

LAW OF INTESTATE SUCCESSION

BY

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A. Who Can Inherit - Degrees of Kinship and Order of Inheritance

1. Important Terminology - We need to know the lingo
 - a. Succession: the term means the transmission of the estate of a deceased person to his successors. The successors have the right to take possession of the decedent's estate after complying with the laws. See La. Civ. Code art. 871.
 - b. Estate: Includes the property, rights and obligations of the deceased person as well as charges (debts/expenses) that accrue after his death. See La. Civ. Code art. 872.
 - c. Universal Successor: represents the deceased and succeeds to all of his rights and charges. Includes heirs, universal legatees and general legatees. See La. Civ. Code art. 3506(28).
 - d. Heir / legatee: An heir is one who inherits property in an intestate succession. A legatee is one who is bequeathed property in a testate succession.
 - e. Successions are either intestate or testate (or partly testate and partly intestate). Intestate successions occur when there is no will, the will is invalid in whole or part, or the will does not dispose of all the decedent's property. See La. Civ. Code art. 880. Testate successions occur when there is a valid-in-form olographic or notarial will.
2. Under Louisiana law there are three (3) different ways to inherit:
 - a. In his/her own right; Ex. Mother or father dies, children inherit from the mother.
 - b. Via representation

- i. La. Civ. Code art. 881. Representation is a fiction of the law, the effect of which is to put the representative in the place, degree, and rights of the person represented.
 - ii. Potential heir dies before decedent and the potential heirs children may represent him and inherit.
 - iii. “Step into the shoes” of the relative you represent.
 - iv. Representation allowed perpetually in the descending line. In the collateral line, it is only allowed for siblings. It occurs ad infinitum. See La. Civ. Code art. 882. Representation of ascendants is never permitted. See La. Civ. Code art. 883. Representation of collaterals is sometimes permitted. See La Civ. Code art. 884. Representation is allowed among descendants of the decedent’s siblings (nieces and nephews).
 - c. Via transmission (heir of an heir); Ex. An heir dies after the decedent but before exercising the right to accept or renounce. This is really an operation of *seizen*. *Seizen* is a civil law concept. “Le Mort Saisit Le Vif” or *Seizen* is a French phrase meaning “the dead seizes the living.” Legal title to the decedent’s property vests immediately in the successors.
 - i. La. Civ. Code art. 937. Transmission of rights of successor. The rights of a successor are transmitted to his own successors at his death, whether or not he accepted the rights, and whether or not he knew that the rights accrued to him.
- 3. Determination of Classes and Degrees.
 - a. Heirs are divided into classes. Classes are groupings of heirs that are ranked according to a hierarchy. Higher-ranking classes exclude lower ranking classes. The order of classes depends on whether the property in question is community property or separate property. Generally, within a class, the closest relative by degree will exclude all others.
 - b. Among each class, heirs are further classified depending on their degree of relationship. In the direct line, the number of degrees is equal to the number of generations between the heir and the deceased. In the collateral line, the number of degrees is equal to the number of generations between the heir and the common ancestor, plus the number of generations between the common ancestor and the deceased. To count the degrees, count up the tree to the common ancestor, and count down the branch in the collateral line to the applicable heir. If multiple people are the same degree, they usually share equally and to the exclusion of more distant relatives. The following articles discuss degrees. A degree is a generation.
 - c. La. Civ. Code art. 899. Nearest in degree among more remote relations. Among the successors in each class the nearest relation to the deceased, according to the following articles, is called to succeed.
 - d. La. Civ. Code art. 900 Degrees of relationship. The propinquity of consanguinity is established by the number of generations, and each generation is called a degree.
 - e. La. Civ. Code art. 901. Direct and collateral relationship. The series of degrees forms the line. The direct line is the series of degrees between persons who

descend one from another. The collateral line is the series of degrees between persons who do not descend one from another, but who descend from a common ancestor.

4. Order of Inheritance

- a. Louisiana law treats separate property and community property differently in intestate successions.
- b. Separate Property Order of Inheritance
 - i. Descendants (“D”)
 - ii. Parents (“P”) and siblings (“S”) (and descendants of S by representation)
 1. When the decedent leaves P and S, the surviving P receive a usufruct subject to the siblings’ naked ownership. This usufruct is joint and successive.
 - iii. Surviving spouse (“SS”) (not judicially separated, but that is only for covenant marriage)
 - iv. Other ascendants (“A”)
 - v. Other collaterals (“C”) (aunts, uncles, cousins (related by blood not affinity))
- c. Relative(s) of the most favored class / degree takes to the exclusion of other classes. (Preference Rule).
- d. Digging Deeper on Order of Inheritance of Separate Property
 - i. D - La. Civ. Code art. 888. Descendants succeed to the property of their ascendants. They take in equal portions and by heads if they are in the same degree. They take by roots if all or some of them succeed by representation.
 1. Children or their representatives take to the exclusion of other heirs.
 2. Adopted children are treated as biological children.
 3. Children born out of wedlock are considered children if formally acknowledged or if filiation is timely.
 - ii. P and S
 1. Parents have a joint and successive usufruct, and the siblings have naked ownership. P receive this usufruct in indivision. If one P dies, the entire usufruct accrues to the surviving P, and the Ss or their descendants continue to have only a naked ownership interest. See La. Civ. Code art. 891.
 - a. La. Civ. Code art. 891. If the deceased leaves no descendants but is survived by a father, mother, or both, and by a brother or sister, or both, or descendants from them, the brothers and sisters or their descendants succeed to the separate property of the deceased subject to a usufruct in favor of the surviving parent or parents. If both parents survive the deceased, the usufruct shall be joint and successive.
 2. Exception: Donation of Immovable Property (right of reversion)
 - a. Requirements

- i. Ascendant gave the immovable property to the descendant.
 - ii. Descendant predeceases ascendant.
 - iii. Descendant dies without children.
 - iv. Immovable is found in the succession or has been sold and part of the sale price has not yet been paid.
- 3. If the decedent has no descendants or surviving parents, the entire estate goes to the siblings of the decedent to the exclusion of others. See La. Civ. Code art. 892. Representation is allowed for siblings (niece or nephew takes the place of the sibling.) If half-siblings are involved, then the decedent's separate property should be divided between the maternal and paternal lines. The siblings who share both parents take in each line, and half-siblings take in the line in which they share a parent with the decedent. La. Civ. Code art. 893.
 - a. La. Civ. Code art. 892. If the deceased leaves neither descendants nor parents, his brothers or sisters or descendants from them succeed to his separate property in full ownership to the exclusion of other ascendants and other collaterals. If the deceased leaves neither descendants nor brothers or sisters, nor descendants from them, his parent or parents succeed to the separate property to the exclusion of other ascendants and other collaterals
 - b. La. Civ. Code art. 893. The property that devolves to the brothers or sisters is divided among them equally, if they are all born of the same parents. If they are born of different unions, it is equally divided between the paternal and maternal lines of the deceased: brothers or sisters fully related by blood take in both lines and those related by half-blood take each in his own line. If there are brothers or sisters on one side only, they take the entirety to the exclusion of all relations in the other line. If the decedent has no descendants, the parents and siblings succeed.
 - i. Assume the following: Son dies. Mom and Dad are alive. Son has a half-sibling, aunt, and first cousin. Half-sibling gets 100% naked ownership, and parents get a joint and successive usufruct.
 - ii. M1, F, M2, Decedent (son of M1 and F), Sibling (M1 and F), Half-sibling (M2 and F). M1 and F will get a usufruct. Then, split the estate between the two parents of the decedent, each blood line representing fifty percent (50%). Each sibling from that line gets a fraction, counted by head. In this

example, both children have the same father, so they each get 25% of the inheritance. Sibling, and not Half Sibling, is related to M1 – so Sibling gets the full 50%. Sibling gets 75%, and half-sibling gets 25%. M1 and F each get joint and successive usufruct.

4. If no siblings, then the parents take the entire estate in full ownership.
- iii. SS - If the decedent has no surviving D, P, or S, then the SS (not judicially separated) inherits to the exclusion of A and C.
 1. La. Civ. Code art. 894. Separate property; rights of surviving spouse. If the deceased leaves neither descendants, nor parents, nor brothers, sisters, or descendants from them, his spouse not judicially separated from him shall succeed to his separate property to the exclusion of other ascendants and other collaterals.
 - iv. A - If the decedent has no surviving D, S, P, or SS, and a grandparent or grandparents survive, they inherit in the succession. Remember the Preference Rule. If there is a grandparent and a great-grandparent that survives then the grandparent inherits to the exclusion of the great-grandparent. Also, if the surviving A are in the same degree, they divide the estate by roots with one-half for maternal line and one-half to the paternal line. However, there is no representation in the ascendant's line. See La. Civ. Code art. 895.
 1. La. Civ. Code art. 895. Separate property; rights of other ascendants. If a deceased leaves neither descendants, nor brothers, sisters, or descendants from them, nor parents, nor spouse not judicially separated, his other ascendants succeed to his separate property. If the ascendants in the paternal and maternal lines are in the same degree, the property is divided into two equal shares, one of which goes to the ascendants on the paternal side, and the other to the ascendants on the maternal side, whether the number of ascendants on each side be equal or not. In this case, the ascendants in each line inherit by heads. If there is in the nearest degree but one ascendant in the two lines, such ascendant excludes ascendants of a more remote degree.
 - v. C - If the decedent has no surviving D, S, P, SS, or A, then the nearest collaterals by degree will take. There is no representation, only equal division by heads. See La. Civ. Code art. 896. Note that this means that the estate is not divided between the maternal line and paternal line.
 1. La. Civ. Code art. 896. If the deceased leaves neither descendants, nor brothers, sisters, or descendants from them, nor parents, nor spouse not judicially separated, nor other ascendants, his other collaterals succeed to his separate property. Among the collateral relations, the nearest in degree excludes all

the others. If there are several in the same degree, they take equally and by heads.

2. This can get really messy, especially in scenarios in which the decedent does not maintain close ties to one side of the family (mom's side or dad's side). Here is a real-life example (with slightly modified facts). Decedent died in Catahoula Parish, Louisiana. She died a single woman, with no surviving ascendants, no descendants, no siblings, no nieces or nephews, and no blood aunts or uncles. The only family she was close to was one of her first cousins and the children of that first cousin (on her dad's side of the family). Her mother had a large family located in South Dakota, but considering the distance, she only met a few members of that family during her lifetime, and did not remain in touch with any members of her mom's family. She had about 20 cousins in total on her mom's side of the family, and she had 5 cousins on her dad's side of the family. Under this article, the 25 first cousins took equally by head, as there is no division between the paternal and maternal lines. Each of her first cousins inherited an undivided 1/25th interest, and the attorneys inherited an administrative nightmare.

vi. State receives estate if there are no D, S, P, SS, or A. See La. Civ. Code art. 902.

1. La. Civ. Code art. 902. Rights of the state. In default of blood, adopted relations, or a spouse not judicially separated, the estate of the deceased belongs to the state.

e. Community Property Order of Inheritance

i. Order of Inheritance

1. Descendants;
2. Surviving Spouse (if D and SS then SS receives 890 usufruct);
3. Parents / Siblings;
4. Other Ascendants;
5. Other Collaterals.

ii. Note that the differences in the inheritance of separate property and community property are the positions of the SS and P/S. The SS has a higher preference for inheritance of community property.

iii. The SS obtains full ownership of her 1/2 share of the community property, not by inheritance, but as the owner.

iv. If the decedent has D, then the decedent's 1/2 interest in community property goes to the D subject to the La. Civ. Code art. 890 usufruct of the SS.

v. La. Civ. Code Art. 890. Usufruct of surviving spouse. If the deceased spouse is survived by descendants, the surviving spouse shall have a usufruct over the decedent's share of the community property to the extent that the decedent has not disposed of it by testament. This

usufruct terminates when the surviving spouse dies or remarries, whichever occurs first.

1. Naked ownership to D, usufruct to SS over the decedent's 1/2 interest to which the children would have otherwise had full ownership. Lasts until the death or remarriage of the SS.
2. Security may be requested if a D is not of the marriage between the SS and decedent. See La. Civ. Code art. 573.
3. If child renounces his P 1/2 of the CP, the child's D inherit rather than the SS.

B. Determining the Share Size

In an intestate succession, determining the share size is ultimately dependent upon the number of heirs involved in a particular succession.

For example, if it is a typical succession in which there husband (H) died leaving his surviving spouse (W) and two children of the marriage C1 and C2. W subsequently died. Neither H nor W had a will. The estate would be divided equally between the C1 and C2 (each would receive an undivided one-half (1/2) interest).

Now assume that instead that H and W died but one child, C3, predeceased them but left two descendants, GC1 and GC2. In this case, C1, C2, GC1 and GC2 inherit the estate. GC1 and GC2 inherit through representation of C3. C1 and C2 each receive an undivided one-third (1/3) interest in the estate. GC1 and GC2 share in C3's portion of the estate. Each of them receive an undivided one-sixth (1/6) interest in and to the estate.

C. Exceptions and Bars to Inheritance

One exception to inheritance is incapacity. It pertains to the fact of the successor's existence at the time of the death of the decedent.

In order to inherit, a successor must exist at the death of the decedent. See La. Civ. Code art. 939. Successors in an intestate succession must be a natural person (except when it escheats to the estate). Natural personality commences from the moment of live birth and terminates at death. See La. Civ. Code art. 25. Although natural personality is said to commence at the moment of live birth, certain statutory exceptions exist for various policy reasons:

La. Civ. Code art. 26. Unborn child. An unborn child shall be considered as a natural person for whatever relates to its interests from the moment of conception. If the child is born dead, it shall be considered never to have existed as a person, except for purposes of actions resulting from its wrongful death.

Note: Conception is the operative language in this instance.

La. Civ. Code art. 940. Same; unborn child. An unborn child conceived at the death of the decedent and thereafter born alive shall be considered to exist at the death of the decedent.

Note: Conception is the operative language in this instance.

La. R.S. 9:391.1. Child conceived after death of parent.

A. Notwithstanding the provisions of any law to the contrary, any child conceived after the death of a decedent, who specifically authorized in writing his surviving spouse to use his gametes, shall be deemed the child of such decedent with all rights, including the capacity to inherit from the decedent, as the child would have had if the child had been in existence at the time of the death of the deceased parent, provided the child was born to the surviving spouse, using the gametes of the decedent, within three years of the death of the decedent.

B. Any heir or legatee of the decedent whose interest in the succession of the decedent will be reduced by the birth of a child conceived as provided in Subsection A of this Section shall have one year from the birth of such child within which to bring an action to disavow paternity.

La. R.S. 9:133 Inheritance rights. Inheritance rights will not flow to the in vitro fertilized ovum as a juridical person, unless the in vitro fertilized ovum develops into an unborn child that is born in a live birth, or at any other time when rights attach to an unborn child in accordance with law. As a juridical person, the embryo or child born as a result of in vitro fertilization and in vitro fertilized ovum donation to another couple does not retain its inheritance rights from the in vitro fertilization patients.

La. Civ. Code art. 1474. Unborn children, capacity to receive. To be capable of receiving by donation inter vivos, an unborn child must be in utero at the time the donation is made. To be capable of receiving by donation mortis causa, an unborn child must be in utero at the time of the death of the testator. In either case, the donation has effect only if the child is born alive.

Unworthiness is another bar to inheritance which deprives the heir from the right of inheritance. A person must be declared judicially unworthy by a court of competent jurisdiction. Since the venue for successions is jurisdictional, then it should be filed in the venue of the succession proceeding, which for a Louisiana domiciliary is the parish of domicile.

An heir, a person who succeeds instead of an unworthy successor or a person who succeeds concurrently with an unworthy successor may bring the action.

Here are the pertinent Louisiana Civil Code articles on unworthiness:

La. Civ. Code art. 941. Declaration of unworthiness. A successor shall be declared unworthy if he is convicted of a crime involving the intentional killing, or attempted killing, of the decedent or is judicially determined to have participated in the intentional, unjustified killing, or attempted killing, of the decedent. An action to declare a successor unworthy shall be brought in the succession proceedings of the decedent. An executive pardon or pardon by operation of law does not affect the unworthiness of a successor.

Notes: This Code article thus requires that there be two judgments rendered in an action to bring an action. First, there needs to be a judgment in the criminal court on the conviction of a

crime as outlined in La. Civ. Code art. 941. Then, there needs to be a declaration of unworthiness in the succession proceeding.

There is a five year prescriptive period to bring an unworthiness action in intestate successions, which begins at the moment of the decedent's death.

An unworthy successor no longer has his or her right to inherit in an intestate succession and as a forced heir in a testate succession. The unworthy heir is treated as predeceasing the decedent.

Rightly, an unworthy successor may not serve as a fiduciary in any capacity for the succession (executor, administrator, attorney, trust protector, trustee).

An unworthy successor has to return and account for the assets in his possession that are part of the succession. If he has possession of the property, then he has to return it with all of the fruits and products.

La. Civ. Code art. 943. Reconciliation or forgiveness. A successor shall not be declared unworthy if he proves reconciliation with or forgiveness by the decedent.

La. Civ. Code art. 945. Effects of declaration of unworthiness. A judicial declaration that a person is unworthy has the following consequences:

- (1) The successor is deprived of his right to the succession to which he had been called.
- (2) If the successor has possession of any property of the decedent, he must return it, along with all fruits and products he has derived from it. He must also account for an impairment in value caused by his encumbering it or failing to preserve it as a prudent administrator.
- (3) If the successor no longer has possession because of a transfer or other loss of possession due to his fault, he must account for the value of the property at the time of the transfer or other loss of possession, along with all fruits and products he has derived from it. He must also account for any impairment in value caused by his encumbering the property or failing to preserve it as a prudent administrator before he lost possession.
- (4) If the successor has alienated, encumbered, or leased the property by onerous title, and there is no fraud on the part of the other party, the validity of the transaction is not affected by the declaration of unworthiness. But if he has donated the property and it remains in the hands of the donee or the donee's successors by gratuitous title, the donation may be annulled.
- (5) The successor shall not serve as an executor, trustee, attorney or other fiduciary pursuant to a designation as such in the testament or any codicils thereto. Neither shall he serve as administrator, attorney, or other fiduciary in an intestate succession.

Limits of Declaration of Unworthiness

Unworthiness excludes the unworthy successor from life insurance benefits that come from decedent's death. See La. Rev. Stat. §22:901(D).

Potentially, unworthiness may apply for purposes of ERISA (Federal preemption).

Unworthiness likely does not affect settlement agreements.

Unworthiness likely does not affect burial rights. See La. R.S. 8:655. Right of disposing of remains

Collation?