

RECENT DEVELOPMENTS REGARDING SOUTH AFRICAN COMMON AND CUSTOMARY LAW OF SUCCESSION

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Summary

This article will concentrate on the development in the common law of succession and administration of estates versus the customary law of succession and inheritance as well as the winding up of estates pursuant to constitutional tendencies, case law, and statutory reform over the last ten years. The principles of customary law of succession and inheritance have become a contentious issue since the commencement of the Constitution and Bill of Rights which provide for a human rights dispensation in South Africa. As a pluralistic legal system was retained, the inevitable conflict between the principles of customary law of succession and the Constitution soon came to the fore. Although the South African Law Reform Commission reported on this issue and submitted their recommendations to the Minister of Justice and Constitutional Development, the report was never formally published. Aspects of intestate succession and the administration of estates of deceased blacks were challenged in court on constitutional grounds. This eventually led to a number of principles of customary law being declared unconstitutional, and consequently invalid, by the Courts who had no choice but to provide relief until such time as the legislature enacted a lasting solution. As far as the intestate succession is concerned, the *Intestate Succession* Act 81 of 1987 was extended to all persons in South Africa, including those adhering to a system of customary law. No distinction will, for purposes of succession, be made in future between legitimate and illegitimate children, between a first born son and other siblings or between men and women. Notwithstanding several court

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judgments in this regard, the Intestate Succession Act has not been amended by the Legislature as yet. As far as the historical discrepancy in the winding up and administration of estates is concerned, all estates, including intestate estates of black persons that have to devolve under customary law, in the future will be administered by the Master. Magistrates no longer will be responsible for supervising and administering customary estates.