

**SIMULTANEOUS DEATHS.**

9° Elizabeth II., No. LX.

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**No. 60 of 1960.**

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**AN ACT to make better provision in respect of the devolution of property in cases of simultaneous deaths.**

[Assented to 2nd December, 1960.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Simultaneous Deaths Act, 1960.* Short title and citation.

2. In this Act unless the context requires otherwise— Interpretation.

“property” includes real and personal property, any estate or interest in property, any debt, any thing in action, and any other right or interest.

Application  
of Act.

3. (1) This Act applies in respect of—
- (a) all property of any person that devolves according to the law of this State;
  - (b) all appointments of trustees where the appointments have to be made according to the law of this State.

(2) This Act so applies whether the deaths occurred in this State or elsewhere.

Devolution  
of property  
in cases of  
simultaneous  
deaths.

4. Where, after the coming into operation of this Act, two or more persons have died at the same time or in circumstances that 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 by the Will, as if he had survived the other person or persons so dying and had died immediately afterwards;
- (b) every *donatio mortis causa* made by a person so dying to another person so dying is void and of no effect;
- (c) if the life of a person 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 a Will or on the intestacy of any person) to the proceeds payable under the policy or any part of the proceeds if he or they survived the person so insured, the proceeds shall, unless a contrary intention is shown by the instrument governing the distribution of the proceeds, be distributed as if the person so insured had survived every other person so dying and had died immediately afterwards;
- (d) any property owned jointly and exclusively by two or more of the persons so dying, other than property so owned by them as

trustees, shall devolve as if it were owned by them when they died as tenants in common in equal shares;

- (e) 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 takes effect as if the property were given to those possible beneficiaries as tenants in common in equal shares, and the property devolves accordingly, but this paragraph does not apply in any case to which paragraph (c) or paragraph (f) of this section applies;
- (f) 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 the 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, but this paragraph does not apply in any case to which paragraph (c) of this section applies;

- (g) 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 Wills Act 1837 of the United Kingdom Parliament 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—
- (i) lapses 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) takes effect in accordance with the provisions of section thirty-three of the Wills Act 1837 of the United Kingdom Parliament if any such other issue of the donee is living at that time;
- (h) 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.
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