



ANALYSIS

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1958, No. 37

An Act to make better provision in respect of the devolution of property in cases of simultaneous deaths

[25 September 1958]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Simultaneous Deaths Act 1958.

2. Interpretation—In this Act, unless the context otherwise requires, the term “property” includes any real and personal property, and any estate or interest in any property, and any debt, and any thing in action, and any other right or interest.

3. Devolution of property in cases of simultaneous deaths—
(1) In any case where, after the commencement of this Act, two or more persons have died at the same time or in circumstances which give rise to reasonable doubt as to which of them survived the other or others—

- (a) The property of each person so dying shall devolve, and if he left a will it shall take effect unless a contrary intention is shown thereby, as if he had survived the other person or persons so dying and had died immediately afterwards:

- (b) Every *donatio mortis causa* made by any person so dying to any other person so dying shall be void and of no effect:
- (c) If the life of any of the persons so dying is insured under any policy of life or accident insurance, and any other person or persons so dying would be entitled (otherwise than under any will or on the intestacy of any person) to the proceeds of the policy or any part thereof if he or they survived the person insured, the said proceeds shall, unless a contrary intention is shown by the instrument governing the distribution of the proceeds, be distributed as if the person insured had survived every other person so dying and died immediately afterwards:
- (d) Any property owned jointly and exclusively by two or more of the persons so dying shall devolve as if it were owned by them when they died as tenants in common in equal shares:
- (e) In any case where under any will or trust or other disposition any property would have passed (whether in consequence of section thirty-three of the Wills Act 1837 of the United Kingdom Parliament or otherwise) to any of two or more possible beneficiaries (being persons who have so died) if any of them could be shown to have survived the other or others of them, then, unless a contrary intention is shown by the will, trust, or disposition, it shall take effect as if the property were given to those possible beneficiaries as tenants in common in equal shares, and the property shall devolve accordingly:

Provided that this paragraph shall not apply in any case to which paragraph (c) or paragraph (f) of this subsection applies:

- (f) In any case where a power of appointment could have been exercised in respect of any property by any of two or more persons so dying if any of them could be shown to have survived the other or others of them, unless a contrary intention is shown by the instrument creating the power, the power may be exercised as if an equal share of that property had been set apart for appointment by each of those persons, and as if each of those persons had the power of appointment in respect of the share of that property so set apart for appointment by him, and

that share shall devolve in default of appointment by him in the manner in which the property would have devolved in default of appointment by him if he had been the survivor of those persons:

Provided that this paragraph shall not apply in any case to which paragraph (c) of this subsection applies:

- (g) In any case where, by any will or other testamentary instrument, any property is devised or bequeathed or appointed to the survivor of two or more of the testator's children or other issue within the meaning of section sixteen of the Wills Amendment Act 1955 (as enacted by section three of the Wills Amendment Act 1958), and all or the last survivors of those children or issue are persons so dying, section sixteen of the Wills Amendment Act 1955 (where it applies) shall take effect as if the devise or bequest or appointment were in equal shares to those of them who so die and leave a child or children living at the death of the testator:
 - (h) Where the persons so dying include a testator and one or more of his issue, however remote, then, for the purposes of section thirty-three of the said Wills Act 1837 where that section applies, the testator shall be deemed to have survived all his issue so dying and to have died immediately afterwards; and accordingly, unless a contrary intention is shown by the will, a devise or bequest by the testator to any of his issue who so dies or has already died in the testator's lifetime shall—
 - (i) Lapse unless any of the donee's issue (other than the persons so dying) is living at the time of the death of the testator:
 - (ii) Take effect in accordance with the provisions of the said section thirty-three if any such other issue of the donee is living at that time:
 - (i) For all other purposes affecting the title to property or the appointment of trustees, the deaths of the persons so dying shall be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.
- (2) Nothing in this section shall affect section seven of the Joint Family Homes Act 1950.

4. Application of Act—(1) This Act shall apply in respect of—

- (a) All property of any person that devolves according to the law of New Zealand:
- (b) All appointments of trustees where the appointments have to be made according to the law of New Zealand.

(2) This Act shall so apply whether the deaths occurred in New Zealand or elsewhere.

5. Repeal—Section twenty-seven of the Property Law Act 1952 is hereby consequentially repealed.
