

Intestate Succession

Position of adopted children, illegitimate children and step children

May adopted children, illegitimate children or step children inherit from the deceased who died intestate?

When a person dies intestate (that is, without leaving a valid will) the person's estate is divided in terms of the provisions of the Intestate Succession Act. The basic rule to remember is that **only blood relations** can inherit in terms of intestate succession rules, **except** for the following categories of persons who may inherit even though they are not related by blood to the deceased:

- **The surviving spouse or spouses** (remember that the deceased must have been married to or in a civil union with the spouse at the time of his/her death). A divorced spouse does not qualify as a "spouse".
- **The adopted children of the deceased.** If a child of the deceased adopted a child, that adopted grandchild may also inherit by representing his or her adoptive parent if that parent died before the deceased. The reason for this is that the adopted child is for all intents and purposes considered to be the child of his adoptive parents.

In terms of sec 1(4)(e) of the Intestate Succession Act,

“ an adopted child shall be deemed-

- (i) to be a descendant of his adoptive parent or parents;
- (ii) not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child..”

The effect of 1(4)(e)(ii) is that the adopted child will no longer be considered as a blood relation of his biological parents and will not inherit from his biological parents, except

- a) if the adoptive parent was married to the child's biological parent (eg where the second husband of the child's mother adopts the child);
- b) or if the adoptive parent is also the biological parent of the child (eg where the unmarried father of the child adopts the child).

The position of illegitimate children / children born out of wedlock

Children born out of wedlock (so-called illegitimate children) may inherit from their biological parents in terms of intestate succession, since they are blood relations of their parents. In our common law a distinction was made between legitimate and illegitimate children, but that

distinction is no longer applicable in our law.

See section 1(2) of the Intestate Succession Act provides that:

“Notwithstanding the provisions of any law or the common law ... illegitimacy shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation.”

Step children

A step child of the deceased is **not a blood relation** of the deceased and cannot inherit from the deceased. An example is where a person (Mr X) marries someone (Ms Y) who already has children. The children of Y is not X's blood relations, but are his step children. If X dies without a will, the step children will not inherit from his intestate estate. However, if X had adopted the children before his death, the children would be able to inherit from X if he dies intestate. They will also be able to inherit from their mother if she dies intestate, because of the exception in section 1(4)(e)(ii) explained above.