

Intestate Succession

Calculating a child's share when there are more than one spouse

How does one calculate a child's share when there are more than one spouse?

According to section 1(4)(f) of the Intestate Succession Act, a child's share is calculated by dividing the **value of the intestate estate** by the **number of children** of the deceased who have **either survived him, or have predeceased him but are survived by their descendants, plus one**. The "plus one" in the definition was to make provision for the surviving spouse. In other words, one counted the number of children plus the spouse and then divided the value of the estate by that number.

However, this definition has now been amended by the *Hassam v Jacobs* **NO 2009 (5) SA 572 (CC)** case and the *Bhe* case (*Bhe and Others v Magistrate, Khayelitsha, and Others (Commission For Gender Equality as Amicus Curiae); Shibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa and Another* 2005 (1) SA 580 (CC)). Both cases are **discussed in Tutorial Letter 101 (see Addendum A: Amendments to the Study Guide)**.

Bhe and *Hassam* amended the calculation of a child's share when a deceased is survived by more than one spouse, in that a child's share would now be determined by adding all the surviving spouses (ie, not "plus one", but "**plus the number of surviving spouses**").

(1) Let us consider an example:

X dies intestate, and is survived by his widow, W, and their two children, D and B. X also had a child C from a previous relationship, who is predeceased but leaves behind a child F. How do we calculate a child's share?

We count child D and B, as well as C because C left behind F, plus 1 for the spouse. That equals $D+B+C+1=4$.

If X's estate amounted to R200 000, we divide R200 000 with 4 and the child's share is R50 000. (Note that this is less than R125 000 and therefore the spouse will not inherit a child's share, but R125 000 in terms of s 1(1)(c) and the rest of the estate will be divided between the children.)

(2) Another example:

X died intestate, and was survived by his 2 widows, W and Y, and three children, D, B and C. X also

had 2 extra marital children, E and F. E is predeceased (meaning he or she died before X) but left behind a child G. F is also predeceased but did not leave behind any children. How do we calculate a child's share?

We count D + B + C + E (because she leaves G and a child that is predeceased but left behind a child, can be represented by the child) plus 2 for the wives = 6. (We do not count F because he is not survived by a child).

Suppose X's estate amounts to R1 200 000. A child's share will be R1 200 000 divided by 6 = R200 000. (In this case the child's share is more than R125 000, therefore the spouses will each inherit R 200 000. The rest will be divided between the descendants.)