

Inheritance (Family Provision) Act Claims

Proposition	Authority
<p>Eligible members of the deceased's family who show they have been left without adequate provision for their proper maintenance, education or advancement in life, may receive such provision the Supreme Court it thinks fit to be made out of the deceased's estate.</p> <ul style="list-style-type: none"> - Legislation cannot be contracted out of. 	<p><i>Inheritance (Family Provision) Act 1972 (SA)</i></p> <p><i>Lieberman v Morris; Re Chester.</i></p>
<p>Who can claim?</p> <ul style="list-style-type: none"> (a) The spouse; (b) A person who has been divorced from the deceased person; (ba) The domestic partner of the deceased person; (c) A child of the deceased person; (g) A child of a spouse or domestic partner of the deceased person being a child who was maintained wholly or partly or who was legally entitled to be maintained wholly or partly by the deceased person immediately before his death; (h) A child of the child of the deceased person; (i) A parent of the deceased person who satisfies the court that he cared for, or contributed to the maintenance of, the deceased person during his lifetime; or (j) A sibling of the deceased person who satisfies the court that he cared for, or contributed to the maintenance of, the deceased person during his lifetime. 	<p>Section 6.</p> <p><i>In the Matter of Sinodinos Parente v Parente & Porter</i></p>
<p>Who is a domestic partner? Declaration needed (see below).</p> <ul style="list-style-type: none"> - If, on a certain date (need not be date of death) is living with that person in a close personal relationship AND– <ul style="list-style-type: none"> - Has so lived with that other person <u>continuously</u> for the period of <u>3 years</u> immediately preceding that date; OR - Has during the period of <u>4 years</u> immediately preceding that date so lived with that other person for periods aggregating not less than <u>3 years</u>; OR - A child, of whom they and the other person are the parents, has been born (whether or not the child is still living at that date). <p>What is a close personal relationship?</p> <ul style="list-style-type: none"> - The relationship between 2 adult persons irrespective of their gender or existence of any sexual relationship who live together as a couple on a genuine domestic basis. Does not include: <ul style="list-style-type: none"> - The relationship between a legally married couple; or - A relationship where 1 of the persons provides the other with domestic support or personal care for fee or reward, or on behalf of some other person or an organisation of whatever kind. <p>Declaration Needed</p> <ul style="list-style-type: none"> - If court satisfied that – <ul style="list-style-type: none"> - Persons were in a domestic partnership per s 11A; OR, in any other case – - They were in a close personal relationship and interests of justice require such a declaration be made. - Considerations: Duration; nature and extent of common residence; financial inter/dependence/support; ownership, use and acquisition of property; care and support of children; household duties; publicity of rel. 	<p><i>Family Relationships Act 1975 Section 11A.</i></p> <ul style="list-style-type: none"> (a) (i) (ii) (b) <p>Section 11</p> <ul style="list-style-type: none"> (a) (b) <p>Section 11B</p> <ul style="list-style-type: none"> (2) (a) (b)(i) and (ii) (3)

<p>Who is a Child?</p> <ul style="list-style-type: none"> - Biological children, adopted children, children conceived following fertilisation procedures. 	Section 10C
<p>When must an application be made?</p> <ul style="list-style-type: none"> - Application shall not be heard unless the application is made within 6 months of the date of the grant of probate of the will, or letters of administration of the estate of the deceased person. - Extensions available. Applicant must show a sufficiently weighty reason of the expectation of those entitled to the estate to receive their full share. 4 months out of time but lived in caravan, used to be lawyer, now cleaner. - Extensions will be granted – <ul style="list-style-type: none"> - Upon such conditions as the Court thinks fit; and - Whether or not the time for making an application pursuant to subsection (1) has expired. - An application for extension shall be made before the final distribution of the estate. <ul style="list-style-type: none"> - Must be actual distribution – held in trust not considered final. - Any distribution of any part of the estate made before the application for extension of time shall not be disturbed by reason of that application or any order made thereon. 	<p>Section 8. (1) (2); <i>Re Traeger</i> (slightly out of time may be enough). <i>Neil v Nott.</i> (3) (a) (b) (4) (5) <i>Easterbrook v Young</i></p>
<p>Circumstances in which an order can be made:</p> <ul style="list-style-type: none"> - Where – <ul style="list-style-type: none"> - A person has died <u>domiciled in the state or owning real or personal property</u> in the State; and - A person entitled to claim the benefit of this Act is left <u>without adequate provision</u> for his <u>proper maintenance, education or advancement in life</u>. - The court may make such provision. - The Court may refuse to make an order in favour of any person on the ground that his <u>character or conduct</u> is such as to disentitle him, or for any other reason the Court thinks. - The Court may impose such conditions, restrictions and limitations as it thinks fit. <p>Process:</p> <ul style="list-style-type: none"> - Two stages: <ul style="list-style-type: none"> - Determine whether the applicant has been left without <u>adequate provision for proper maintenance</u> (question of fact despite exercise of value judgments). - Decide what provision ought to be made (involves discretion). - Considerations: see below <ul style="list-style-type: none"> - Ordinary claims arising out of the relationship (spouse and children first, then rapidly diminishing importance of other relatives); - Any special claims; means possessed by the applicant; size of estate; and relative importance of competing claims. - To appeal, must show that an entirely erroneous estimate was made. <p>Determining what is 'proper':</p> <ul style="list-style-type: none"> - 'Proper' connotes something different to 'adequate'. - Court places itself in position of deceased and considers what they ought to have done in all the circumstances of the case if they were wise and just, rather than fond and foolish. - Should be interpreted widely, in all the circumstances. Special claim unnecessary. <ul style="list-style-type: none"> - P had done well, but better with proper support– succeeded but provision was relatively modest. 	<p>Section 7. (1) (a) (b) (3) (4) <i>Singer v Berghouse.</i> <i>Lambeff v Farmers Cooperative.</i> <i>Singer v Berghouse.</i> <i>Bosch v Perpetual Trustee Co Ltd</i> – cite this. <i>Bosch; Carrail v Carrail</i> <i>Lambeff v Farmers Cooperative</i></p>

<ul style="list-style-type: none"> - Treating the testator as wise and just, there was no reason on evidence to treat the adopted children and their parent different to the other grandchildren and parents – award made. - Deceased left wife and son 46 years before death when son was 4, who had no recollection of him, and never attempted to get in touch. Application failed. - Application based not on financial need but on a moral claim arising out of the previous family and business dealings. <ul style="list-style-type: none"> - Appellant had more than enough for his proper maintenance and advancement in life (married with one dependent – assets worth \$1.5m) based on deed made with parents. - Although non-financial contributions important, relationship existed briefly, comparable assets, resolved to marry with a prenup late in life. Prenup admissible to show that parties thought terms fair at the time of signing. <p>Other Considerations:</p> <ul style="list-style-type: none"> - Any special claims: <ul style="list-style-type: none"> - Most important: claim arising from need such as a disability which restricts capacity for independent support, or, being unable to find employment or have suffered a financial disaster. - Support contributed to the deceased: building their estate, helped in business or other ways – <ul style="list-style-type: none"> - Supportive spouse (or child): ex-wife visited regularly, cooking meals he liked, cared for him. - Reward or moral duty/obligation: <ul style="list-style-type: none"> - Irrelevant. Doesn't matter how much the applicant did for the deceased if the applicant is wealthy. - Means possessed by the applicant in their own right: <ul style="list-style-type: none"> - Applicant had a sizeable estate and had already been adequately provided for outside of will earlier. - Size of the estate: <ul style="list-style-type: none"> - Considering the size of the estate, a further amount was awarded to cover the cost of attending university (father had gone to Cambridge and mother wished for sons to do the same). - Relative importance of competing claims: <ul style="list-style-type: none"> - Disentitling conduct by the applicant: <ul style="list-style-type: none"> - Misconduct towards the deceased or character or conduct which shows that any need which an applicant may have for maintenance is due to their own fault. - Burden of proving disentitling conduct is on those who resist the application. <ul style="list-style-type: none"> - Statements made by the deceased are not evidence of the facts stated. - Behaviour inconsistent with public policy and indeed an affront to the public attitude. <p><i>Domestic Partners Property Act 1996 (SA)</i>: focuses on contribution to relationship cf to adequate provision. Put in = get.</p>	<p><i>Carraill v Carraill.</i></p> <p><i>Pontifical Society for the Propagation of the Faith v Scales</i> <i>Vigolo v Bostin</i></p> <p><i>Singer v Berghouse</i></p> <p><i>Goodman v Windeyer</i> <i>Burke v Public Trustee</i></p> <p><i>Singer v Berghouse, cf Vigolo</i> (informs decision).</p> <p><i>Vigolo v Bostin</i></p> <p><i>Bosch v Perpetual Trustee Ltd</i> Section 7(3).</p> <p><i>Hughes v National Trustees Executors & Agency</i> <i>Troja v Troja (No 2).</i> S 11(1)(a): financial; 11(1)(b): homemaking/parenting</p>
<p>Contents of the Order:</p> <ul style="list-style-type: none"> - Every order must: <ul style="list-style-type: none"> - Specify the amount and nature of the provision thereby made; and - Specify the parts of the estate of the deceased person out of which that provision shall be raised or paid, and prescribe the manner of raising and paying that provision; and - State the conditions, restrictions or limitations imposed by the Court. - Unless the Court otherwise orders, <u>provision provided in proportion to the values of beneficiaries' interests.</u> <ul style="list-style-type: none"> - The order is restricted to the estate – no inter vivos gifts or trusts, or donation mortis causa eligible. - However, covenants included: property is drawn through the will – becomes part of estate so interest of the promisee has to compete with that of the deceased's dependents under the FPA. 	<p>Section 9</p> <p>(1) (a) (b)</p> <p>(c) (2)</p> <p><i>Dillon; Barnes</i></p> <ul style="list-style-type: none"> - Contracts: don't override but into account.