

IN SCOTLAND RULES OF INHERITANCE DIFFERED IN RESPECT TO

- moveable (the possessions)
- heritable property, i.e. land and buildings.

Early testaments before 19th century **do not expect to find any references to land and buildings.**

TESTAMENTS RELATED ONLY TO THE DECEASED'S MOVEABLE ESTATE,.

- money,
- household furnishings,
- personal possessions,
- farm animals and
- crops
- etc.

From the early 19th century, it was not uncommon to find dispositions, settlements, trust dispositions and settlements, etc. recorded in the commissary court registers, and these documents often included details of heritable property.

HERITABLE PROPERTY, I.E. LAND AND BUILDINGS.

Before 1964 the **law of primogeniture applied with regard to heritage, i.e.**

- **the eldest son inherited everything,**
- **unless there had been a disposition or bequest specifically made by the deceased owner.**

Where there was "heritage", this by right went to the eldest son, it

- **automatically debarred him from receiving a share of the moveable estate, i.e. that share which formed part of the legitim.**
- **this son was still entitled to the heirship moveables so that he would not succeed to a house and land completely denuded. These moveables consisted of the best of the deceased father's furniture, horses, cows, farming implements, etc**

WHO GOT MOVEABLE (THE POSSESSIONS)

- money,
- household furnishings,
- personal possessions,
- farm animals and
- crops
- etc.

The rules of moveable succession differed from those which applied to succession to heritable property

- **no significance attached either to primogeniture (i.e. the inheritance going to the eldest son to the exclusion of all the other sons and daughters) or**
- **to the gender of the children of the deceased.**
- **moveable succession, all children had equal rights.**

A man's property had to be divided into a maximum of three parts:

- the widow's part - jus relictæ
- the bairns' (other childrens) part - legitim
- the dead's part - deid's part

If he was survived by both wife and children his estate was divided into three,

- one-third **going to the widow,**
- one-third divided **equally among the children** or all going to an only child,
- **remaining third could be disposed of in accordance with the wishes expressed by the deceased in his will** or disposition.

If the man had been pre-deceased by his wife the division was into two parts,

- **one half going to the children** and
- **other to persons named by the deceased.**

If there was a widow but no children again the division was into two –

- one half to the widow and the
- dead's part going to other named individuals.

Lastly, if the man had no surviving wife or children

- the whole of his moveable estate was designated as the dead's part, to be bequeathed by him as he pleased.
- This distribution could be affected by any special provisions already made in a marriage contract or in bond(s) of provision for children of the marriage (his siblings).

On the father's death **the jus relictæ and legitim vested automatically in the wife and children** so there was no need for their shares of the estate to be presented to the commissary court by the executor for confirmation.

The deid's part had to be confirmed by the court, even if this had not been disposed of by a will. In the latter case, this share had to be taken up by the next of kin by confirmation.

If the deceased was survived by neither wife nor children, then his next nearest of kin were his surviving siblings, his estate would be distributed equally among them.

strictly equal succession in moveables took place only when no heritable property to be disposed of in addition.

- Where there was "heritage", **this by right went to the eldest son, which automatically debarred him from receiving a share of the moveable estate,** i.e. that share which formed part of the legitim.
- **this son was still entitled to the heirship moveables so that he would not succeed to a house and land completely denuded.** These moveables consisted of the best of the deceased father's furniture, horses, cows, farming implements, etc.

The moveable estate of a widow would be divided into two parts,

- the legitim and
- the deid's part.