

NORWEGIAN LAWS

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tionally or by gross negligence has given incorrect or incomplete information which has caused, or might have caused, the duty to be stipulated at an unduly small amount, the Ministry concerned may order the said person to pay an extra duty adjusted to the degree of guilt and other circumstances. The extra duty must not exceed the amounts of duty which such person has evaded or might have evaded. An extra duty may also be imposed when any person as mentioned in the first sentence hereof fails entirely to fulfil his obligation to supply information pursuant to §§ 25 and 27.

Chapter X. Reduction of the duty, etc.

§ 45. Settled amount.

When it is unduly difficult to calculate the exact duty in accordance with the foregoing rules, the Ministry concerned may settle for an amount to be accepted in final payment of the duty. The State is however not bound by such a settlement if it is discovered within 10 years that the person liable for the duty has intentionally or by gross negligence supplied incorrect or incomplete information which has affected the decision.

§ 46. Reduction of the duty etc.

If a gift is bestowed by a Norwegian citizen who is shown to be permanently domiciled abroad, deduction from the inheritance duty will be made for any inheritance duty, gift duty or similar duty which is shown to have been paid to the country of domicile. Deduction will not be made from inheritance duty payable on the assets described in § 1, third paragraph.

If the demand for due payment of the whole duty should prove unreasonable or unduly burdensome, the Ministry concerned may, in regard to one or more of the persons liable for the duty, reduce the amount of the duty or waive the claim therefore or grant a respite for the payment thereof. When a respite is granted, interest and security may be demanded insofar as considered reasonable.

Chapter XI.

§ 47. Date of entry into force and transitional provisions.

This Act enters into force on 1 January 1965.

On the inheritance left by any person who has died, or by any person who pursuant to the Act of 23 March 1961 relating to persons who have disappeared, is assumed to have died, on or before 31 December 1964 the legislation hitherto in force will be applicable instead of Chapters I, II, III and IV of this present Act. However, the present Act shall apply in full if the assets are retained by the surviving spouse in undivided estate, unless

- a) undivided assets are distributed and a report on the distribution is sent to the tax authority not later than 30 June 1966, or
- b) official division of the undivided estate is requested not later than 30 June 1966, or
- c) the person liable for the duty demands, not later than 30 June 1966, that the obligation to pay duty pursuant to the legislation hitherto in force shall be deemed to have arisen on 31 December 1964.

The provision in the first sentence of the preceding paragraph is also applicable to any advance on inheritance effectively made prior to 1 April 1934. The same provision applies to other gifts of which the recipient, pursuant to the provisions of this Act, is deemed to have acquired control not later than 31 December 1964, and to gifts from a deceased which are distributed in connection with the division of the estate left by any person who has died or is assumed to have died on or before 31 December 1964, in both cases provided a report on the gift has been sent to the tax authority not later than 31 March 1965.

§ 48.

2. Act of 3 March 1972 relating to inheritance, etc. (The Inheritance Act).

Part One.

Statutory inheritance and the right to retain the estate undivided.

Chapter I. Inheritance based on kinship.

Inheritance based on kinship.

§ 1. First ranking kinship heirs are the offspring (descendants) of the decedent.

Children of the decedent inherit equal portions, unless otherwise provided by special statute. If a child has died, its share of the inheritance passes to its offspring with an equal portion to each line.

If the decedent leaves a spouse, the rules of Chapters II and III shall apply.

§ 2. If the decedent has no offspring, the inheritance passes to his parents.

Parents inherit equal portions. If the father or mother is dead, the inheritance passes to his or her offspring, with an equal portion to each line.

If one parent is dead without leaving offspring, the entire inheritance passes to the other parent or to his or her offspring. If the decedent was younger than 18 years, however, half of the inheritance passes to his grandparents on the deceased father's or mother's side, or to their offspring in accordance with § 3 below, if the parents were not married to each other when the first of them died, or such circumstances existed as mentioned in § 8 below. If no such heirs are alive, the rules of the first sentence of this paragraph shall apply.

If the decedent also leaves a spouse, the rules of Chapters II and III shall apply.

§ 3. If the decedent leaves neither offspring nor spouse, and if neither his father nor mother nor any offspring of either of them is living, the inheritance passes to his grandparents or to their offspring, the rules of § 2, second paragraph applying correspondingly. However, no statutory inheritance accrues to more distant relations than grandchildren of grandparents.

If one of the grandparents has died without leaving children or grandchildren, his or her inheritance shall pass to the other grandparent on the same side or to the latter's children or grandchildren. If there are no heirs on one side, the entire inheritance passes to the heirs of the other side.

§ 4. A child born out of wedlock inherits from and is inherited by its father and father's relatives in accordance with §§ 1—3 if the paternity has been established or admitted pursuant to Norwegian law, or established or admitted pursuant to foreign law, to such extent as provided by agreement with a foreign state, or by decision of the King in the individual case. More distant kinship based on birth out of wedlock entitles to inheritance under the same rules.

The father and the father's relatives do not inherit from a child born out of wedlock, if it was conceived by an act which constitutes an offence against any provision of §§ 192—199 of the General Civil Penal Code, and for which the father received an unsuspended prison sentence. This rule does not, however, apply to inheritance the value of which is equivalent to inheritance or gift received by the child from the father or a father's relative.

§ 5. The right to inherit on the basis of adoption, and forfeiture of the said right are dealt with in a separate statute.

Chapter II. Inheritance based on marriage.

§ 6. The spouse is entitled to one-fourth of the inheritance when the decedent has offspring. If the decedent's first ranking kinship heirs are his parents or their descendants, the spouse is entitled to one-half of the inheritance.

If there are no heirs as mentioned in the preceding paragraph, the spouse takes the entire inheritance.

In relation to heirs as mentioned in the first paragraph of this section, the spouse has the right to retain undivided possession of the joint estate according to the rules of Chapter III.

If the spouse exercises the said right, inheritance shall not be considered as having passed under the first paragraph of this section from the decedent spouse to the surviving spouse if the estate is not divided among the other heirs of the decedent until after the death of the surviving spouse.

§ 7. The rights of the spouse under § 6, cf. Chapter III, can be restricted only by testament, of which the spouse is informed before the testator's death. The requirement that the spouse must be informed of such testament is, however, not applicable if it was impossible or under the circumstances unreasonably difficult to inform the spouse thereof.

§ 8. The rights under § 6, cf. Chapter III, cannot be exercised if the spouses were separated by judgment or licence at the time when one of them dies, or if a joint estate is to be divided in the manner provided for in the rules relating to annulment of marriage in § 40, cf. § 37, of the Marriage Act. The same applies when a judgment or licence exists for separation or divorce, even if the decision had not become enforceable or final at the time when one of the spouses dies.

Chapter III. Possession of the undivided estate.

§ 9. When one of the spouses dies, the surviving spouse has the right to retain possession of the joint estate without dividing it with the decedent spouse's other statutory heirs.

The surviving spouse has the same right with regard to separately owned property if such right is stipulated by marriage contract (cf. § 26, second paragraph, second sentence, of the Act relating to property relationship between spouses) or if the heirs consent thereto. If the spouse exercises this right, his or her separately owned property shall also belong to the undivided estate, unless otherwise provided by marriage contract or by agreement with the heirs, or the separate estate has as its basis an injunction of a donor or testator thereof. For an heir who is legally incapable, consent as mentioned in the first sentence of this paragraph is given by the

board of guardianship, whose consent must also be obtained for any agreement with the heirs as mentioned in the preceding sentence.

§ 10. In relation to the separate offspring of a decedent spouse (children of other marriages, or the offspring of such children) the right of the surviving spouse to retain possession of the undivided estate is subject to the consent of said descendants. If a separate descendant is legally incapable, the consent must be obtained from the board of guardianship. The board of guardianship should as a rule grant such consent if it believes that a right for the surviving spouse to retain such possession would benefit also the separate offspring.

§ 11. If a decedent spouse has provided by testament that one or more of his offspring should take all or part of their inheritance immediately, the probate court may, if so required, decide that all or part of the spouses' estate shall be divided proportionally among all the heirs. For the purpose of its decision, the court shall take into account the interests both of the heirs and of the surviving spouse.

If anybody who is not an offspring is the beneficiary of a testament, or if a testament provides that other heirs than the offspring shall take their inheritance immediately, the rules of §§ 9 and 10 relating to possession of the undivided estate shall apply only insofar as compatible with the testament.

§ 12. The fact that one or more heirs may be entitled to take their inheritance immediately shall not entail the forfeiture of the surviving spouse's right to retain possession of the estate undivided in relation to other heirs.

§ 13. A surviving spouse is not entitled to retain possession of the undivided estate if it is probable that the prospects for the decedent spouse's creditors of obtaining payment or the prospects for the decedent spouse's heirs to obtain inheritance, will be substantially reduced on account of the surviving spouse's obligations. The same rule applies if the surviving spouse, by improper conduct, has incurred or caused other persons to incur any considerable property loss and the probate court finds it unlikely that he or she will administer the estate in a proper manner.

A spouse who has been declared legally incapable is not entitled to retain possession of the undivided estate. However, insofar as necessary to ensure proper subsistence of such spouse and of children living in the same home and in order to maintain the home, the probate court may decide, subject to the consent of the board of guardianship, that the spouse shall take over all or part of the estate for undivided possession.

A spouse who is a minor is only entitled to retain possession of the undivided estate with the consent of the board of guardianship.

§ 14. A surviving spouse who intends to exercise the right to retain possession of the undivided estate shall as soon as possible after the death of the decedent spouse notify the probate court thereof and state the name, age and address of the heirs and furnish a summary statement of his or her and the decedent spouse's assets and debts. Information shall be given of any demand by any heir to receive the inheritance immediately.

If the statement is not accepted by the heirs or their guardians, the surviving spouse shall request the probate court to arrange for an inventory of the estate.

If the undivided estate includes any separate property which will affect the subsequent division of the inheritance, the surviving spouse shall instead request the probate court to undertake registration and valuation thereof. The registration and valuation statement shall specify the community property and the separate property of each spouse, and the joint debts and the separate debts of each spouse. The rules of §§ 2 and 13, second paragraph of the Probate Act shall apply correspondingly.

§ 15. If an heir is legally incapable and the surviving spouse is his guardian, the probate court shall arrange for the appointment of a deputy guardian. However, a deputy guardian need not be appointed if the total assets of the spouses, as valued by the probate court, do not exceed what is needed to support the surviving spouse and children.

§ 16. If the probate court finds that the conditions for retaining possession of the undivided estate have been met, and if the estate is not to undergo official division pursuant to § 87, second paragraph, of the Probate Act, it shall notify the spouse that he or she has taken over the estate undivided. If the surviving spouse is to take over only part of the estate undivided, then this shall be stated in the notification. Before the probate court makes any such decision it should, wherever possible, obtain the opinion of the heirs or their guardians.

If the surviving spouse or any heir is legally incapable, the probate court shall transmit to the board of guardianship in the district where the incapable person resides, such statement, inventory or registration and valuation statement as mentioned in § 14.

§ 17. Everything that becomes the property of the surviving spouse forms part of the undivided estate. Excepted, however, is property which the surviving spouse owns separately by virtue of marriage contract between the spouses or by virtue of an injunction of a donor or testator pursuant to § 23, first or second paragraph, of the Act relating to property relationship

between spouses. If the surviving spouse has taken over the separate property of the deceased spouse for undivided possession under § 9, second paragraph, the rules of that section shall apply correspondingly.

Non-transferable rights and objects or rights and objects which are otherwise of a personal nature, are subject to the rules relating to retaining possession of the undivided estate only insofar as compatible with the legal rules applying to such rights or objects.

Any gift or inheritance received by the surviving spouse will not form part of the undivided estate if division thereof is demanded within 3 months from receipt by the spouse of said gift or inheritance.

§ 18. The surviving spouse has for the duration of his or her life an owner's control of all the property belonging to the estate, except as otherwise specifically provided.

The surviving spouse may by testament dispose of such part of the estate as will pass to that spouse's own heirs when he or she dies (cf. § 26), insofar as such disposal does not conflict with the rules of obligatory inheritance. Subject to the same reservation the surviving spouse may by testament dispose of specified property items of the estate, which were not specifically contributed thereto by the decedent spouse.

§ 19. A surviving spouse who retains possession of the undivided estate must not without the consent of the heirs donate any real property, or donate any other gift which is disproportionate to the resources of the estate.

If the spouse has donated any such gift without said consent, each heir may obtain a court order cancelling the gift if the recipient thereof understood or ought to have understood that the spouse was not entitled to donate it. Judicial proceedings for that purpose must be brought within one year from the date on which the heir was informed of the gift.

If a demand for cancellation is presented while the estate is under the administration of the probate court, the court may decide whether or not to grant the demand in accordance with § 11, second paragraph, of the Probate Act. Such demand must be presented to the probate court within one year from the date on which the heir was informed of the gift.

The preceding provisions relating to gifts are applicable also to any sale or other transaction which involves an element of gift.

§ 20. The surviving spouse is personally liable for the debts of the decedent spouse. The surviving spouse may issue legal notice under Chapter 12 of the Probate Act.

§ 21. If the surviving spouse retains possession of the undivided estate, he or she may effect inheritance settlement, wholly or in part, in relation to one or more of the heirs only if all the heirs receive equal shares of their inheritance or consent thereto. If any heir is legally incapable, the consent of the board of guardianship is required.

If any heir has taken all or part of his inheritance and the rules of the preceding paragraph have been disregarded, each of the other heirs may demand his inheritance in the same proportion. If the spouse is unwilling to comply therewith, the heirs may demand the division of the estate.

If an heir has received any separate settlement which is not a final inheritance transfer, the inheritance which he later receives shall be reduced in accordance with the rules of §§ 39—42, insofar as applicable.

§ 22. The heirs of the first deceased spouse inherit an undivided estate only if they survive the other spouse or are alive when official division is demanded or private division is commenced, or when the estate in any other case is to be divided. If the right to retain possession of the undivided estate is subject to the consent of the heirs, or of the board of guardianship if they are legally incapable, these heirs shall nevertheless inherit whether they are alive or not at such time as mentioned above. The inheritance shall be divided among the heirs of the first deceased spouse according to the circumstances at that time which pursuant to the foregoing rules determine whether they have inheritance rights.

If the surviving spouse has retained possession of the undivided estate together with the heirs of the first deceased spouse of an inheritance class which has subsequently become extinct, the inheritance does not pass on to a more remote inheritance class.

The right of an heir in an undivided estate does not form part of any property he may own jointly with his spouse, until he himself has received the inheritance under the rules of the first sentence of the first paragraph above. Even when the right to retain possession of the undivided estate is subject to the consent of the heir, cf. the second sentence of the first paragraph above, his spouse acquires no greater right to the inheritance unless the joint property is dissolved because the heir dies.

The creditors of an heir cannot levy any distraint on the right of an heir in an undivided estate, nor is such right included in the bankruptcy estate of the heir until the heir himself has taken the inheritance under the rules of the first sentence of the first paragraph above. This provision applies even if the possession of the undivided estate is subject to the heir's consent.

§ 23. The right to retain possession of the undivided estate lapses when the surviving spouse remarries.

It also lapses when the surviving spouse is declared legally incapable, provided, however, that the provisions of § 13, second sentence of the second paragraph, shall apply correspondingly.

§ 24. A surviving spouse may at any time divide all or part of the estate proportionally with all the heirs.

An heir may require the estate to be divided when the duties of the surviving spouse to maintain him are neglected or when the surviving spouse acts improperly so that the estate is unnecessarily reduced or exposed to the risk of considerable reduction.

If the surviving spouse retains possession of the undivided estate with the decedent spouse's children of other marriages who are legally incapable, these may require the estate to be divided as far as they are concerned, when they have become legally capable. If a legally incapable child of another marriage dies, the spouse is obliged to divide the estate with his offspring, unless they consent to let the estate remain undivided. § 10, second and third sentences, shall apply correspondingly. The fact that a child of another marriage may be entitled to take inheritance under these provisions will not cause the surviving spouse to forfeit the right to retain undivided possession of the rest of the estate.

On behalf of a spouse or heir who is legally incapable, it is the guardian who with the consent of the board of guardianship presents the demand for division of the estate.

§ 25. The creditors of an heir have no right to require the estate to be divided.

§ 26. Between the heirs of the first deceased spouse and the heirs of the other spouse the undivided estate shall be apportioned equally to each group of heirs, unless otherwise provided. If the estate is divided while the other spouse is still alive, this spouse is entitled to inherit under § 6 above in addition to his or her own part.

If the surviving spouse has taken over separate property in the undivided estate by virtue of marriage contract, the estate shall be apportioned in accordance with the value of the separate properties of the spouses at the time the apportionment commences, unless otherwise provided in the marriage contract. If in such cases the estate consists also of joint property, the value of the separate properties of the spouses plus the half part which each of them has in the joint property shall be taken into account for the purpose of apportioning the estate. If the surviving spouse has taken over separate property in the undivided estate with the consent of the heirs, the estate shall be apportioned in this manner unless otherwise agreed.

If part of the inheritance from the first deceased spouse has passed to the heirs, such part shall be taken into account for the purpose of the subsequent apportionment.

If the last deceased spouse leaves neither kinship heirs nor testamentary heirs, the whole estate passes to the heirs of the first deceased spouse, so that any heirs under §§ 2 or 3 will be included.

§ 27. If the undivided estate has been considerably reduced in value because the surviving spouse has mismanaged his or her financial affairs, made improper use of the right to retain possession of the undivided estate or been guilty of any other improper conduct, the heirs may claim compensation from the estate or such part thereof as remains after the creditors have been paid. If the resources of the estate are insufficient, the heirs may for the rest of the amount by which their part has been reduced, claim compensation from any separate property which the spouse may have and which is not needed for the payment of debts.

If the undivided estate is reduced because the surviving spouse uses the resources thereof for the purpose of increasing his or her property outside the estate, or in order to obtain rights or objects which by their nature are excepted from the division of the estate, the heirs are entitled to compensation according to the rules of the preceding paragraph. If the spouse has incurred costs for procuring a pension or annuity, the heirs may, however, only claim compensation for these costs insofar as reasonable according to the spouse's financial situation and other circumstances.

If the estate, when divided, is insufficient to pay the compensation provided for in the two preceding paragraphs, the difference cannot subsequently be claimed.

§ 28. All the property available to the surviving spouse belongs to the undivided estate when the time comes to divide it, unless it is proved that the resources are owned by the surviving spouse outside the estate.

Chapter IV. Obligatory inheritance.

§ 29. Two thirds of the property of the decedent pass as obligatory inheritance to his offspring. But the obligatory inheritance shall in no case exceed 500.000 kroner to each child of the decedent or to each child's line, provided, however, that the limit for the more remote offspring is at least 100.000 kroner to each heir.

A testator may not dispose of an obligatory inheritance by testament unless otherwise specifically authorized.

§ 30. A testator may by testament entitle an heir to take his inheritance in the form of specific assets.

§ 31. The testator may by testament provide that also the obligatory inheritance which he leaves shall be the separate property of the heir.

§ 32. The testator may in special cases provide by testament that all or part of the inheritance passing to a descendent shall be administered in the same manner as assets owned by legally incapable persons or in some other manner which provides adequate security and yield. Any such testament is subject to confirmation by the King, unless the heir is legally capable and has consented thereto. In special circumstances advance notification and report to the heirs under the Public Administration Act may be waived.

Under such a testament the heir will receive only the yield on the inheritance, the capital of the inheritance being paid on the date stipulated by the testator, but never after the date of the heir's death. The board of guardianship may consent to the payment of inheritance when the yield therefrom is insufficient to cover the necessary expenses of the heir. Any refusal by the board of guardianship to pay out inheritance may be appealed to the District Governor.

In lieu of or in addition to provisions as mentioned in the first paragraph of this section, the testator may provide that all or part of the inheritance shall be spent on the purchase of annuity for the heir.

As long as the inheritance is administered as provided in the first paragraph of this section, the heir may not sell or mortgage the inheritance. Nor can the creditors seek coverage in the inheritance, except in the case of private claims for compensation of loss or damage caused intentionally or by gross negligence.

When the reasons for the testator's provisions have become inoperative, the King may void the provisions, wholly or in part. If the testator has appointed a named person to make the decisions, provisions may be voided only with his consent, unless special circumstances exist.

§ 33. The operator of any fair-sized business or the owner of the major part of any enterprise conducting such business may provide by testament that the business or his share of the enterprise together with all appurtenances shall pass to one or more of his offspring. Any such testament is subject to confirmation by the King, unless all the descendents are legally capable and have consented thereto. Confirmation may be given only when the business or the share of the enterprise owned by the testator should pass to a single heir or some of the heirs on account of the public interest or the interests of the heirs. Such testament shall not override the rights of primogeniture.

A judicial survey shall stipulate the price which is payable for the business, and decide whether payment to the other heirs shall be postponed for a certain period of time. If a postponement is decided, statutory interest shall be paid and the inheritance shall be secured by a lien or in some other manner. The price and other terms shall be stipulated so as to enable the business to provide reasonable working conditions for the heir who takes it over, with due regard for the total resources of the estate and the interest of the other heirs.

§ 34. The testator may provide by testament that an heir who has attained the age of 18 years shall not receive the obligatory inheritance from that testator if the heir has committed a criminal offence against the testator or against any of his relatives in direct line of ascent or descent, or any sister or brother or their descendents, or if the heir has failed to assist the testator to the best of his ability when the testator was in need of assistance. Any such testament is subject to confirmation by the King.

If any person is disinherited according to the preceding rules, the inheritance shall devolve as if he had died before the inheritance fell due.

§ 35. A gift which is to be fulfilled after the donor's death is valid only insofar as it comes within such part of the donor's property as he was able to dispose of by testament under §§ 29 and 37. The same rule applies to any gift which the donor makes on his death-bed.

Chapter V. Right of children to take a prior share in certain cases.

§ 36. Decedent's children whose fostering has not been completed at the time of the decedent's death are entitled to a sum of the estate as a prior share in order to secure their sustenance and education, wherever reasonable under the circumstances. The size of such sum shall be adjusted according to the circumstances. For the purpose of such adjustment, due account shall be taken of the inheritance which the unfostered child will otherwise receive, whether the child has any property of its own, whether its fostering has been ensured in some other manner, the expenses incurred by the decedent for the education of his other children, and other factors. If several children have not been completely fostered, each child shall receive such amount as is reasonable, with due regard for their requirements and other circumstances.

Children living at home who, without receiving reasonable compensation, have been of particularly great help to the decedent, may at the time of the inheritance settlement claim a sum of the estate as a prior share, if such claim is reasonable under the circumstances. The

size of such sum shall be adjusted according to the circumstances. For the purpose of such adjustment, due account shall be taken of the help afforded by the child, its prospects for employment, the amount of the inheritance otherwise to be received by the child, the economic situation in general of the child and of the other heirs, and other factors.

§ 37. The right of children to take a prior share under § 36 cannot be limited by testament. The rules of § 29, second paragraph, and §§ 31—34 shall nevertheless apply correspondingly.

The right to take prior share shall be satisfied by the estate before any other inheritance, but has no effect on the rights of a surviving spouse under the Probate Act. In an obligatory inheritance said right can be fulfilled only insofar as the other resources of the estate are insufficient.

Chapter VI. Deductions from inheritance and agreements on inheritance.

§ 38. If the decedent has given a descendent any considerable gift without giving the other descendants equivalent assets, the gift shall be deducted from the inheritance devolving on the recipient thereof in the same manner as an advance on inheritance, if the decedent has made a provision to that effect, or if it is proved that such deduction would be in accordance with the decedent's intentions. The preceding rule regarding gifts shall apply correspondingly to insurance and expenses or the like for the benefit of a descendent. Expenses for the descendent's support, medical aid and education are not considered as constituting an advance on inheritance when the expenses merely represent a parent's duty to provide for the fostering of his children.

§ 39. If an advance on inheritance has been made to a descendent of both spouses, out of assets which are regarded as joint property at the time when one of the spouses dies, the advance shall be deducted from the inheritance coming from the decedent spouse when the estate is divided while the other spouse is alive. Further deduction shall, if necessary, be made after the death of the other spouse.

§ 40. For the purpose of a deduction from the inheritance the value of the advance at the time when it was made shall be taken as the basis, unless it would be obviously unreasonable to do so. If the decedent has stipulated the deductible amount, however, this amount shall be taken as the basis unless it is too high.

§ 41. If the deductible amount exceeds the inheritance of the descendent, he shall not for that reason be a debtor of the estate, unless otherwise provided at the time when the advance was made.

§ 42. If a descendent who would have had to sustain a deduction dies before the inheritance devolves, the deduction shall be effected in respect of his offspring.

§ 43. Except as otherwise agreed, deduction under the rules of §§ 38—42, does not affect the right of a surviving spouse to a part of the estate or the right of a person to dispose of the inheritance by testament.

§ 44. Nobody may transfer or mortgage an anticipated inheritance. The same applies to the right of an heir in an undivided estate.

§ 45. An heir may waive by declaration to the testator all or part of the anticipated inheritance. Except as otherwise agreed, a waiver of inheritance is binding also on the offspring of the heir, unless the waiver was made by a descendent of the testator without reasonable compensation.

If the heir is legally incapable, any waiver of his anticipated inheritance is subject to the consent of the board of guardianship.

A declaration of waiver of inheritance may be addressed also to the surviving spouse who retains possession of the undivided estate.

Chapter VII. The State's inheritance right.

§ 46. If a decedent has no relatives or spouse to inherit from him, and he has not drawn up any testament, his inheritance devolves on the State.

§ 47. The Ministry of Consumer Affairs and Government Administration may decide on the sale of real property and movable property which the State inherits. In special cases the Ministry may waive inheritance to the State in favour of relatives or other persons who have been close to the decedent. The King shall issue more detailed regulations relating to such sale and waiver.

Part Two.

Inheritance by virtue of testament.

Chapter VIII. Rules for drawing up testaments.

§ 48. A person who has attained the age of 18 years may by testament dispose of the property he leaves upon his death.

A testament drawn up by a person under 18 years of age is invalid unless confirmed by the King. So is any testament drawn up by a person who has been declared legally incapable. The request for confirmation should be presented as soon as possible after the testament has been drawn up.

§ 49. Unless otherwise provided in this Chapter, a testament shall be drawn up in writing with two witnesses who have been approved by the testator and who are simultaneously present and know that the document is a testament. The testator shall in their presence sign the document or confirm his signature. The witnesses shall sign their names on the document while the testator is present and at his wish.

If the witnesses declare in writing on the document containing the testament that the rules of the preceding paragraph have been observed, such declaration shall be deemed to be sufficient evidence, unless special circumstances give reason to doubt its correctness.

This Act does not prevent two or more persons from drawing up a joint testament. Nor does the Act prevent two or more persons from drawing up a testament in favour of one another (reciprocal testament).

§ 50. The testamentary witnesses should state in their declaration on the document that the testator has drawn up the testament voluntarily and that he was in full possession of his senses. The declaration should state the occupation and address of each witness. The testament should also be dated.

§ 51. If any sudden and dangerous sickness or other emergency prevents a person from drawing up a written testament in accordance with § 49, he may pronounce his will orally before two witnesses who shall be simultaneously present and approved by him. The witnesses should promptly draw up his testament in writing and together write a declaration, setting forth the circumstances which prevented the testator from drawing up the testament in writing.

If it is impossible to procure any testamentary witness, the testator may draw up his testament in a document which he personally writes and signs.

A testament made according to either of the two preceding paragraphs is no longer valid if the testator, during a period of 3 months after the testament was made, has not been prevented from complying with the rules of § 49.

§ 52. Testamentary witnesses shall be at least 18 years old and shall not be insane, mentally undeveloped or feeble-minded.

§ 53. The above rules of this Chapter apply also to gifts which are intended to be fulfilled after the donor's death, and gifts which are made on the death-bed.

§ 54. A testament which fails to satisfy the formal requirements of this Chapter shall nevertheless be considered as valid in formal respects, provided it satisfies the requirements to form set forth in the law:

- a) of the place where the testament was made,
- b) of a state of which the testator was a citizen either on the date of the testament or on the date of his death, or
- c) of the place where the testator had his residence either on the date of the testament or on the date of his death, or
- d) of the place where the testator had his domicile either on the date of the testament or on the date of his death, provided the laws of that state distinguish between domicile and residence, and the testator was regarded under said laws as having his domicile there, or
- e) of the place where a real property is located insofar as the testament pertains to that property.

Chapter IX. Revocation and alteration, etc., of testaments.

§ 55. A testator may freely revoke or alter his testament, except as otherwise provided in this Chapter.

§ 56. A testator may by inheritance contract commit himself to abstain from making, altering or revoking a testament.

The rules of §§ 48—52 are applicable to the drawing up of inheritance contracts. Any inheritance contract drawn up by a person who is legally incapable requires, in addition, the consent of the board of guardianship insofar as the inheritance contract pertains to assets which the legally incapable person cannot dispose of himself.

§ 57. The rules of Chapter VIII shall apply to the revocation and alteration of testaments. The rule relating to confirmation in § 48, is however, not applicable if any person under 18 years wishes to revoke his testament.

If a testamentary provision can be revoked without confirmation, it will also become void if the document is destroyed or crossed out in such manner as to make it probable that the provision is not to apply. Further, a testamentary provision becomes void when subsequent circumstances make it obvious that it shall not apply.

In addition to the rules of the two preceding paragraphs, reciprocal testaments are subject to the rules that any revocation or amendment thereof is valid only when the other testator has been notified thereof prior to the death of the testator, unless it was impossible or unreasonably difficult to notify the other testator.

§ 58. If a surviving spouse has taken over the inheritance under a reciprocal testament which makes any provision for the apportionment of the inheritance when both spouses have died, the surviving spouse may revoke or alter provisions which are to the effect that the inheritance or part thereof shall devolve on the statutory heirs of the surviving spouse. The surviving spouse may not revoke or alter any provision regarding inheritance rights of other heirs.

However, a surviving spouse may revoke or alter all provisions regarding the inheritance of any person who has been appointed or must be presumed to have been appointed an heir at the specific wish of the surviving spouse.

§ 59. The rules of § 54 shall apply correspondingly to any revocation or alteration of a testament. A revocation is, moreover, valid in respect of its form if it satisfies the statutory requirements of the place where the testament was valid pursuant to § 54.

Chapter X. Invalid testamentary dispositions.

§ 60. Failure to observe preematory rules of Chapters VIII and IX relating to the making, revocation or alteration of a testament causes the provisions to be invalid. A gift as mentioned in § 53 shall similarly be invalid if preematory rules of Chapter VIII relating to the making of a testament have been disregarded.

§ 61. A testamentary provision for the benefit of either of the testamentary witnesses is invalid. So is any provision for the benefit of a testamentary witness's spouse, relative in direct line of ascent or descent or brother or sister or spouse thereof. An adopted child is regarded as the child of the adoptive parent, and the kinship by blood of such child shall only be taken into account if the witness was aware of that kinship at the time when the testament was drawn up.

A testamentary provision for the benefit of any person in whose service the witness is at the time the testament is drawn up, is invalid. For this purpose, service includes the function as member of the executive board and the like in a company, association, foundation or public institution. The provision is, nevertheless, valid if the connection is remote and there is no reason to believe that it has had any effect on the contents of the testament.

A provision in a testament appointing its executor is valid even if the appointee or any person in his service acted as testamentary witness to that testament.

§ 62. A testamentary disposition is invalid if the testator was insane or mentally undeveloped or feeble-minded at the time he drew up the testament, unless there is no reason to believe that his mental state has had any effect on the contents of the provision.

§ 63. A testamentary provision is invalid if induced by coercion, fraud or other improper influence or by taking advantage of the testator's frivolity, weakness or dependent position.

§ 64. A testamentary provision is invalid if aimed at any use or destruction which obviously serves no sensible purpose.

Chapter XI. Interpretation of testaments.

§ 65. A testament shall be interpreted in accordance with the intentions of the testator.

If a writing error or other error has made the contents of a testament differ from the intentions of the testator, the testament shall be executed in accordance with said intentions, provided they can be ascertained.

§ 66. When there is no reason to believe that this will be contrary to the intentions of the testator, the following rules shall apply:

- (1) If the inheritance is insufficient, the heir of a specified object shall have priority over the heir of a sum of money.
- (2) If an heir dies before the testator, or if the heir is unable for any other reason to receive the inheritance, his offspring will take his place, provided that they may have a statutory right to inherit from the testator.
- (3) If a testator has appointed his spouse as a testamentary heir, the rules of § 8 shall apply correspondingly.
- (4) The appointed heir of a specified object may not claim compensation for any lien on the object. He may not claim money for such object which does not exist in the estate.
- (5) If the testator has left more than one testament, they are all valid unless a more recent testament revokes or conflicts with any former provision. If the estate is insufficient, more recent provisions rank before older ones.

§ 67. If a surviving spouse has taken over the inheritance pursuant to a reciprocal testament, and neither of the spouses leaves any offspring, the following rules shall apply, unless there is reason to believe that the spouses had other intentions when they made the testament:

- (1) The surviving spouse has during his or her lifetime an owner's control of the entire capital, regardless of any rights of the decedent spouse's heirs. The surviving spouse may at any time transfer to one or more heirs all or part of their inheritance.
- (2) If the testament contains clear provisions regarding the inheritance rights of the heirs of the first deceased spouse, then upon the death of the surviving spouse one half of the combined estate shall devolve on the heirs of the first deceased spouse and the other half on the heirs of the other spouse. If the surviving spouse remarries, he or she must divide the estate with the decedent spouse's heirs. The provisions of § 17, second and third paragraphs, § 18, second paragraph, and § 26, third paragraph, shall apply correspondingly.
- (3) If the testament does not contain any clear provisions regarding the apportionment of the inheritance after the death of the surviving spouse, he or she has free disposal of the entire capital also by testament. If the surviving spouse has not disposed of the capital, the heirs of the first deceased spouse under § 2 are entitled to one half of the combined capital, if the surviving spouse dies without having remarried.
- (4) The rules of §§ 22 and 26, fourth paragraph, shall apply correspondingly to the inheritance rights of the first deceased spouse's heirs.

Chapter XII. Safe custody and presentation of testaments.

§ 68. The testator may deliver his testament to the probate court of the district where he lives, for safe custody. Instead of the original testament he may deliver a certified copy thereof. When the testator so desires, the testament may be delivered in a closed envelope and he may require the court to keep it in the same manner.

Safe custody as provided for in the preceding paragraph has no effect on the validity of the testament, and entails no obligation to notify the probate court of any revocation of the testament, nor need a new testament for that reason be delivered in the same manner for safe custody. If the testator alters or revokes a testament which has been delivered for safe custody, he should, however, notify the probate court thereof.

The probate court has no responsibility for ensuring that a testament which has been delivered to it for safe custody is presented upon the death of the testator.

§ 69. If a testament cannot be found when the testator has died, it shall nevertheless be valid, provided the contents thereof can be ascertained, unless there is reason to believe that the testament has been revoked or that it has become invalid.

§ 70. Rights under a testament may only be exercised if at least one of the beneficiaries have notified the probate court within 6 months from the date on which he was informed of the contents of the testament and of the death of the testator. Notification is not required in cases where the probate court or at least one of the persons who were otherwise to receive that part of the inheritance which is covered by the testament, has in some other manner been informed of the testament before the notification period has expired for all holders of rights under the testament.

An objection to the validity of a testamentary provision cannot be made by any statutory or testamentary heir, unless at least one of the heirs has notified the probate court within 6 months from the date on which he was informed of the provision and of the death of the testator and of the basis of the objection to the invalidity. The right to make an objection to the provision is nevertheless effective insofar as such notification has been given to each beneficiary under the testament.

Part Three.

Combined rules for statutory and testamentary inheritance.

Chapter XIII. Conditions for taking inheritance and the cessation of inheritance rights.

§ 71. Inheritance rights are held only by those who are alive or conceived at the death of the decedent.

A testator may deviate from the rules of the preceding paragraph as regards inheritance of which he may freely dispose by testament. An unborn person may, however, only be given inheritance rights if one of his parents has been born or conceived at the time when the testator dies.

§ 72. If an heir is dead and it is not known whether he survived the person whom he was to inherit, he shall be regarded as not having survived him.

If it is subsequently proved that the heir survived the person whom he was to inherit, the heirs of the decedent may bring a claim for recovery under the rules of § 18 of the Act of 23 March 1961 relating to persons who have disappeared.

§ 73. If any person receives an unsuspended prison sentence for any offence against the

person he was to inherit, and such offence causes the latter's death, ~~some~~ part of the offender's inheritance rights may be forfeited.

If any person receives an unsuspended prison sentence for any offence against an heir of a person from whom the offender himself is or may be entitled to inherit, and said heir dies on account of the offence, all or part of the offender's inheritance rights may be forfeited. The same rule applies if any person receives an unsuspended prison sentence for any offence which causes a conceived child not to be born alive, when that child's inheritance rights would have had priority above or on the same level as the inheritance rights of the offender.

Any decision relating to forfeiture of inheritance rights under the two preceding paragraphs shall be made by judgment or — if the estate is officially divided — by ruling of the probate court. A demand for forfeiture of inheritance rights may be presented by anybody who will become entitled to inherit or obtain better inheritance rights if the demand is granted. In criminal proceedings regarding the offence, the public prosecutor may also present such demand, and the court may at its own initiative decide on the forfeiture of inheritance rights, even if nobody presents any demand to that effect.

If anybody is deprived of his inheritance rights under the preceding rules, the inheritance shall devolve as if he had died prior to the person who leaves the inheritance.

The rules of this section shall not prevent the inheritance rights from being restored by testament. But such testament is valid only when confirmed by the King.

§ 74. An heir may waive inheritance which has devolved. The waiver may apply to the entire inheritance or part thereof.

If the heir is legally incapable, the waiver is subject to the consent of the board of guardianship.

An inheritance which has been waived shall devolve as if the heir had died prior to the person who leaves the inheritance. An heir who leaves no offspring may, however, waive the inheritance in favour of a specified co-heir.

§ 75. The right to claim inheritance lapses if the heir fails to exercise it within 10 years from the date of the decedent's death. The prescription is interrupted when the claim is reported to the probate court which is administering the estate or — if such administration has not been terminated — when official estate settlement is demanded, or when judicial proceedings are brought against those who will otherwise inherit or have obtained the inheritance. Nor is an inheritance claim prescribed if approved by the said heirs before the expiry of the prescription term.

An inheritance claim is not prescribed as long as the estate of the decedent is under official administration. If the estate has been taken over by the surviving spouse under the rules of Chapter III relating to possession of the undivided estate, the prescription term runs only from the death of the surviving spouse. If the surviving spouse has divided the estate before his or her death, the prescription term runs from the termination of such division. If according to the testament the heir cannot exercise any inheritance claim at the time when the testator dies, the prescription term runs only from such time as the claim could have been exercised.

Absent or missing heirs are subject to specific statutory rules.

Chapter XIV. The area of Norwegian and foreign inheritance law.

§ 76. Notwithstanding the provisions of this Act, an agreement with a foreign state may contain rules regarding the relations between the inheritance law of Norway and the inheritance law of that foreign state.

Part Four.

Entry into force. Transitional rules. Amendments of other Acts.

Chapter XV. Entry into force and transitional rules.

§ 77. This Act takes effect from the date stipulated by the King.

§ 78. Children born out of wedlock prior to 1 January 1917 do not take inheritance from their father or father's relatives. If the father had publicly accepted his paternity, the child shall take inheritance, but only half as much as the children who have been born to the father in wedlock.

The father and father's relatives are not entitled to inherit from children who were born out of wedlock prior to 1 January 1917.

§ 79. The rules of older Acts regarding inheritance rights under the law and regarding rights to retain possession of the undivided estate and regarding other rights of the surviving spouse, heirs and legatees, shall apply if the testator died before this Act entered into force, provided, however, that the rules of §§ 17—21, 23—25, 27 and 28 shall apply even if the person who leaves the inheritance (the first deceased spouse) died before the entry into force of this Act.

§ 80. The rules of § 4, second sentence of the first paragraph, regarding the inheritance

right of children born out of wedlock when the paternity has been established or admitted pursuant to foreign law, shall apply only when the paternity has been established or admitted after the entry into force of this Act.

§ 81. The rules of Chapter IV regarding obligatory inheritance etc. apply only when the person who leaves the inheritance died after this Act entered into force. However, a testament which has been confirmed under § 36 or § 37 of the Inheritance Act of 31 July 1854 shall still be valid. So shall a testament drawn up pursuant to § 70 of the said Inheritance Act before the entry into force of this Act.

§ 82. The rules of Chapter V regarding the right of children to take a prior share of the inheritance apply only when the testator died after the entry into force of this Act.

§ 83. The rules of Chapter VI regarding deductions on inheritance shall apply also to gifts and other benefits granted before the entry into force of this Act, if the testator dies after entry into force of this Act.

Any waiver of anticipated inheritance is subject to the rules applying at the time of the waiver.

§ 84. The rules of § 47 regarding sales of real property and movable property which the State inherits and regarding waiver of inheritance to the state apply also to inheritance devolving on the State before the entry into force of this Act.

§ 85. The question whether a testamentary provision is valid shall be decided according to the laws applying at the time when the testament was drawn up, altered or revoked.

§ 86. The rules of § 67 regarding the rights of a surviving spouse and heirs under a reciprocal testament shall apply if the first deceased spouse died after the entry into force of this Act.

§ 87. The rules of §§ 70 and 75 shall apply only when the person who leaves the inheritance died after the entry into force of this Act.

The right to take inheritance from anybody who died before the entry into force of this Act is prescribed in accordance with former legislation. Such right is, however, forfeited if it is not exercised within 10 years from the date of entry into force of this Act. The rules of § 75 apply as regards the circumstances which interrupt such prescription.

§ 88. The rules of § 73 apply only when the offence was committed after this Act entered into force.

The rules of §§ 69 and 72, cf. § 71, of the Inheritance Act of 31 July 1854 shall apply after the entry into force of this Act, when the circumstances mentioned in those sections occurred before the entry into force of this Act.

b. Settlement of estates.

Excerpts from Act of 21 February 1930 relating to settlement of estates (The Probate Act).

Part One.

General rules relating to official settlement of estates.

Chapter II. Competence of the probate court.

§ 8. An official division of the joint estate of a husband and wife shall take place in the locality where the husband has his domicile, or — if no domicile in Norway can be ascertained — in the locality where the wife has her domicile. However, if no such domicile can be ascertained the division shall take place at the husband's last place of residence, or — if he is sojourning outside the country — at the wife's last place of residence.

The division of an inheritance shall be carried out by the probate court in the circuit where the deceased had his last domicile or — if no domicile can be ascertained — where he last was known to sojourn. When a joint estate is to be divided between the heirs of the deceased and the surviving spouse the provisions in the first paragraph shall apply correspondingly. If, however, a surviving spouse has retained possession of the undivided estate, only the domicile or place of residence of this spouse is considered.

When the estate of a disappeared person, who is presumed dead according to a court decision, is to be divided, the division shall take place at the last domicile of the disappeared person. If the person was married, and the spouse retains possession of their joint estate, the division takes place at the spouse's domicile.

The division of an inheritance devolving on a missing heir, and which has been treated as trust-funds, shall be carried out by the probate court at the place where the inheritance was left.

When the estate of a Norwegian subject who at the time of his death was domiciled abroad