

# MAINE STATE LEGISLATURE

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he resided 10 days before making it, unless he is suddenly taken sick from home and dies before returning to it. But a soldier in actual service or mariner at sea may dispose of his personal estate and wages without regard to the provisions of this chapter.

2 Me. 299; 8 Me. 168; \*53 Me. 569.

**Sec. 19. Proved within 6 months; exception.** R. S. c. 88, § 19. No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of 6 months from the time when they were spoken, unless the words or the substance of them were reduced to writing within 6 days after they were spoken.

120 Me. 263.

**Sec. 20. Limitation as to property affected.** R. S. c. 88, § 20. No nuncupative will is effectual to dispose of property exceeding in value \$100, unless proved by the oath of 3 witnesses who were present at the making of it and were requested by the testator to bear witness that such was his will.

2 Me. 299.

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## CHAPTER 156.

### TITLE BY DESCENT.

- Sections 1-7 Rules of Descent. Advancements.
- Sections 8-19 Rights of Surviving Husbands and Wives.
- Sections 20-21 Descent of Personal Property.
- Sections 22-29 Uniform Simultaneous Death Act.

#### Rules of Descent. Advancements

**Sec. 1. Rules of descent.** R. S. c. 89, § 1. 1943, c. 4, § 1. The real estate of a person deceased intestate, being subject to the payment of debts, including a wood-lot or other land used with the farm or dwelling-house although not cleared, and also including wild lands of which he dies seized, but excepting wild lands conveyed by him, though afterwards cleared, descends according to the following rules:

58 Me. 259; 61 Me. 472; 130 Me. 103; 133 Me. 385; 134 Me. 302.

**I. (1943, c. 4, § 1)** If he leaves a widow and issue,  $\frac{1}{3}$  to the widow. If no issue,  $\frac{1}{2}$  to the widow. If no kindred, the whole to the widow; and to the widower shall descend the same shares in his wife's real estate. There shall likewise descend to the widow or widower the same share in all such real estate of which the deceased was seized during coverture, and which has not been barred or released as herein provided. In any event,  $\frac{1}{3}$  shall descend to the widow or widower free from payment of debts, except as provided in section 22 of chapter 150.

See c. 153, §§ 45, 46, re proceedings by deserted wife or husband; 92 Me. 397; \*95 Me. 261; 99 Me. 350; 100 Me. 512; \*105 Me. 482; \*107 Me. 36; 114 Me. 382; 123 Me. 160; \*124 Me. 387; 133 Me. 385.

II. The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation.

14 Me. 310; 81 Me. 158; 95 Me. 277.

III. If no such issue, it descends to his father and mother in equal shares.

139 Me. 233.

IV. If no such issue or father, it descends  $\frac{1}{2}$  to his mother. If no such issue or mother, it descends  $\frac{1}{2}$  to his father. In either case, the remainder, or, if no such issue, father or mother, the whole descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

14 Me. 310; 57 Me. 352; 84 Me. 376; \*117 Me. 100; 119 Me. 185.

V. If no such issue, father, brother, or sister, it descends to his mother. If no such issue, mother, brother, or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters.

57 Me. 351; \*76 Me. 448, 451.

VI. If no such issue, father, mother, brother, or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor in preference to those claiming through an ancestor more remote.

\*53 Me. 495; \*67 Me. 583; \*76 Me. 448, 453; \*104 Me. 337; 117 Me. 100; 123 Me. 160.

VII. When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent and the issue of those deceased; in equal shares if all are of the same degree of kindred; otherwise, according to the right of representation.

See c. 145, § 38, re descent of property to adopted child; 60 Me. 162.

VIII. If the intestate leaves no widower, widow, or kindred, it escheats to the state.

See § 20; c. 155, § 9, re child or issue of deceased child not having devise in will.

Sec. 2. Degrees of kindred. R. S. c. 89, § 2. The degrees of kindred are computed according to the rules of the civil law. Kindred of the half-blood inherit equally with those of the whole blood in the same degree.

32 Me. 311, 312, note; 76 Me. 456; 88 Me. 353.

Sec. 3. Heirship of an illegitimate child; descent of estate. R. S. c. 89, § 3. An illegitimate child born after the 24th day of March, 1864 is the heir of his parents who intermarry. Any such child, born at any time, is the heir of his mother. If the father of an illegitimate child adopts him or her into his family or in writing acknowledges before some justice of the peace or notary public, that he is the father, such child is also the heir of his or her father. In each case such child and its issue shall inherit from its parents respectively, and from their lineal and collateral kindred, and these from such child and its issue the same as if legitimate.

\*37 Me. 336; \*38 Me. 160; \*55 Me. 472; \*76 Me. 313; 83 Me. 23, \*251; \*88 Me. 349, 398; \*92 Me. 170; 117 Me. 441; \*124 Me. 72; 139 Me. 233.

Sec. 4. Advancements, how established. R. S. c. 89, § 4. Gifts and grants of real or personal estate to a child or grandchild are deemed an advancement, when so expressed therein, or charged as such by the intestate, or acknowledged

in writing to be such. For purposes of descent and distribution, they shall be regarded as part of the estate of the intestate and as taken towards a share of it.

51 Me. 379; 59 Me. 216; \*103 Me. 97.

**Sec. 5. Value of an advancement on a distribution; not to be refunded. R. S. c. 89, § 5.** When the value of an advancement is determined by the intestate in his gift or charge, or is acknowledged in writing, it shall be allowed in the distribution; if not, the value shall be estimated at the time when it is given. When it exceeds his share, he is excluded from any further portion; when less, he shall receive sufficient to make it an equal share. He shall not refund any part of an advancement.

103 Me. 97.

**Sec. 6. Advancements of real and personal estate, how marshaled; proceedings where one having advancement dies, leaving issue. R. S. c. 89, § 6.** When an advancement is made in real estate, it shall be regarded as part of the real estate, and when in personal, as part of the personal estate. If it exceeds his share of the real or personal estate, he receives so much less of the other as will make his whole share equal. If such child or grandchild dies before the intestate, leaving issue, the advancement made to him shall be regarded as made to such issue, and distribution shall be made accordingly.

103 Me. 97.

**Sec. 7. When heir is indebted to the estate, a lien on his share to be created; how enforced. R. S. c. 89, § 7.** When an estate is solvent and a person to whom a share of it descends is indebted to the intestate at the time of his death, such debt creates a lien on his share, having priority to any attachment of it; and such lien may be enforced by suit and attachment of the share within 2 years after administration is granted, and by levy within 30 days after judgment. In such action, or in one brought by the heir, all claims between the intestate and heir may be set off and adjusted, and the balance due may be established.

See c. 143, § 20, re lien for debt due estate created; 68 Me. 60; 75 Me. 419; 107 Me. 105.

### Rights of Surviving Husbands and Wives

**Sec. 8. Rights of dower and tenancy by the curtesy, abolished; not to affect vested rights, nor antenuptial settlement. R. S. c. 89, § 8.** Except as hereinafter provided, the right of widows to dower in the real estate of their deceased husbands, and the right of widowers as tenant by curtesy in the real estate of their deceased wives are abolished. This section and the 11 following sections shall not be held to affect, modify, enlarge, or limit the rights and interests which any widower or widow married before the 1st day of May, 1895 has in the estate of a wife or husband deceased prior to the 1st day of January, 1897, nor any of the remedies by which the same may be enforced, nor affect any jointure or antenuptial settlement or pecuniary provision made for such widow by any such husband; nor shall a widower married before the 1st day of May, 1895 have any interest in the real estate of his wife conveyed by her during coverture prior to the 1st day of January, 1897.

114 Me. 382; 117 Me. 236; \*120 Me. 103; \*123 Me. 237; 130 Me. 103.

**Sec. 9. Husband or wife may bar the right by deed etc. R. S. c. 89, § 9.** A husband or wife of any age may bar his or her right and interest by descent in an estate conveyed by the other, by joining in the same, or a subsequent deed,

or in a deed with the guardian of the other; or by sole deed; but shall not be deprived of such right and interest by levy or sale of the real estate on execution; but may, after the right of redemption has expired, release such right and interest by sole deed.

See c. 150, § 11, re disposal of property by antenuptial settlement and decree that husband is deserted bars wife's rights in his property; c. 153, §§ 42, 45, 46, re wife of incapacitated ward may join in deed with guardian; \*95 Me. 77; \*100 Me. 512; 123 Me. 237; 129 Me. 395; 132 Me. 45.

**Sec. 10. Right barred by accepting jointure before marriage. R. S. c. 89, § 10.** A woman may be barred of her right and interest by descent in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian.

See c. 153, §§ 42, 45, 46, re disposal of property by antenuptial settlement and decree that husband is deserted bars wife's rights in his property; 21 Me. 369; \*69 Me. 534; 95 Me. 77; \*96 Me. 533.

**Sec. 11. Right barred by pecuniary provision. R. S. c. 89, § 11.** A pecuniary provision made for the benefit of an intended wife instead of her right and interest by descent, consented to by her as provided in the preceding section, bars her right and interest by descent in her husband's lands.

61 Me. 398; 69 Me. 534; 95 Me. 77; 96 Me. 533; 120 Me. 103.

**Sec. 12. When widow may waive jointure. R. S. c. 89, § 12.** If such jointure or provision is made before marriage, without the consent of the intended wife, or if it is made after marriage, it bars her right and interest by descent, unless, within 6 months after the husband's death, she makes her election to waive such provision, and files the same in writing in the registry of probate. In case she so makes such election she shall be entitled to her right and interest by descent in her husband's lands.

See § 15; 49 Me. 463; 61 Me. 398; 69 Me. 534; \*82 Me. 237; 95 Me. 76, 77; 96 Me. 533; 121 Me. 402.

**Sec. 13. Widow, widower, or guardian may elect whether to accept provision in will or claim interest by descent. R. S. c. 89, § 13.** When a specific provision is made in a will for the widow or widower of a testator or testatrix who was married before the 1st day of May, 1895, and died since the 1st day of January, 1897, or who was married on or after said 1st day of May, such legatee or devisee may within 6 months after probate of said will and not afterwards, except as hereinafter provided, make election, and file notice thereof in the registry of probate, whether to accept said provision or claim the right and interest by descent, herein provided; but is not entitled to both, unless it appears by the will that the testator or testatrix plainly so intended. Such election may be made by an insane widow or insane widower by his or her guardian, or by a guardian ad litem appointed for the purpose. If such election is not made within 6 months after probate of a will, and the estate is thereafter rendered insolvent, and commissioners are appointed by the judge of probate, such election may be made at any time within 6 months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may

recover from such executor or administrator, if not paid within 30 days after demand therefor in writing,  $\frac{1}{3}$  of any sums received from real estate sold before such waiver was filed. Whenever the widow or widower is advised that the legal construction of the provisions of the will for her or him is doubtful or uncertain, the time for making such election shall be extended to 30 days after certificate is returned to the probate court in the county where the probate proceedings are had, of the final decision upon a bill in equity, commenced by said legatee or devisee within 30 days after the probate of the will, to obtain the decision of the court as to his or her rights under it, but in no case shall the time for election be less than 6 months after probate. The clerk of courts for the county in which the proceedings in equity are commenced, within 3 days after receipt of the decision therein, shall send notice of the same to the widow or widower, or her or his solicitor of record, and transmit a certified copy of the decree to the proper probate court, where it shall be recorded, with the time of its reception.

See § 15; 1 Me. 150; 32 Me. 133; 36 Me. 215; 69 Me. 534; 82 Me. 237; 83 Me. 554; \*116 Me. 450; 123 Me. 463; 124 Me. 385; 126 Me. 276; 130 Me. 103; 131 Me. 203; 133 Me. 385, 450; 134 Me. 302; 137 Me. 259.

**Sec. 14. Share of estate to which widow or widower waiving provisions of will, or when no provision is made in will, is entitled.** R. S. c. 89, § 14. 1943, c. 114. When a provision is made in a will for the widow of a testator who died after the 26th day of April, 1897, or for the widower of a testatrix, who died after the 1st day of June, 1903, and such provision is waived as aforesaid, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates. When no provision is made for his widow in the will of a testator who died after the 26th day of April, 1897, or for her widower in the will of a testatrix who died after the 1st day of June, 1903, such widow or widower shall likewise have and receive the same share of the real estate and the same distributive share of the personal estate of such testator or testatrix as is provided by law in intestate estates, provided such widow or widower shall within 6 months after the probate of such will file in the registry of probate written notice that she or he claims such share of the real and personal estate of such testator or testatrix. Such notice may be filed by an insane widow or widower by his or her guardian, or by a guardian ad litem appointed for the purpose. Any notice filed under the provisions of this or the preceding section shall be recorded by the register of probate in the record books of the probate court where such notice is filed, but a failure to record such notice shall not in any way affect the rights of any widow or widower.

\*99 Me. 67; 100 Me. 513; 105 Me. 482; \*110 Me. 63; \*117 Me. 471; \*118 Me. 248; 123 Me. 471; 124 Me. 198; 130 Me. 103.

**Sec. 15. Copy of notice to be filed in registry of deeds.** R. S. c. 89, § 15. Within 30 days after any notice provided for in the 3 preceding sections is filed in the registry of probate, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated, an attested copy of such notice, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills.

**Sec. 16. Release of dower or curtesy, how construed.** R. S. c. 89, § 16. All releases of rights to dower or curtesy in any manner heretofore or hereafter

made, in estates conveyed or mortgaged by husbands or wives, shall be deemed to include and shall be construed to include all rights and interests by descent.

**Sec. 17. Rights of wife in mortgaged property in certain cases.** R. S. c. 89, § 17. If the wife has heretofore released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person, or by himself before their marriage, she shall be entitled to her right and interest by descent, as herein provided, in the mortgaged premises, as against every person except the mortgagee and those claiming under him. If the heirs of the husband, or other person claiming under him, redeem the mortgage, she shall repay such proportion of the money paid by him as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to her right and interest by descent only according to the value of the estate, after deducting the money paid for its redemption.

117 Me. 470.

**Sec. 18. Right of wife who has not released her right of dower in land conveyed or mortgaged.** R. S. c. 89, § 18. If the wife of the grantor or mortgagor of lands conveyed or mortgaged prior to the 1st day of May, 1895, or in case of persons then married, prior to the 1st day of January, 1897, has not released or barred her right of dower in the same, she shall be entitled, as against the grantee or mortgagee and those claiming under him, to her right of dower only, as then existing. The wife of an insolvent debtor, married prior to the 1st day of May, 1895, decreed to be insolvent under the provisions of chapter 149, prior to the 1st day of January, 1897, shall be entitled, as against the assignee, and those claiming under him, to her right of dower only, as aforesaid.

117 Me. 236; 125 Me. 38.

**Sec. 19. Proceedings where owner has contracted to sell real estate and husband or wife refuses to release interest, or is incapacitated; rights of assignees, trustees in bankruptcy, etc.** R. S. c. 89, § 19. If the owner of real estate contracts to sell the same, and the husband or wife of the owner refuses to release his or her interest and right by descent, or if the owner is a non-resident and the husband or wife is incapacitated and has no guardian in this state or if the owner is a resident of this state and the husband or wife is under guardianship the owner may apply to a justice of the superior court, who, after such notice to the other party as he may order, and hearing, may, in his discretion, approve the sale and price, and order the owner to pay to the clerk of court, for such husband or wife of the owner, such sum as would amount to  $\frac{1}{3}$  of the price approved, if the owner has issue, and  $\frac{1}{2}$  if he has no issue, at the expiration of the owner's expectancy of life, computed at 3%, compound interest. The clerk shall give a certificate of such approval by the court, and of the fact that said money has been paid as aforesaid, to be filed with the register of deeds in the county or registry district where the land lies, with the owner's deed thereof, and such register shall record the same; and thereafter such interest or right by descent in such real estate shall be barred. An assignee for the benefit of creditors, or in insolvency, or a trustee in bankruptcy, or any person holding title by levy or sale on execution may make application for proceedings under the provisions of this section in relation to any real estate held by him in such capacity, to bar the interest and right by descent therein, of the husband or wife of the assignor, insolvent or bankrupt, or the interest and right by descent therein of the husband or wife of the judgment debtor.

98 Me. 510; 114 Me. 105, 382; 120 Me. 103; 126 Me. 260; 132 Me. 45.

### Descent of Personal Property

**Sec. 20. Personal estate, how distributed.** R. S. c. 89, § 20. The personal estate of an intestate, except that portion assigned to his widow by law and by the judge of probate, shall be applied first to the payment of his debts, funeral charges, and charges of settlement; and the residue shall be distributed or shall escheat by the rules provided for the distribution of real estate.

See R. S. 1841, c. 94, § 17; 50 Me. 237; 61 Me. 472; 63 Me. 376, 381; 67 Me. 583; 78 Me. 463; 95 Me. 277; 99 Me. 67; \*105 Me. 482; 107 Me. 248; \*110 Me. 67; 118 Me. 278; 125 Me. 22; 127 Me. 423; 130 Me. 103; 133 Me. 385.

**Sec. 21. Life insurance, disposal of.** R. S. c. 89, § 21. Money received for insurance on the life of any person dying intestate, deducting the premium paid therefor within 3 years with interest, does not constitute a part of the estate of such person for the payment of debts, or for purposes specified in section 1 of chapter 144, when the intestate leaves a widow, or widower, or issue, but descends,  $\frac{1}{3}$  to the widow or widower, and the remainder to the issue; if no issue, the whole to the widow or widower, and if no widow or widower, the whole to the issue. It may be disposed of by will; but in case the estate is insolvent, such disposition by will shall be limited to the distribution of such money among the widow or widower, and issue in such proportions as the testator or testatrix may designate.

See c. 55, § 160, re-descent of shares, or money received for shares, in loan and building associations; c. 56, § 137, re policies exempt from claims of creditors; c. 56, § 161, re benefit, charity, or relief funds not liable to attachment; c. 56, § 206, re casualty insurance not liable to attachment; c. 141, § 62, sub-§ IV, re money becoming due upon death from insurance on life to be omitted from inventory; 58 Me. 434; 61 Me. 471; 66 Me. 518; 73 Me. 548; 79 Me. 234; \*81 Me. 180; 82 Me. 208; \*83 Me. 295; \*84 Me. 523; \*87 Me. 68; 97 Me. \*441, 584; \*118 Me. 248; 126 Me. 555.

### Uniform Simultaneous Death Act

**Sec. 22. No sufficient evidence of survivorship.** 1941, c. 111, § 1. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person shall be disposed of as if he were the survivor, except as provided otherwise in sections 22 to 29, inclusive.

**Sec. 23. Two or more decedents, beneficiaries under another person's will.** 1941, c. 111, § 2. Where a testamentary disposition of property depends upon the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor.

**Sec. 24. Decedents joint tenants.** 1941, c. 111, § 3. Where there is no sufficient evidence that 2 joint tenants died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

**Sec. 25. Insured presumed to survive.** 1941, c. 111, § 4. Where the decedents are the insured and the beneficiary respectively in policies of life or acci-

dent insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived.

**Sec. 26. Not retroactive.** 1941, c. 111, § 5. The provisions of sections 22 to 29, inclusive, shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date.

**Sec. 27. Not to apply if decedent provides otherwise.** 1941, c. 111, § 6. The provisions of sections 22 to 29, inclusive, shall not apply in the case of wills, deeds, or contracts of insurance wherein provision has been made for distribution different from the provisions of said sections.

**Sec. 28. Uniformity of interpretation.** 1941, c. 111, § 7. Sections 22 to 29, inclusive, shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact them.

**Sec. 29. Short title.** 1941, c. 111, § 8. Sections 22 to 29, inclusive, may be cited as the "Uniform Simultaneous Death Act."

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## CHAPTER 157.

### TITLE TO REAL ESTATE BY LEVY OF EXECUTION.

Sections 1-23	Levy by Appraisalment.
Sections 24-28	Redemption of Levies by Appraisalment.
Sections 29-30	Levies on Equities of Redemption.
Sections 31-39	Levy by Sale.
Sections 40-42	Redemption of Real Estate. Rights and Interest.
Section 43	Sale of Railroad Franchises.
Sections 44-50	Miscellaneous Provisions.
Sections 51-52	Redemption of Lands of Defaulted Defendants Living Out of the State.

#### Levy by Appraisalment

**Sec. 1. What real estate may be levied on; levy by appraisal; appointment of appraisers.** R. S. c. 90, § 1. Real estate attachable, including the right to cut timber and grass as described in chapter 99, may be taken to satisfy an execution, by causing it to be appraised by 3 disinterested persons, one chosen by the creditor, one by the debtor, and the other by the officer having the execution for service, who shall give notice to the debtor or his attorney, residing in the county where the land lies, to choose an appraiser, and shall allow him a reasonable time therefor, and if he neglects, appoint one for him.

See c. 99, § 60, re real estate and interests subject to attachment; 4 Me. 373; \*6 Me. 164; \*7 Me. 147; 8 Me. 210; 19 Me. 279; 20 Me. 227; 23 Me. 336; 26 Me. 291; 31 Me. 548; 33 Me. 190; 34 Me. 573; 37 Me. 24; 53 Me. 542; \*56 Me. 224; 63 Me. 251; \*64 Me. 454, 540; 67 Me. 593; 68 Me. 294; 111 Me. 93; 128 Me. 96.

**Sec. 2. Appraisers, how sworn; certificate; view of land.** R. S. c. 90, § 2. The appraisers may be sworn by the officer without fee or by a justice of the