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You are here: [CommonLII](#) >> [Malaysia](#) >> [Journals](#) >> [JMCL](#) >> [2004](#) >> [2004] JMCL 6

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- [The Distribution \(Amendment\) Act 1997 – Amendments to Section 6 of the Distribution Act 1958](#)
 - [I. Introduction](#)
 - [II. Where a Married Woman Dies Intestate](#)
 - [III. Where a Married Man Dies Intestate](#)
 - [IV. Where an Unmarried Person Dies Intestate, or where a Married Person Dies Intestate and is not Survived by a Spouse or Issue](#)
 - [V. The Scheme of the Statutory Trusts Set Out in Section 7 of the Principal Act](#)
 - [VI. Concluding Remarks](#)

The Distribution (Amendment) Act 1997 – Amendments to Section 6 of the Distribution Act 1958

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I. Introduction

In 1984, two academic staff of the Faculty of Law of the University of Malaya, namely Associate Professors P Balan and Rafiah Salim (as they then were), published a comprehensive article on the law of intestate distribution of non-Muslims under the Distribution Act 1958^[1] (hereinafter also referred to as the “principal Act”) in the present Journal.^[2] In that article, the said writers provided an informative and critical account of the scheme of distribution provided by the Distribution Act 1958 as it stood in 1984. Since then, the Distribution Act 1958 has undergone some important changes. These changes were brought about by the amendments set out in the Distribution (Amendment) Act 1997 (hereinafter referred to as “Act A1004”), which came into force on 31 August 1997.

The major changes brought about by Act A1004 to the scheme of intestate distribution for non-Muslims are by the amendments to section 6 of the Distribution Act 1958. The purpose of the present article is to set out these changes by highlighting the differences in the law before and after the enforcement of Act A1004. It is hoped that this article will serve as a supplement to the above mentioned well researched and detailed work of Associate Professors P Balan and Rafiah Salim (as they then were). That article is still valid today except to the extent of the changes made by Act A1004 as will be discussed below.

This article is divided into six parts. After the introduction in Part I, Part II discusses the changes in the scheme of intestate distribution where a woman dies intestate. Part III deals with the changes where a married man dies intestate. Part IV is about the position where an unmarried person dies intestate, or where a person, though married, dies intestate without leaving a surviving spouse or issue; these persons may be a male or a female. Part V briefly explains the scheme of statutory trusts under section 7 of the principal Act. Although Act A1004 has not amended section 7 of the principal Act specifically, a brief explanation of the scheme of statutory trusts as set out by this section is pertinent to facilitate a better understanding of the operation of section 6, which, as stated, has been amended in important respects by Act A1004. Part VI contains the writers’ concluding remarks. Finally, for easy and quick reference, the writers have prepared as

an appendix to this article tables which set out in summary, in relation to intestate distribution of deceased married men and women, the intestate distribution entitlement of three main categories of beneficiaries, namely spouse, issue and parents, both in respect of the law before and after the enforcement of Act A1004.

II. Where a Married Woman Dies Intestate

- (a) *Where a married woman dies intestate leaving a husband*

- o (i) Position *before* Act A1004

Before Act A1004, the principal Act made a significant distinction between the rights of a surviving husband and those of a surviving wife of an intestate. Under section 6(1)(i) of the pre-amendment principal Act, the surviving husband was entitled to the whole of his deceased wife's estate even though she was survived by her child or children or her parent or parents. This archaic provision, which was based on old English law,^[3] was justly criticised by many as being unfair to the deceased wife's children and her parents, particularly where the intestate's child or children were young and where the parents were old and infirm and were in need of support. It ignored the fact that, in modern times, many women work and accumulate substantial assets for the welfare of their children. It also failed to provide for old and infirm parents of an intestate, who were dependent upon the daughter during her life-time.

- (ii) Position *after* Act A1004

As a result of Act A1004, the principal Act now makes no distinction between the rights of a surviving husband and those of a surviving wife. In fact the terms "wife" and "husband" have been discarded, and the current section 6(1) refers to them as "spouse". Section 6(1)(a), which is currently in force, reads as follows:

If an intestate dies leaving a spouse and no issue and no parent or parents, the surviving spouse shall be entitled to the whole of the estate;

This is a significant change in the law. The surviving husband is no longer entitled *ipso facto* to the whole of the deceased wife's estate. Now he may only claim the whole estate if the deceased intestate wife left no issue and no parent or parents.

At this point it must be mentioned that the term "issue" is defined in section 3 of the principal Act as including "children and the descendants of deceased children". Further, Act A1004 has not amended the definition of "child" in section 3. The term refers to a legitimate child or a child adopted under the Adoption Act 1952^[4] of Peninsular Malaysia or the Adoption Ordinance of the State of Sarawak.^[5] Hence, both before and after Act A1004, the principal Act does not recognise any right of an illegitimate child for purposes of intestate succession. The law, however, makes an exception in the Legitimacy Act 1961^[6] wherein section 11 thereof provides for the right of an illegitimate child to succeed to the property of his/her mother where the mother has died without any legitimate issue surviving her.

The following discussion uses the terms "child/children" and "issue" as is required by the context of the discussion.

- (b) *Where a married woman dies intestate leaving a husband and a parent or parents but no issue*

- o (i) Position *before* Act A1004

As stated above, before the enforcement of Act A1004, the surviving husband of an intestate married woman was entitled to the whole of her estate such that her surviving parent or parents were not entitled to any share of the estate. Thus, the parents of an intestate married woman who had settled valuable property in her name for her benefit or the benefit of her children, would find that the property would be inherited by the husband if she had left no issue.

- (ii) Position *after* Act A1004

After the enforcement of Act A1004, the relevant new provision is section 6(1)(b) which reads:

If the intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;

This new provision significantly improves the position of the surviving parent or parents of a married woman who dies leaving a husband but no issue. They are now entitled to one-half of their deceased daughter's estate. This new provision will benefit old and infirm parents who have depended on their deceased daughter for their support. Where the parents have settled valuable property on the deceased, the parents will be entitled to at least half of it.

At this point, it should be mentioned that Act A1004 has included a definition of the term "parent" to section 3 of the principal Act. The term "parent" is now expressly defined to mean the natural mother or father of a child, or the lawful mother or father of a child under the Adoption Act 1952. This new definition, in the writers' opinion, must be read together with the definition of the term "child" for purposes of intestate succession. As mentioned above, the term "child" is restrictively defined in section 3 of the principal Act to mean only the legitimate or lawfully adopted child of an intestate deceased. It would therefore appear that for intestate succession purposes, the law requires a formal legal relationship between the parent and a child; a mere blood relationship will not suffice. However, as alluded to above, the Legitimacy Act 1961 has made provision, albeit limited, for the right of an illegitimate child to inherit the property of his/her deceased mother where the mother dies without any legitimate issue surviving her.

• (c) *Where a married woman dies intestate leaving issue but no husband or parent or parents*

Both before and after Act A1004, where a married intestate woman dies leaving issue but no surviving husband or parent or parents, the whole of the estate will be inherited by her issue in the form of statutory trusts as set out in section 7.^[7] These statutory trusts will be further explained in Part V.

• (d) *Where a married woman dies intestate leaving parent or parents but no husband or issue*

Both before and after Act A1004, where a married intestate woman dies leaving a parent or parents but no surviving husband or issue, the whole of the estate will be inherited by her parent or parents.^[8]

• (e) *Where a married woman dies intestate leaving a husband and issue but no parent or parents*

o (i) *Position before Act A1004*

As has been noted above, before the enforcement of Act A1004, the result of section 6(1)(i) of the principal Act was that where an intestate woman left a husband and issue, her issue were not entitled to any share of the estate. Thus the estate of a married woman, who had accumulated a considerable amount of property for her children, would be inherited by her husband, unless she had prior to her death made testamentary or *inter vivos* gifts to the children or created trusts of her property in their favour.

• (ii) *Position after Act A1004*

Section 6(1) of the principal Act, as amended by Act A1004, now provides in paragraph (e) as follows:

If an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds;

This is an important amendment in favour of a deceased intestate woman's children. They are now entitled to two-thirds of their deceased intestate mother's estate even though their father survives the mother.

Section 6(1)(h) goes on to provide that the entitlement of the issue is in the form of "trusts set out" in section 7 of the principal Act. The scheme of the trusts created by the section will be explained in Part V.

• (f) *Where a married woman dies intestate leaving issue and a parent or parents but no husband*

o (i) *Position before Act A1004*

By virtue of section 6(1)(iii) of the pre-amendment principal Act, where an intestate woman died leaving issue and a parent or parents but no surviving husband, the issue were entitled to the whole of her estate in

the form of trusts set out in section 7. The intestate woman's surviving parents were not entitled to any share of the estate.

- (ii) Position *after* Act A1004

The relevant new provision is paragraph (f) of section 6(1) of the principal Act, which provides as follows:

If an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;

This is a significant change in the law. The issue's share is reduced from the whole of the estate to two-thirds. The parent or parents, who were previously not entitled to any share of the estate, are now entitled to the remaining one-third.

- (g) *Where a married woman dies intestate leaving a husband, issue and a parent or parents*

- o (i) Position *before* Act A1004

As is obvious from what has been mentioned earlier, before Act A1004, the fact that an intestate married woman was survived by her issue or a parent or parents was irrelevant because the surviving husband was entitled to the whole of her estate.

- (ii) Position *after* Act A1004

The relevant new provision is section 6(1)(g) of the principal Act. This section reads:

If an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining one-quarter;

This is a significant new development. The surviving husband's share is reduced from the whole to one-quarter. The children, who previously obtained no share, are now entitled to one-half. The surviving parent or parents, who previously were entitled to nothing, are now entitled to the remaining one-quarter. An important point to note is that the parents are entitled to a share even where the deceased has left issue.

III. Where a Married Man Dies Intestate

- (a) *Where a married man dies intestate leaving a wife*

- o (i) Position *before* Act A1004

The rights of a surviving husband and those of a surviving wife were treated differently by the principal Act before it was amended by the Act A1004.

Under section 6(1)(ii) of the pre-amendment principal Act, the surviving wife was entitled to only one-half of her intestate husband's estate if he had left no issue. By virtue of section 6(1)(iv), the remaining one-half was inherited in the following order and manner – first, by the deceased husband's surviving parent or parents; secondly, where there were no such surviving parents, by the deceased husband's surviving brothers and sisters in the form of trusts set out in section 7; thirdly, where there were no surviving parents or siblings, by the deceased husband's surviving grandparent or grandparents; and finally, in the absence of all the beneficiaries mentioned hereinbefore, by the surviving wife. Thus, in the event that the deceased husband left no parent or parents or any brothers or sisters (or their issue) or grandparent or grandparents, the surviving wife was entitled to the remaining one-half.

Hence, a point to be noted is that while the surviving husband had an absolute right to the whole of the deceased wife's estate regardless of whether she was survived by her issue, parents or other relatives, the surviving wife was only entitled to the whole of the deceased husband's estate if he was not survived by any issue, parents or other relatives.

- (ii) Position *after* Act A1004

As has been pointed out earlier, the principal Act, as amended by Act A1004, makes no distinction between the rights of a surviving husband and those of a surviving wife.

As a result of the currently in force section 6(1)(a), if the deceased husband leaves no issue or parent or parents, the surviving wife is now entitled to the whole of his estate. It is now irrelevant that the deceased has left brothers or sisters or grandparents. This has greatly improved the position of the surviving wife. This change, however, may not be wholly socially positive in all circumstances. In Malaysia, it is common for a working married man to provide financial support for his young siblings. As a result of the new provision, his brothers and sisters are no longer entitled to a share of his estate. It may also be noted that the siblings of a deceased person are also not entitled to bring a claim under the Inheritance (Family Provision) Act 1971 [9] as dependants of the deceased.

If the deceased husband leaves a wife and a parent or parents, section 6(1)(b) will apply. The surviving wife is entitled to one-half of the estate. The parent or parents will inherit the remaining one-half. In this instance, Act A1004 makes no change to the rights of the parents of a deceased married man and the legal position under the principal Act before Act A1004 is maintained.

Finally it may be noted that section 6(2) of the principal Act has not been amended by Act A1004. Section 6(2) reads as follows:

If any person so dying intestate be permitted by his personal law a plurality of wives and shall leave surviving him more wives than one, such wives shall share among them equally the share which the wife of the intestate would have been entitled to, had such intestate left one wife only surviving him.

- (b) *Where a married man dies intestate leaving issue but no wife or parent or parents*

Both before and after Act A1004, where an intestate man dies leaving issue but no wife or parent or parents, the whole of the estate will be inherited by his issue in the form of statutory trusts as set out in section 7. [10]

- (c) *Where a married man dies intestate leaving parent or parents but no wife or issue*

Again, there is no change in the law. Before and after Act A1004, where an intestate man dies leaving parent or parents but no wife or issue, the whole of the estate will be inherited by his parent or parents. [11]

- (d) *Where a married man dies intestate leaving a wife and issue*

- o (i) Position *before* Act A1004

Under section 6(1)(ii) of the pre-amendment principal Act, where a man died leaving a wife and issue, the surviving wife was entitled to one-third of his estate. The remaining two-thirds went to his issue. The significant point was that a parent or parents of the deceased had no right to inherit any part of his estate if he was survived by a wife and issue.

- (ii) Position *after* Act A1004

The relevant new provision is section 6(1)(e) of the principal Act. This provision reads:

If an intestate dies leaving a spouse and issue *but no parent or parents*, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds. [12]

The provision of one-third for the wife and two-thirds for the issue may seem to be a re-enactment of the former section 6(1)(ii). But in fact, there is an important change in the law. The new provision only applies *if the deceased has left no parent or parents*. As will be discussed below, Act A1004 reduces the shares of both the surviving spouse and the issue if the deceased had left a parent or parents. Both before and after Act A1004, the issue take their shares in the form of trusts set out in section 7, the details of which will be discussed in Part V.

- (e) *Where a married man dies intestate leaving issue and a parent or parents but no wife*

- o (iii) Position *before* Act A1004

By virtue of section 6(1)(iii) of the pre-amendment principal Act, the issue of a deceased intestate who left no surviving wife or husband were entitled to the whole of his or her estate in the form of trusts set out in section 7. The point to note was that the intestate's parents were not entitled to any share of the estate.

- (iv) Position *after* Act A1004

Act A1004 makes another significant change in the law. The present section 6(1)(f) of the principal Act provides as follows:

If an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;

Thus if a man dies leaving behind a son, a mother and no spouse, the son will only inherit two-thirds of his father's estate when previously he was entitled to the whole. The mother will inherit one-third of the estate when previously she was entitled to none.

- (f) *Where a married man dies intestate leaving a wife, issue and a parent or parents*

- o (i) Position *before* Act A1004

As stated above, before Act A1004, if an intestate left a wife and issue, they took the entire estate, with the wife being entitled to one-third and the issue two-thirds. The intestate's parent or parents had no entitlement to any part of his estate.

- (ii) Position *after* Act A1004

The relevant new provision is section 6(1)(g) of the principal Act, which reads:

If an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining one-quarter;

Act A1004 alters the law by giving the parent or parents one-quarter of the estate when previously they had no share at law. The share of the issue is reduced from two-thirds to one-half, while the wife's share is reduced from one-third to one-quarter.

IV. Where an Unmarried Person Dies Intestate, or where a Married Person Dies Intestate and is not Survived by a Spouse or Issue

- (a) Position *before* Act A1004

By virtue of section 6(iv) and (v) of pre-amendment principal Act, where an unmarried man or woman died intestate, or where, although married, he or she died leaving no spouse or issue, his or her estate would be distributed in the following manner and order:

- - first, for the surviving parents in equal shares absolutely, or if there was only one parent such parent absolutely;
- - secondly, if there was no surviving parent, for the brothers and sisters in equal shares in the form of trusts set out in section 7;
- - thirdly, if there were no brothers or sisters, for the surviving grandparents in equal shares absolutely, or if there was only one grandparent such grandparent absolutely;
- - fourthly, if there was no surviving grandparent, for the surviving uncles and aunts in equal shares in the form of trusts set out in section 7;

- - fifthly, if there was no surviving uncle or aunt, for the surviving great grandparents in equal shares absolutely, or if there was only one great grandparent such great grandparent absolutely;
- - sixthly, if there was no surviving great grandparent, for the great uncles and great aunts in equal shares in the form of trusts set out in section 7;
- - seventhly, if no person as mentioned above takes an absolute interest under the above provisions, the Government of Malaysia was entitled to the whole of the personal estate (*ie* non-land property) as *bona vacantia*. Land was reverted to the respective State Authority by virtue of section 351 of the National Land Code 1965.[\[13\]](#)
- (b) *Position after Act A1004*

- o (i) The entitlement of parents

By virtue of the new section 6(1)(d), if the intestate was unmarried, or if the intestate is not survived by a spouse or issue, the surviving parent or parents are entitled to the whole of the estate. In this respect, the position before Act A1004 is maintained.

- (ii) The entitlement of beneficiaries other than parents

The rights of the brothers and sisters, grandparents, uncles and aunts, great grandparents, great uncles and great aunts are set out in the new section 6(i). This provision maintains the law before Act A1004. The only difference is that the terms “great uncle” and “great aunt” have now been replaced with “great grand uncle” and “great grand aunt” respectively.

- (iii) *Bona vacantia*

There is also no change in the law relating to *bona vacantia* and this is indicated in the new section 6(j).

Cases of *bona vacantia*, however, are rare because of the application of the statutory trusts in section 7. Further, although the personal estate of a deceased person without lawful beneficiaries becomes *bona vacantia*, the Yang di-Pertuan Agong has the power by virtue of section 24 of the Civil Law Act 1956[\[14\]](#) to “order the transfer of the whole or part of such personal estate to any person or persons who shall establish” to the satisfaction of His Majesty any moral or equitable claim to the estate. This provision will be of assistance to a person who is not recognised as a lawful beneficiary, for example an illegitimate child of the intestate deceased.

V. The Scheme of the Statutory Trusts Set Out in Section 7 of the Principal Act

- (a) *Beneficiaries affected by section 7*

As has been noted above, both before and after Act A1004, certain beneficiaries of an intestate estate take the shares of the estate in the form of statutory trusts set out in section 7 of the principal Act. These beneficiaries are the issue, brothers and sisters, uncles and aunts, and great grand uncles and great grand aunts.

- (b) *The statutory trusts in respect of the shares of the intestate’s issue*

Section 7(1) deals with the shares of the issue of an intestate. It must be stressed again that “issue” of an intestate, as defined in section 3, include the children and the descendants of the children. This provision states the following:

Where under the provisions of section 6, the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section for the issue of the intestate, the same shall be held in trust in equal shares if more than one for all or any of the children or child of the intestate living at the death of the intestate, who attain the age of majority or marry under that age, and for all or any of the issue living at the death of the

intestate, who attain the age of majority or marry under that age, of any child of the intestate who predeceases the intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is still living at the death of the intestate and so capable of taking.

The following points are to be noted.

(i) The interest of the child or issue is contingent

According to the scheme of statutory trusts under section 7(1), the interest of a child or issue in the intestate's estate is contingent and is held in trust for him or her until he or she attains the age of majority or marries under that age.^[15] The age of majority is 18 pursuant to the Age of Majority Act 1971.^[16] Suppose that A dies intestate leaving a spouse B, a parent C, and an infant daughter D. B and C will each be entitled to one-quarter of A's estate, which will be vested in them immediately. D will be entitled to the remaining one-half in the form of trusts set out in section 7(1). Although the trustee of D's share may use D's shares for the purposes of D's maintenance or advancement under trusts law, D will not take an absolutely vested interest until she attains 18 years of age or marries under that age.

Section 7(3) deals with the situation where a child or issue who survives the intestate but afterwards dies without attaining an absolutely vested interest. In such a case, the child or issue's share "shall go, devolve and be held under the provisions of [the Distribution Act 1958] as if the intestate had died without leaving issue". Thus in the above example, D's share (or what remains after D's maintenance or advancements) shall be divided amongst A's other beneficiaries, that is between B and C accordingly, as though the intestate had not been survived by D.

(ii) The interest of a child who predeceases the intestate and who leaves issue is not forfeited

Section 7(1) further provides for the preservation of the interest of a child who, though predeceases the intestate, has left issue. In such a case, the interest of the child does not lapse, but will go to the child's issue, "such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate".

Suppose that A dies intestate and is survived by his spouse B, his mother C and a son D. A's daughter, E, predeceased him. E is survived by a spouse, F, and two infant children, G and H. After Act A1004, B, the spouse, is entitled to one-quarter of his estate; C, the parent, is also entitled to one-quarter of the estate; while the remaining one-half is inherited by A's issue in the form of trusts set out in section 7(1). E's share is not forfeited although she has predeceased A, because she has left issue, namely G and H, who will inherit her share equally in the form of trusts set out in section 7(1). Thus the remaining one-half will be divided between D (1/4 share), G (1/8 share) and H (1/8 share). Needless to say, the shares of G and H are contingent and are held in trust until they attain majority or marry under that age. It is to be noted that both before and after Act A1004, E's spouse, F, is not entitled to a share because he is not her issue.

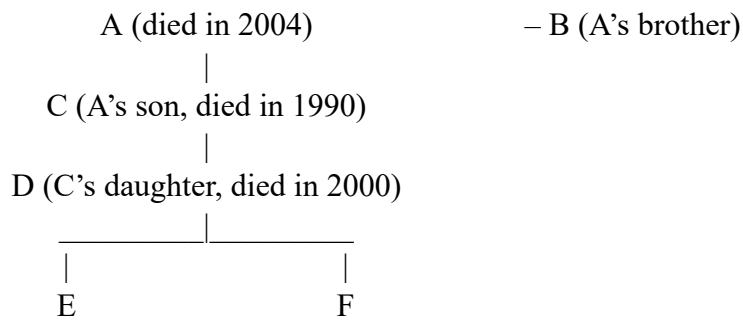
(iii) Issue whose parent is still living shall not take the share of the parent

Section 7(1) stipulates, *inter alia*, that "no issue shall take whose parent is still living at the death of the intestate and so capable of taking". In the example immediately above, A's two grandchildren, G and H, inherit a share of A's estate because E, their mother and A's daughter, has predeceased A. Had E survived A, G and H would not have been entitled to take any share directly as "no issue shall take whose parent is still living at the death of the intestate". If E had survived her father, she would have taken her share, and, if she subsequently died intestate, her estate (including the property she inherited from her father's estate, if any still remained) would be distributed in accordance with the provisions of section 6.

(iv) The significance of the words "to take through all degrees according to their stocks" in section 7(1)

Section 7(1) stipulates, *inter alia*, that an intestate's issue shall "take through all degrees according to their stocks, in equal shares if more than one, the share which the parent would have taken if living at the death of the intestate".

Suppose that A died in the year 2004 leaving no spouse or parent. A was survived by a brother B. A's only son C, had died in the year 1990. C's only daughter, D, had died in the year 2000 leaving two sons, E and F.



In the above illustration, E and F are A's great grandchildren and are his issue. A's brother, B, is not entitled to any share in A's estate. Under section 6, where an intestate has left issue but no spouse or parent, the issue are entitled to the whole estate. Thus E and F will inherit A's entire estate as "issue take through all degrees according to their stocks" provided that their parent are not living at the time of the death of the intestate. Needless to say, E and F's interest will be contingent if they are minors, in which case the interest will be held in trust for them until they attain 18 years of age or marry under that age.

• (c) The statutory trusts in respect of the shares of beneficiaries other than the intestate's issue

As has been noted above, according to section 6, where a brother or sister, or an uncle or aunt, or a great grand uncle or great grand aunt, is entitled to a share of the intestate's estate, he or she shall also take his or her share in the form of the statutory trusts set out in section 7. In this respect, the scheme of the trusts affecting the shares of issue is similarly applied. The position is provided in section 7(2), which reads:

Where under the provisions of section 6 the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section for any class of relatives of the deceased other than the issue of the intestate, the same shall be held on trusts corresponding to the trusts set out in subsection (1) of this section for the issue of the intestate as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

As an illustration, suppose that A, who was unmarried, died leaving an uncle, B, as his sole living beneficiary. Further suppose that another uncle, C, had predeceased A, leaving two minor children D and E. C's death would not forfeit his half share. By virtue of section 7(2) read together with section 7(1), C's share will be inherited by D and E (*ie* A's cousin brothers or sisters) equally in the form of statutory trusts set out in section 7(1). D and E will therefore inherit $\frac{1}{4}$ share respectively. Their shares are contingent until they attain the age of majority or marry under that age.

VI. Concluding Remarks

This article has attempted to highlight the key changes brought about by Act A1004 to the scheme of distribution for non-Muslims by the amendments to section 6 of the Distribution Act 1958. Needless to say, some of the changes have been long overdue.

A significant change resulting from the amendments is the elimination of the distinction between the rights of intestate succession of a surviving husband and those of a surviving wife, and consequently providing for the rights of children to share the estate of their deceased mother even where their father survives their mother. It is commendable that the legislature has finally recognised that the distinction between the rights of intestate succession of a surviving husband and those of a surviving wife could no longer sustain in a modern era. Although not all husbands are improvident persons or prodigals, the removal of the right to inherit the whole of his intestate wife's estate will serve to better protect the welfare of the children.

Act A1004 has also significantly improved the rights of the parents of an intestate deceased, whether the deceased is a son or a daughter. Before Act A1004, the entitlement of the parents was more limited. In the case where the deceased was a daughter, the parents had no share in her estate unless she died without a husband or issue. In the case where the deceased was a son, the parents were not entitled to any share where

he left issue. Where he did not leave issue, but a wife, the parents were entitled to half of his estate. Where he left no wife or issue, the parents were entitled to the whole estate. After Act A1004, a parent or parents are entitled to a share of the estate of the intestate daughter or son so long as they survive their deceased child, regardless of whether the deceased had left a spouse or issue, or a spouse and issue, or no spouse and issue. This is a recognition of the fact that many parents are dependent on their children for some support.

Finally it may be noted that Act A1004 has not sought to improve the legal rights of illegitimate children. Both before and after Act A1004, the Distribution Act 1958 makes no provision for the right of illegitimate children to the estate of their intestate parents. Although such illegitimate persons may find section 24 of the Civil Law Act 1956 to be of some assistance, the fact remains that they have no legal right to claim any part of the deceased's estate, except where they fall within the very limited provision in section 11 of the Legitimacy Act 1961 where they are given the right to succeed to the property of their mother only if the mother has died without legitimate issue surviving her. Further, the operation of section 24 of the Civil Law Act 1956 is limited as it only applies in cases of *bona vacantia*, and it does not extend to landed property of the deceased.

APPENDIX

Table 1

The Pre-Amendment Scheme of Intestate Distribution under the Distribution Act 1958 where a Married Woman Dies Intestate

Married woman dies leaving	Section of the Distribution Act 1958 (before Act A1004)	Entitlement		
		Husband	Issue	Parents
(i) husband only	s 6(1)(i)	Entire estate	n/a	n/a
(ii) issue only	s 6(1)(iii)	n/a	Entire estate	n/a
(iii) parent or parents only	s 6(1)(iv)	n/a	n/a	Entire estate
(iv) husband and issue only	s 6(1)(i)	Entire estate	None	n/a
(v) husband and parent or parents only	s 6(1)(i)	Entire estate	n/a	None
(vi) issue and parent or parents only	s 6(1)(iii)	n/a	Entire estate	None
(vii) husband, issue and parent or parents	s 6(1)(i)	Entire estate	None	None

Notes:

1. "n/a" – not applicable.
2. The above table only shows the entitlement of the three main categories of beneficiaries, namely husband, issue and parents. For cases where none of these beneficiaries survives the deceased (as well as for cases where an unmarried person dies intestate), see the explanation in Part IV for the provision in law for other beneficiaries (for instance the brothers and sisters), and when *bona vacantia* can arise.

Table 2

The Pre-Amendment Scheme of Intestate Distribution under the Distribution Act 1958 where a Married Man Dies Intestate

Married man dies leaving	Section of the Distribution Act	Entitlement		
		Wife	Issue	Parents

	1958 (before Act A1004)			
• (i) wife only	s 6(1)(ii) & s 6(1)(iv)	Entire or 1/2*	n/a	n/a
• (ii) issue only	s 6(1)(iii)	n/a	Entire estate	n/a
• (iii) parent or parents only	s 6(1)(iv)	n/a	n/a	Entire estate
• (iv) wife and issue only	s 6(1)(ii)	1/3	2/3	n/a
• (v) wife and parent or parents only	s 6(1)(ii) & s 6(1)(iv)	1/2	n/a	1/2
• (vi) issue and parent or parents only	s 6(1)(iii)	n/a	Entire estate	None
• (vii) wife, issue and parent or parents	s 6(1)(ii)	1/3	2/3	None

Notes:

1. “n/a” – not applicable.

2. *The wife takes the *entire estate* in the absence of all other beneficiaries included in section 6(1)(iv) of the pre-amendment Act, namely parent or parents, brothers and sisters (or their issue) and grandparent or grandparents. Where there are any of these other beneficiaries, the wife takes ½ of the estate, and the other beneficiaries take the remaining ½. See the more detailed explanation in Part III(a)(i) of the main text for the order of priority of entitlement of these other beneficiaries.

3. The above table only shows the entitlement of the three main categories of beneficiaries, namely wife, issue and parents. For cases where none of these beneficiaries survives the deceased (as well as for cases where an unmarried person dies intestate), see the explanation in Part IV for the provision in law for other beneficiaries (for instance the brothers and sisters), and when *bona vacantia* can arise.

Table 3

The Post-Amendment Scheme of Intestate Distribution under the Distribution Act 1958

Intestate dies leaving	Section of the Distribution Act 1958 (as amended)	Entitlement		
		Spouse	Issue	Parents
(i) spouse only	s 6(1)(a)	Entire estate	n/a	n/a
(ii) issue only	s 6(1)(c)	n/a	Entire estate	n/a
(iii) parent or parents only	s 6(1)(d)	n/a	n/a	Entire estate
(iv) spouse and issue only	s 6(1)(e)	1/3	2/3	n/a
(v) spouse and parent or parents only	s 6(1)(b)	1/2	n/a	1/2
(vi) issue and parent or parents only	s 6(1)(f)	n/a	2/3	1/3
(vii) spouse, issue and parent or parents	s 6(1)(g)	1/4	1/2	1/4

Notes:

1. “n/a” – not applicable.

2. In eliminating the differential treatment of the rights of intestate succession of a surviving husband and those of a surviving wife, Act A1004 has replaced the terms “husband” and “wife” with a single term “spouse”.

3. The above table only shows the entitlement of the three main categories of beneficiaries, namely spouse, issue and parents. For cases where none of these beneficiaries survives the deceased (as well as for cases where an unmarried person dies intestate), see the explanation in Part IV for the provision in law for other beneficiaries (for instance the brothers and sisters), and when *bona vacantia* can arise.

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[1] Act 300 (Revised 1983).

[2] Balan, P & Rafiah Salim, “Akta Pembahagian” [1984] *JMCL* 179.

[3] See *id* at pp 179-184 for a brief history of the law of intestate succession for non-Muslims in Malaysia.

[4] Act 257 (Revised 1981). Note further that s 29 of the Adoption Act 1952 provides that the expression “child” in any written law relating to the distribution of intestate estate currently in force in Malaysia shall include an adopted child irrespective of any provisions to the contrary in any such written law.

[5] Cap 91.

[6] Act 60.

[7] S 6(1) para (iii) of the pre-amendment principal Act, and s 6(1) paras (c) & (h) of the post-amendment principal Act.

[8] S 6(1) para (iv) of the pre-amendment principal Act, and s 6(1) para (d) of the post-amendment principal Act.

[9] Act 39.

[10] See *supra*, n 7.

[11] See *supra*, n 8.

[12] Emphasis added.

[13] Act 56 of 1965.

[14] Act 67 (Revised 1972).

[15] However, note that according to s 10 of the Law Reform (Marriage and Divorce) Act 1976 (Act 164), any marriage “purported to be solemnised in Malaysia” will be void “if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnisation of such marriage was authorised by a licence granted by the Chief Minister under section 21(2)”.

[16] Act 21.

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