spouse usually passes to the decedent’s brothers and sisters equally. The children of deceased brothers and sisters (i.e., nieces and nephews) take their parent’s share by right of representation (Exhibit 4-5). To illustrate, the Uniform Probate Code provides, “if there is no surviving issue or parent, to the issue of the parents or either of them by representation.” [UPC § 2-103(3)]
As in the case of grandchildren, some state laws provide that when all of the intestate’s brothers and sisters have predeceased the intestate, their issue inherit per capita rather than per stirpes. The number of nieces and nephews is counted and each receives an equal share.

**Next of Kin**

When someone dies intestate survived by no issue, no father or mother, and no brothers or sisters or children of deceased brothers or sisters, the part of the estate not passing to the surviving spouse passes to the decedent’s closest kindred. These include grandparents, aunts and uncles, and cousins. (See Exhibit 4–2.)

**Grandparents**

Existing grandparents usually inherit to the exclusion of aunts, uncles, and cousins because they are more closely related to the intestate. In some states, grandparents inherit equally. In others, if a distribution is to be made to grandparents, the estate is divided into halves and one-half passes to the maternal side and the other half to the paternal side. If there are no grandparents, some states allow great-grandparents to inherit; others do not.

**Aunts, Uncles, and Cousins**

If no grandparents are living, aunts and uncles are the next in line to inherit, and cousins follow them. Some state statutes provide that intestate property passes to the lineal descendants of the intestate’s grandparents by right of representation. Under these statutes, the children of deceased aunts and uncles—that is, cousins—take their parent’s share by right of representation.

Other state statutes provide that intestate property passes to the next of kin “in equal degree.” Under these statutes, because aunts and uncles are third-degree relatives, they take the entire estate to the exclusion of all others. No one takes by right of representation. Cousins, who are fourth-degree relatives, inherit only when no aunts and uncles are alive when the intestate passes away (see Exhibit 4–6).

Sometimes, in complicated family relationships, the court will require that an affidavit signed by a qualified genealogist be filed as proof of heirship (see Exhibit 4–7).
§ 4.5 ESCHEAT

When people die intestate survived by no spouse and no ascertainable kindred, their property escheats, that is, passes or reverts, to the state. Some state laws provide that personal property escheats to the state in which the deceased was domiciled, and real property escheats to the state in which the property is located. Other state laws provide that both real and personal property escheat to the state in which the property is located.

Some state laws provide that an inheritance escheats to the state when the beneficiary under a will cannot be located. For example, a Florida statute provides that when the lawful owner of an inheritance is unknown or cannot be located, the inheritance must be given to the state treasurer to the credit of the state school fund. Under the law, the lawful owner has 10 years to claim the money, after which it escheats to the state for the benefit of the school fund. [Fla. Stat. Ann. § 733.816] In some states, such as Tennessee, an intestate’s property escheats if the only surviving relatives are more remote than descendants of grandparents (see Exhibit 4–2). Thus, in Tennessee, second cousins would not inherit; instead, the intestate’s property would pass to the state if second cousins were the nearest surviving relatives.
AFFIDAVIT OF DEATH AND HEIRSHIP

STATE OF MICHIGAN  
}  
}  
COUNTY OF WAYNE 

NOW COMES Charles Morgan, Jr., of the full age of majority and under no legal disability, who deposes and says:

1. That he is well and personally acquainted with the succession and death of Howard R. Hughes, Jr., deceased.

2. That the decedent died, intestate, on April 5, 1976, with vagabond domicile.

3. Decedent was born a child of Howard R. Hughes, Sr. and Alene Gano, who predeceased the decedent.

4. Howard R. Hughes, Sr. and Alene Gano were married but once, and then to each other. From said marriage, one child was born, to-wit: Howard R. Hughes, Jr.

5. Decedent was twice married, with no issue therefrom. Said marriages ended in divorce, without issue; purported marriage and/or issue concerning the decedent have no evidence, are not supported by fact, record or certified log. There are no adoptions of record or acknowledged children.

6. Decedent’s father, Howard R. Hughes, Sr., was a child of Felix Hughes, Sr. and Jean A. Summerlin. They were married but once, and then to each other. From said marriage, four children were born, to-wit:
   A. Howard R. Hughes, Sr., decedent’s father;
   B. Felix Hughes, Jr., who predeceased the decedent intestate, without issue;
   C. Gretta Hughes, who predeceased the decedent intestate, without issue;
   D. Rupert Hughes, thrice married; firstly, to Agnes Hedge. From this marriage was born his only child, a cousin of the full blood to the decedent, namely, Elspeth Hughes Lapp.

7. Said Elspeth Hughes Lapp predeceased the decedent and is survived by the following children:
   A. Elspeth DePould, residing Cleveland, Ohio;
   B. Agnes Roberts, residing Cleveland, Ohio;
   C. Barbara Cameron, residing Los Angeles, California.

8. Alene Gano, mother of the decedent, Howard R. Hughes, Jr., is survived by a sister and descendants of a predeceased brother and sister, whose issue are as follows:
   A. Annette Gano, or issue;

EXHIBIT 4–7a  Affidavit of Death and Heirship Filed in the Estate of Howard R. Hughes, Jr.
§ 4.6 INTESTATE SUCCESSION: AN EXAMPLE STATUTE

The New York State Intestacy Statute is typical of these laws. Here is what the New York Law provides.

a. If the decedent is survived by:
   1. A spouse and issue, $50,000 and one-half the remaining estate to the spouse, and the balance of the estate to the issue by representation.
   2. A spouse and no issue, the entire estate to the spouse.
   3. Issue and no spouse, the entire estate to the issue, by representation.
   4. One or both parents, and no spouse or issue, the whole to the surviving parent or parents.
   5. Issue of the parents, but no spouse, issue or parents, the whole to the issue of the parents, by representation.

EXHIBIT 4–7b  Affidavit of Death and Heirship Filed in the Estate of Howard R. Hughes, Jr.

B. Mrs. J. P. Houston, or issue;
C. Chilton Gano, or issue.

9. Said Ganos are maternal cousins and aunt. Said Elspeth DePould, Agnes Roberts, and Barbara Cameron are paternal cousins of the full blood.

Affiant is making this affidavit for the sole purpose of establishing heirship in the Estate of Howard R. Hughes, Jr.

Further your affiant sayeth not.

(signed)

CHARLES MORGAN, JR.
Chairman of the Board
Diversified Genealogy Research
1314 City National Bank Building
Detroit, Michigan 48226

Subscribed and sworn to before me this 29th day of April, 1976.
(signature illegible)
6. One or more grandparents, or the issue of grandparents, and no spouse, issue, parent or issue of parents, one-half to the surviving paternal grandparent or grandparents, or if neither of them survive the decedent, to their issue by representation, and the other half to the maternal grandparent or grandparents, or if neither of them survive the decedent, to their issue by representation: provided, that if the decedent was not survived by a grandparent or grandparents on one side or by the issue of such grandparents, the whole to the surviving grandparent or grandparents on the other side, or, if neither of them survive the decedent, to their issue by representation, in the same manner as the one-half. For the purposes of this subparagraph, issue of grandparents shall not include issue more remote than grandchildren of such grandparents.

7. Great-grandchildren of grandparents, and no spouse, issue, parent, issue of parents, grandparent, children of grandparents or grandchildren of grandparents, one-half to the great-grandchildren of the paternal grandparents, per capita, and the other one-half to the great-grandchildren of the maternal grandparents, per capita; provided that if the decedent was not survived by great-grandchildren of the grandparents on one side, the whole to the great-grandchildren of grandparents on the other side, in the same manner as the one-half.

b. For the purposes of this section, decedent’s relatives of the half-blood shall be treated as relatives of the whole-blood.

c. Distributees of the decedent, conceived before her death, but born alive thereafter, take as if they were born in her lifetime.

d. The right of an adopted child to take a distributive share and the right of succession to the estate of an adoptive child continue as provided in the domestic relations law.

e. A distributive share passing to a surviving spouse under this section is in lieu of any right of dower to which such spouse may be entitled.

A complex formula, easily circumvented by a will.

SUMMARY

When someone dies intestate, the law of the decedent’s domicile determines how personal property will pass. In contrast, the law of the place where the property is located determines how real property will pass.

All property that does not pass under a will passes as intestate property, according to the state law of intestate succession.
When people die simultaneously, so that it is impossible to determine who died first, each person’s solely owned property is disposed of as if she had survived. In the case of property owned jointly by both decedents, the property is distributed one-half as if one had survived and one-half as if the other had survived. When the beneficiary of an insurance policy dies simultaneously with the insured, the proceeds are payable as if the insured had survived the beneficiary. Any person who fails to survive the intestate by 120 hours is deemed to have predeceased the intestate, under the UPC.

Anyone who is convicted of murdering another cannot inherit from the other’s estate. In addition, a divorce terminates the right of a former spouse to inherit from an intestate. People who are related by affinity, such as stepchildren, do not inherit from an intestate. In contrast, half-blood relatives often inherit the same share they would inherit if they were of the whole blood.

The amount that a surviving spouse inherits from a spouse who dies without a will differs from state to state.

The balance remaining after the surviving spouse receives her share passes to the decedent’s children equally, with the children of any deceased children taking their parent’s share by right of representation. If there are no children or grandchildren, the decedent’s parents inherit the estate. If there are no parents, the decedent’s brothers and sisters inherit equally, with the children of any deceased brothers and sisters taking their parent’s share by right of representation. If there are no brothers, sisters, nieces, nephews, uncles, or aunts, cousins inherit, depending on the state law.

Modern state statutes treat adopted children as strangers to their former relatives and consider adopting parents as though they were legitimate blood relatives to their adopted children. However, adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

Illegitimate children, under most state laws, inherit from and through their fathers who have either acknowledged paternity or have been adjudicated to be their fathers, as well as from and through their mothers.

When people die intestate survived by no spouse and no ascertainable kindred, their property escheats to the state.
**REVIEW QUESTIONS**

1. What law determines the passing of an intestate’s:
   a. out-of-state personal property?
   b. out-of-state real property?
2. When a husband and wife are killed at the same time in an accident, how does the wife’s solely owned property pass? How does the husband and wife’s jointly owned property pass?
3. What is the rationale for state laws providing that one who is convicted of murdering another cannot inherit from the other’s estate?
4. In states that have adopted the Uniform Probate Code, how do relatives of the half blood inherit? How do stepchildren inherit?
5. How does the term *heirs* differ from the term *next of kin*?
6. Under the civil law method, how is the degree of kinship of a relative calculated?
7. Give examples of priorities that are recognized within the degrees of kindred.
8. For inheritance purposes, how do modern state statutes treat adopted children?
9. Since the United States Supreme Court decision in 1977, in what way may nonmarital children inherit from their father and mother who die intestate?
10. When does the property of one who dies intestate pass to the state?

**CASES TO DISCUSS**

1. Mary Holliday was brutally murdered in her home during the evening hours. A grand jury returned an indictment against her son, Craig Holliday, on the charge of murder with the use of a deadly weapon. Holliday was subsequently tried by a jury and acquitted of all charges. Later, a district court determined that Holliday could not inherit from his mother’s estate because of the murder. Do you agree? Why or why not? Holliday v. McMullen, 756 P.2d 1179 (NV).

2. One year before Delynda was born, her mother, Princess Ann Ricker, and her father, Prince Rupert Ricker, were ceremonially married. The marriage, however, was not valid, because Prince Rupert’s divorce from his first wife had not been finalized. Prince Rupert died intestate when Delynda was 18 years old. The Texas court refused to allow her to inherit from her father’s estate. A Texas statute prohibited an illegitimate child from inheriting from her father unless her parents had subsequently married, which Delynda’s parents had not done. Is the Texas statute valid under the United States Constitution? Explain. Reed v. Campbell, 476 U.S. 850.

3. Helen Russell died in the state of Florida, leaving a will that left one-half of her estate to her son, Kenneth Smith, and the other half to her stepchildren, Robert, Ronald, and Patricia Russell. The three stepchildren could not be located. Had Helen died intestate, her only child, Kenneth, would have inherited the entire estate. Kenneth argued that because the stepchildren could not be located, he was entitled to the entire estate. Do you agree? Why or why not? In re Estate of Russell, 387 So. 2d 487 (FL).
RESEARCH ON THE WEB

1. Log on to the Internet, type in the words <http://www.Google.com>, and press Enter. Then, type in the box the words *intestate succession* and press Enter. Choose one of the many sites that appear (possibly your state), and print out your findings.


3. Read more about the massive problems that arose in settling the estate of Howard Hughes by going to <http://Kingpineapple.com/Hughes/overview.htm>.

SHARPENING YOUR PROFESSIONAL SKILLS

1. Refer to the affidavit in Exhibit 4–7 and draw a family tree of the Hughes family. Then, assign a degree of kindred to each person in the family tree, using the information in Exhibit 4–2 on page 89. Finally, determine who should inherit, under the law of intestate succession, from Howard Hughes’s estate, being the most nearly related by blood.

2. Look up your state statute that sets forth the right of inheritance of the surviving spouse of a person who dies intestate. Write down the statutory reference, and give the fraction the spouse will inherit (a) if the decedent is survived by issue; (b) if the decedent is survived by no issue but kindred; and (c) if the decedent is survived by no issue and no kindred.

3. A person died intestate. After all debts, taxes, and expenses of administration were paid, the amount remaining to be distributed was $400,000. Under the laws of your state, how will the $400,000 be divided and to whom will it be given if the decedent is survived by: (a) a spouse and two children; (b) a spouse and a father and mother; (c) a spouse but no blood relatives; (d) four children; (e) a brother and two children of a deceased sister; (f) a spouse and a 95-year-old aunt; and (g) no blood relatives and no surviving spouse.

4. (a) List the people who are related to you by lineal consanguinity. (b) List the people who are related to you by collateral consanguinity. (c) List the people who are related to you by affinity. (d) List the people who would inherit from you, and the fractional share each would receive, if you were to die intestate today.

5. In case number 3 of the “Cases to Discuss,” how would Helen Russell’s estate have passed if she had been domiciled in your state when she died? Provide state statutory references or case citations to back up your answer.

6. Open your book to Exhibit 4–2. Write your name in the square labeled “decedent.” Then fill in the other squares, writing in the names of a parent, grandparent, great-grandparent, uncle or aunt, great-uncle or great-aunt, brother or sister, niece or nephew, and so on. Can you name one of your first cousins once removed and one of your second cousins?

7. What is the meaning of the term *per stirpes* as it is used in Item VI of the will of Elvis Presley (reproduced in Appendix B)?
SHARPENING YOUR LEGAL VOCABULARY

On a separate sheet of paper, fill in the numbered blank lines in the following anecdote with legal terms from this list:

affinity
bastard
collateral consanguinity
consanguinity
descent
distribution
escheat
filius nullius
half blood
heirs
illegitimate child
intestacy
intestate
intestate succession
issue
lineal consanguinity
next of kin
nonmarital child
per capita
per stirpes
posthumous issue
slayer statutes
Conrad Haynes owned both real and personal property when he died (1), that is, without a will. In early times, his real property would have passed according to the law of (2), and his personal property would have passed according to the law of (3). Today, however, the law that determines the passage of Conrad’s property is called the law of (4) or (5). His worldly belongings did not (6), that is, pass to the state, because he was survived by people who were related to him by (7), (blood). The relationship between Conrad and his children and grandchildren was one of (8), and the relationship between Conrad and his two sisters was one of (9). Conrad’s sister, Norma, was the daughter of his mother but not his father; therefore, she was related to him by the (10). A stepsister, Karen, was related to Conrad by (11), that is, by marriage. The people who inherited from Conrad’s estate are called (12). Because they were his nearest kindred, they are also known as his (13). In addition, they were his (14) because they descended from him—a common ancestor. They included two daughters and the son of a deceased daughter who inherited his parent’s share (15), that is, by right of representation, rather than (16), which means per head. Another child, who was born out of wedlock, was unable to prove paternity, and therefore did not inherit from Conrad’s estate. The law has given such a child various names over the years, including (17), (18), (19), and (20).

**KEY TERMS**

affinity  
distribution  
intestate succession  
bastards  
escheats  
lineal consanguinity  
collateral consanguinity  
filius nullius  
nonmarital children  
consanguinity  
half blood  
per capita  
constructive trust  
heirs  
per stirpes  
degree of kindred  
illegitimate children  
posthumous issue  
descendants  
intestacy  
slayer statutes  
descent  
intestate