

SIMULTANEOUS DEATHS BILL

EXPLANATORY NOTE

SECTION 27 of the Property Law Act 1952 provides that, where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, those deaths shall (subject to any order of the Court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder. Under the common law there was no presumption as to who died first in these cases, and very difficult questions of fact would arise.

The present rule avoids the previous uncertainty, but produces unsatisfactory consequences in some cases. For instance, where a childless couple are killed together and the husband is the elder, the wife's estate will receive whatever portion of the husband's property she is entitled to under his will or on his intestacy. This may mean that a farm or other valuable property given to the husband by his parents will go to the wife's family.

This Bill makes provision for a fuller code designed to produce more satisfactory results in these cases.

Clause 2 defines the term "property" in the same way as it is defined in the Property Law Act 1952.

Clause 3 provides that in any case where, after the commencement of the Bill, 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 of the persons so dying shall devolve as if he were the last to die:
- (b) A *donatio mortis causa* made by a person so dying to any other person so dying shall be void:
- (c) If the life of any person so dying is insured and any other person so dying would be entitled to the proceeds of the policy of insurance, those proceeds shall (unless a contrary intention is shown by the instrument governing the distribution thereof) be distributed as if the person insured were the last to die:

- (d) Property owned jointly and exclusively by persons so dying shall devolve as if it were owned by them as tenants in common in equal shares:
- (e) Property which would (under any will or trust or other disposition) have passed to the survivor of two or more possible beneficiaries (being persons who have so died) shall be deemed to have passed to those possible beneficiaries as tenants in common in equal shares, and shall devolve accordingly:
- (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 the 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 the shares shall devolve in default of appointment accordingly:
- (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, 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:
- (h) For all other purposes affecting the title to property or the appointment of trustees, the existing rule is to continue, i.e., 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.

The position in respect of joint family homes has been covered by section 2 of the Joint Family Homes Amendment Act 1957.

Clause 4 declares that the Bill applies 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.

Clause 5 consequentially repeals section 27 of the Property Law Act 1952.

Hon. Mr Mason

SIMULTANEOUS DEATHS

ANALYSIS

Title	3. Devolution of property in cases of simultaneous deaths
1. Short Title	4. Application of Act
2. Interpretation	5. Repeal

A BILL INTITULED

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

BE IT ENACTED by the General Assembly of New Zealand
5 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
10 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— 5
- (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: 10
- (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 20 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 25 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 30 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 35 other or others of them, then, unless a contrary intention is shown by the will, trust, or disposition, that property shall pass or be deemed to have passed to those possible beneficiaries as tenants in common in equal shares, and shall devolve accordingly: 40
- Provided that this paragraph shall not apply in any case to which paragraph (c) or paragraph (f) of this subsection applies:

- 5 (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:
- 10
- 15 Provided that this paragraph shall not apply in any case to which paragraph (c) of this subsection applies:
- 20 (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 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 life-time shall—
- 25
- 30 (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:
- 35 (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.
- 40 (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. 5

(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.