
THE PROBLEMATIC PRACTICAL APPLICATION OF SECTION 1(6) AND 1(7) OF THE INTESTATE SUCCESSION ACT UNDER A NEW DISPENSATION

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SUMMARY

In recent years many developments have taken place in the field of the law of succession. Du Toit aptly states that "despite the static image that the law of succession often projects, it is a vibrant area of the law that has undergone dramatic changes in recent times and will continue to do so in future". This is indeed the case, as has been illustrated numerous times by the decisions in our courts as to the meaning of the word "spouse" and the recognition of the family as an important social institution. Although the family as an institution is not *per se* protected in the *Constitution*, our courts have recognised it as a vital social institution that comes in many different shapes and sizes and it has stressed that one form of family cannot be entrenched at the expense of other forms. As a result of various decisions on the meaning of the word "spouse" under a new dispensation, a Discussion Paper, in the form of Discussion Paper 129 (Project 25) *Statutory law revision: Legislation administered by the Department of Justice and Constitutional Development* (2011), has seen the light in order to suggest amendments to certain legislative provisions. Unfortunately certain issues covered in this Discussion Paper have not been clearly set out and need further investigation.

KEYWORDS: Intestate succession; succession; family; law of succession; meaning of spouse.

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