

Intestate Succession:

Representation and substitution *ex lege* in terms of sections 1(6) and 1(7) of the Intestate Succession Act

QUESTION:

Is there a difference between **succession by representation** that takes place when a descendant replaces an heir and **substitution *ex lege* in terms of sections 1(6) and 1(7)** of the Intestate Succession Act?

For example, if we take the example on page 17 of the study guide:

Suppose F and W were still alive at the time of the death of X, but F repudiated his benefit, do we then say that succession by representation will take place (where F's descendants will inherit F's share *per capita*), or do we look at Section 1(6) which provides that if a descendant who is entitled to a benefit from an intestate estate, renounces his right to receive such a benefit, it will vest in the surviving spouse?

ANSWER

Yes, there is a difference. As indicated in the study guide (p 18), sections 1(6) and 1(7) of the Intestate Succession Act were introduced to cater for the situation where a person **repudiates** or **are unworthy** to inherit. These people could not be represented in terms of the common law rules of intestate succession (which are now codified in the Act), because they were still alive. One could only be represented if one were predeceased (ie died before the person whose estate is being divided). In other words, succession by representation only takes place if the descendant were predeceased (ie, died before the deceased whose estate is divided).

So, if a person **repudiates** or is **unworthy to inherit**, he or she is not represented in the usual sense of the word, but one has to look at the provisions of section 1(6) and 1(7) to see who will substitute them.

In terms of section 1(7) a person can be represented by his or her **descendants** if he or she **repudiates or is disqualified** to inherit (ie, is unworthy to inherit). However, if the descendant **repudiates (and only when he or she repudiates)**, one first has to establish whether there was a **surviving spouse** or not. If **not**, then section 1(7) applies and the **descendants substitute** the person who renounces. If there is a spouse, however, one has to apply section 1(6) in terms of which **the spouse will take the renounced benefit**.

In other words, section 1(6) applies in the following circumstances:

- The descendant of the deceased **repudiated** the benefit AND
- There is a surviving spouse (of the deceased)

Section 1(7) is subject to section 1(6). **If the above situation prevails, one has to apply section 1(6)**. If the descendant did not repudiate, but were disqualified, then section 1(6) does not apply, but section 1(7) applies.

