

**CHAPTER 532**  
**DESCENT OF PROPERTY**

Section

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### **Note**

Sections 532-1 through 532-15 are applicable to matters relating to persons who died, and rights accrued, prior to July 1, 1977, and such law shall continue in full force and effect as to any such rights notwithstanding the provisions of chapter 560, and the revisor of statutes is instructed to retain these sections in the Hawaii Revised Statutes. L 1976, c 200, §1(8-102(16)).

### **Cross References**

Intestate succession and wills, see chapter 560, Article II.

" **§532-1 Issue includes whom.** The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor. [CC 1859, §1462; RL 1925, §3304; RL 1935, §4812; RL 1945, §12072; RL 1955, §318-1; HRS §532-1]

### **Case Notes**

Includes adopted child. 26 H. 439. "Issue" as used in will includes adopted child. 35 H. 104, aff'd 115 F.2d 956; 42 H. 640; 49 H. 273, 414 P.2d 925; see also 42 H. 129. Does not include illegitimate child. 20 H. 722. "Issue by me begotten" does not include grandchildren. 29 H. 278. "Keiki" construed as descendant of any generation, according to the context. 47 H. 610, 393 P.2d 753.

" **§532-2 To heirs.** Whenever any person dies intestate, his property, both real and personal, of every kind and description, shall descend to and be divided among his heirs, as in this chapter prescribed; provided that upon the death, testate or intestate, of any occupier or lessee of public land, holding under an existing certificate of occupation or an existing nine hundred and ninety-nine year homestead lease, succession to the decedent's interest in such land shall be determined as provided in section 171-99(e). [CC 1859, §1447; RL 1925, §3302; RL 1935, §4810; RL 1945, §12070; RL 1955, §318-2; HRS §532-2; am L 1974, c 71, §1]

### **Cross References**

Decree of distribution, prima facie proof of descent of title, see §622-43.

Disposition of community property, see §510-10.

## Case Notes

### **Effect of distribution decree.**

In absence of statute permitting notice by publication, not binding on parties not served. 6 H. 47; 10 H. 421; 19 H. 232, 238; 22 H. 436. As evidence. 30 H. 116.

### **Interpretation of word "heirs" as used in wills, deeds, etc.**

"Heirs" distinguished from "by way of dower". 10 H. 687. Dower estate is not an estate by way of descent. 17 H. 525, 527. Class determined at time for distribution. 31 H. 1; 31 H. 418; 32 H. 32, aff'd 61 F.2d 598; 32 H. 140, 151. No estates tail in Hawaii. 12 H. 375; 20 H. 372; 21 H. 699, aff'd 242 U.S. 612, 23 H. 537, 539; 23 H. 747, aff'd 255 F. 732, cert. denied, 249 U.S. 616; 24 H. 298, 303, mod. 25 H. 561; 31 H. 1, 3. Word "heirs" construed as word of purchase. 8 H. 392, 402; 9 H. 88, 91; 21 H. 74, 78; 23 H. 685; 23 H. 747, 752, aff'd 255 F. 732, cert. denied, 249 U.S. 616. Word "heirs" not necessary to convey fee. 13 H. 499; 23 H. 38, 44, aff'd 242 F. 446; 24 H. 298, 304, mod. 25 H. 561. Word "heirs" not necessary to devise fee. 6 H. 694; 14 H. 142; 22 H. 233, 240. Includes adopted child. 42 H. 129, 640.

### **No distinction between realty and personalty.**

6 H. 8, 14; 8 H. 392, 404; 23 H. 685, 691; 32 H. 140, 144. Heirs take as tenants in common. 6 H. 8, 14; 23 H. 685, 691.

### **Pedigree evidence.**

13 H. 523, 525; 17 H. 577, 583; 20 H. 202. Relationship of declarant must be established by proof independent of declaration. 25 H. 127; 30 H. 116; 32 H. 1.

### **Presumption against intestacy.**

14 H. 378, 382; 21 H. 556, 565; 28 H. 590, rev'd 26 F.2d 609; 29 H. 359; 31 H. 259, 264.

### **Property subject to inheritance.**

Lease descends as chattel interest. 3 H. 763. Equitable interest. 22 H. 78; 23 H. 685; 25 H. 174. Homesteads. 35 H. 550. Where devisee of residuary estate predeceased testator. 43 H. 304, aff'd 282 F.2d 431.

" **§532-3 Actual possession not requisite.** It shall not be requisite that the intestate shall have been in actual possession of the property; it is sufficient if he had a good claim to it at the time of his death. [CC 1859, §1461; RL 1925,

§3303; RL 1935, §4811; RL 1945, §12071; RL 1955, §318-3; HRS §532-3]

" **§532-4 General rules of descent.** (a) Issue, lineal descendants. The property shall be divided equally among the intestate's children, and the issue of any deceased child by right of representation, and if there is no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall share the estate per capita, that is, equally; otherwise they shall inherit per stirpes, that is, by each of the children taking a share, and the grandchildren, the children of a deceased child taking a share, to be afterwards divided among themselves.

(b) Widow; father and mother; brothers and sisters. If the intestate leaves no issue, his estate shall descend one-half to his widow, and the other half to his father and mother as tenants in common; and if he leaves no widow, nor issue, the whole shall descend to his father and mother, or to either of them if only one is alive.

If he leaves no issue, nor father, nor mother, his estate shall descend one-half to his widow, and the other half to his brothers and sisters, and to the children of any deceased brother or sister by right of representation. If he leaves no issue, nor father, nor mother, nor widow, his estate shall descend to his brothers and sisters, and to the children of any deceased brother or sister by right of representation.

(c) Husband; father and mother; brothers and sisters. If the intestate is a woman and leaves no issue, her estate shall descend one-half to her husband, and the other half to her father and mother as tenants in common, and if she leaves no husband, nor issue, the whole shall descend to her father and mother, or to either of them if only one is alive; if she leaves no issue, nor father, nor mother, her estate shall descend one-half to her husband and the other half to her brothers and sisters, and to the children of any deceased brother or sister by right of representation. If she leaves no issue, nor father, nor mother, nor husband, her estate shall descend to her brothers and sisters, and to the children of any deceased brother or sister by right of representation.

(d) Widow or husband. If the intestate leaves no issue nor father, mother, brother, or sister, nor descendants of any deceased brother or sister, the estate shall descend to the intestate's widow, if any; or in case the intestate is a woman, to her husband, if any.

(e) Otherwise, next of kin. If the intestate leaves none of such relatives surviving, nor widow, nor husband, the estate

shall descend in equal shares to the next of kin in equal degree, but no person shall be entitled, by right of representation to the shares of the next of kin who have died; provided that if the estate comes through either parent of the deceased intestate, the brothers and sisters of that parent and their respective heirs shall be preferred to those of the other parent. [CC 1859, §1448; am L 1872, c 1, §1 (repealed by L 1898, c 47, §2); am L 1898, c 47, §1; RL 1925, §3305; RL 1935, §4813; RL 1945, §12073; am L 1951, c 306, §§1, 2; RL 1955, §318-4; HRS §532-4]

### **Cross References**

Public lands, descent under certificate of occupation or homestead lease, see §171-99.

### **Case Notes**

Statute supersedes common law. 22 H. 78, 83. Conflict of laws. 22 H. 78; 23 H. 685. Inheritance governed by law at time of death. 4 H. 536, 537.

Widow: 4 H. 346; 8 H. 392; 10 H. 687; 15 H. 76, 84 (not included under "nearest blood relatives"). Effect of inheritance by widow on dower. 2 H. 715.

Widower: 3 H. 374; 8 H. 612; 12 H. 178; 23 H. 451, 456, aff'd 250 F. 612.

Parents: 4 H. 346; 8 H. 381, 382; 10 H. 543, 545, criticized 201 F. 224.

Adopted children: 21 H. 304; 24 H. 396; 24 H. 643. Adopted child inherits through adoptive mother from her father. 26 H. 439; 42 H. 129. See 35 H. 104, aff'd 115 F.2d 956; 42 H. 640, 653.

Collateral relatives: Word "children" used in 4th paragraph includes grandchildren. 20 H. 114; 22 H. 78. But see 6 H. 410. Includes children of half brother or half sister. 6 H. 410. Includes distant collateral relatives. 6 H. 487; 8 H. 612; 32 H. 140. Half-blood. 33 H. 299. Heirs. 34 H. 131.

Ancestral estates: 25 H. 246, 249. No preference in property acquired through proceeds of inheritance. 32 H. 140. See 9 H. 393. Kindred of half blood. 13 H. 716; 15 H. 648; 20 H. 567; 20 H. 653.

Interpretation of word "children" as used in wills, deeds, etc. limited to immediate offspring. 23 H. 213; 27 H. 462. Includes legally adopted children. 24 H. 396, 399; 42 H. 129. But see 24 H. 643. Class determined at time for distribution. 31 H. 1. "Children lawfully begotten" does not include bastard legitimated by statute. 14 H. 271.

" **§532-5 From unmarried minor child.** If the intestate dies leaving several children, or leaving one child, and the issue of one or more others, and any surviving child dies under age not having been married, all the estate that came to the deceased child by inheritance from the deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any other deceased children, who have died, by right of representation.

If at the death the child who dies under age, not having been married, all the other children of his parent are also dead, and any of them has left issue, the estate that came to the child by inheritance from his parent, shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to the child, they shall share the estate equally; otherwise they shall take according to the right of representation. [CC 1859, §§1449, 1450; RL 1925, §3306; RL 1935, §4814; RL 1945, §12074; RL 1955, §318-5; HRS §532-5]

#### **Case Notes**

This section is exception to general rule stated in §532-4. 8 H. 381. See 19 H. 223, 224; 20 H. 203, 209.

" **§532-6 To child born to parents not married to each other.** Every child born to parents not married to each other at the time of the child's birth and for whom the parent and child relationship has not been established pursuant to chapter 584 shall be considered as an heir to the child's mother, and shall inherit her estate, in whole or in part, as the case may be, in like manner as if the child had been born in lawful wedlock. [CC 1859, §1452; am L 1874, c 50, §1 (repealed by L 1876, c 9); RL 1925, §3307; RL 1935, §4815; RL 1945, §12075; RL 1955, §318-6; HRS §532-6; am L 1997, c 52, §2]

#### **Cross References**

Inheritance of child of illegal marriage, see §580-25.

#### **Case Notes**

"Children lawfully begotten" does not include bastard legitimated by marriage. 14 H. 271.

Illegitimate child is not heir to mother's parent. 20 H. 722.

" **§532-7 From persons born to parents not married to each other.** If any person born to parents not married to each other dies intestate, without leaving lawful issue, or a spouse, the decedent's estate shall descend to the decedent's mother; but if the decedent leaves a spouse, the spouse shall take one-half, and the decedent's mother the other half, and if the decedent's mother is not living, but the decedent's spouse is, then the spouse shall take one-half, and the remaining half shall go to the decedent's brothers and sisters in equal parts, the children of any deceased brother or sister taking by right of representation. In default of surviving brothers or sisters, or their issue, such one-half shall go to the brothers and sisters of the decedent's mother in equal shares, the issue of any such brother or sister who is deceased, taking by right of representation. In default of any relatives as are in this section mentioned, the half, and the whole in the event that the decedent leaves no spouse, shall go to the decedent's next of kin. No action shall be commenced or prosecuted on behalf of the State to recover or hold any property which but for this section, might have been held to have escheated to the State. [CC 1859, §1453; am L 1874, c 50, §2 (repealed by L 1876, c 9); am L 1909, c 6, §1; RL 1925, §3308; RL 1935, §4816; RL 1945, §12076; RL 1955, §318-7; HRS §532-7; am L 1972, c 108, §2; am L 1997, c 52, §3]

#### Case Notes

Cited: 4 H. 221, 225.

" **§532-8 Kindred of half blood.** The kindred of the half blood shall inherit equally with those of the whole blood in the same degree; provided that where the inheritance came to the intestate by descent, devise, or gift, of some one of his ancestors, all those who are not of the blood of the ancestor, shall be excluded from such inheritance. [CC 1859, §1454; RL 1925, §3309; RL 1935, §4817; RL 1945, §12077; RL 1955, §318-8; HRS §532-8]

#### Case Notes

Effect of adjudication of pedigree in subsequent action. 3 H. 546, 551.

Kindred of half blood as heirs. 6 H. 410; 9 H. 393. Cousin of half blood as heir. 6 H. 487. "Each of my nephews and nieces" includes those of the half blood. 33 H. 299.

Definitions: "Ancestor" means any one from whom estate was immediately inherited by deceased, including son or wife of

deceased. 9 H. 393; 20 H. 567. Kindred "of the blood" of an ancestor includes kindred of the half blood. 9 H. 393. "Gift" from ancestor does not include property transferred from wife to husband through intermediary. 20 H. 567; 20 H. 653. Whether "gift" includes other than testamentary gift. See 20 H. 567, 574.

Ancestral estates: Kindred of half blood of ancestor not excluded. 9 H. 393. Cousins of the blood of the deceased ancestor inherit in preference to half brother not of blood of ancestor. 13 H. 716; 15 H. 648.

" **§532-9 Posthumous children.** Posthumous children shall, in all cases, inherit the same as if they had been born during their father's lifetime. [CC 1859, §1456; RL 1925, §3310; RL 1935, §4818; RL 1945, §12078; RL 1955, §318-9; HRS §532-9]

" **§532-10 Advancements; effect of.** If an advancement has been made by an intestate to any of his children by settlement or portion of real or personal estate, or both, the value thereof shall be reckoned for the purposes of this section only, as part of the real and personal estate of the intestate, descendible to his heirs, and to be distributed to his next of kin, according to law.

If the advancement is equal or superior to the amount or share which the child would be entitled to receive, of the real and personal estate of the deceased, as above reckoned, then the child and his descendants shall be excluded from any share in the real and personal estate of the intestate.

If the advancement is not equal to the share, the child and his descendants shall be entitled to receive so much only of the personal estate, and to inherit so much only of the real estate of the intestate, as shall be sufficient to make all the shares of the children, in the real and personal estate and advancement, equal as nearly as can be estimated. [CC 1859, §§1457, 1459; RL 1925, §3311; RL 1935, §4819; RL 1945, §12079; RL 1955, §318-10; HRS §532-10]

#### Case Notes

Advancement not part of intestate's estate. 10 H. 384, 386.

Gift of money as advancement on account of legacy. 32 H. 489, rev'd 70 F.2d 793.

" **§532-11 Advancement; valuation of.** The value of any real or personal estate so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise, the value shall be estimated according to



the worth of the property when given. [CC 1859, §1459; RL 1925, §3312; RL 1935, §4820; RL 1945, §12080; RL 1955, §318-11; HRS §532-11]

" **§532-12 What not advancements.** The maintaining or educating, or the giving money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement. [CC 1859, §1460; RL 1925, §3313; RL 1935, §4821; RL 1945, §12081; RL 1955, §318-12; HRS §532-12]

" **§532-13 Procedure if partition undesirable.** When any part of the property left by the intestate consists of real estate, and the same is to be divided among several children, and in the opinion of the probate court it is desirable that the real estate or any particular piece thereof be not divided, then the eldest son, and in succession of age after him the other sons, or if he or they renounce or decline the privilege, then the daughters in like succession may, after the property or piece of property has been duly appraised by a court of probate, elect to pay to the others the amount of their shares in money, in order that the land may not be divided. The same rule shall apply where a part of the claimants are children, and the rest are issue of deceased children of the intestate. [CC 1859, §1455; am L 1878, c 1; RL 1925, §3314; RL 1935, §4822; RL 1945, §12082; RL 1955, §318-13; HRS §532-13]

#### Case Notes

Cited: 3 H. 546, 553.

" **§532-14 Disposition by State.** If the intestate leaves no kindred, the intestate's estate shall be disposed of as provided in chapter 523A. [CC 1859, §1451; RL 1925, §3315; RL 1935, §4823; RL 1945, §12083; RL 1955, §318-14; HRS §532-14; am L 1974, c 75, §6; am L 1985, c 68, §25]

#### Case Notes

"Kindred", meaning of. 4 H. 221, 225.  
Cited: 3 H. 262, 268; 20 H. 114, 116.

" **§532-15 REPEALED.** L 1987, c 307, §2.

#### Cross References

For present provision, see §560:2-105.5.