



Republic of Namibia
Annotated Statutes

Political Ordinance of 1 April 1580, (Republic of the United Netherlands), Articles 20-29

Ordonnantie van de Polityen binnen Hollandt, Groot Placaet-Boek, Part 1

Note that the original source is referred to variously in different sources as "Groot Placaet-Boek", "Groot Placaet-Boeck", "Groot Plakaatboek" and other variations.

translation and summaries from Howard, *The Administration of Estates, 1908*
as quoted in *Frans v Paschke 2007 (2) NR 520 (HC)*, footnotes 10-11
(similar translation in Law Reform and Development Commission,
Report on Succession and Estates, LRDC 20, July 2012)

APPLICABILITY TO SOUTH WEST AFRICA: *Frans v Paschke 2007 (2) NR 520 (HC)* explains in paragraphs 9-10 how this law applied to South West Africa:

"In 1652 the Cape of Good Hope came into possession of the Vereenigde Geoctroyeerde Oost Indische Compagnie 'the VOC'. It was one of the first companies - in the structure of a modern company limited by shares - in the world and was a subject of the Republic of the United Netherlands (the Republic). This Republic consisted of seven provinces (including Holland, Zeeland and Friesland). The provinces were administered by the Estates General (which consisted of one representative from each province)... The VOC operated under Charter (Octrooi) of the Estates General of 1602, putting the ownership of the Cape under that of the Estates General... During March of 1621 already, the Estates General instructed the VOC to apply in its possessions, the laws and statutes of Holland, including the Political Ordinance of 1 April 1580. Although the Estates General could pass legislation for its possessions, there is only one Octrooi which was passed and still survived by 1 January 1920, and that was the Octrooi of 10 January 1661, which regulated the law of intestate succession."

The *Octrooi of 10 January 1661* clarified that both the Political Ordinance of 1 April 1580 (Republic of the United Netherlands) and the associated Interpretation of 1594 (Republic of the United Netherlands) applied to the Cape Colony. (This *Octrooi* applied the Political Ordinance to the "Indies", which at the time included the Cape Colony.) Both the 1580 Ordinance and the 1954 interpretation were subsequently made applicable to South West Africa by the South West Africa Administration of Justice Proclamation 21 of 1919, as interpreted by *Tittel v The Master of The High Court 1921 SWA 58*.

According to *Tjingaete v Lakay NO and Others [2014] NAHCMD 178 (11 June 2014)* at para 34 (footnotes omitted):

"By virtue of the Administration of Justice Proclamation 21 of 1919, the Roman-Dutch common law applied in the Province of the Cape of Good Hope became the common law of Namibia.... [T]he common law on intestate succession was based upon the old Political Ordinance of 1580 and the Interpretation Ordinance of 1594, as modified by the Octrooi of 1661, all passed in the Netherlands and imported to the Cape Colony."

as interpreted and modified in its application by

Interpretation of 13 May 1594 (Republic of the United Netherlands)
Verklaringhe van de Heeren Staten van Hollandt en de Wes-Vrieslandt
op de Ordonnantie van de Successien, Groot Placaet-Boek, Part 1

Octrooi of 10 January 1661

Octrooi, by haer Hoog Mog: Verleent de Oost-Indische Compagnie deser Landen op 't Regt van successie ab intestato, Groot Placaet-Boek, Part 2

POLITICAL ORDINANCE

[These rules should be read together with the Intestate Succession Ordinance 12 of 1946.]

Article 20

Firstly, children and other direct descendants *ad infinitum* succeed by representation or *per stirpes*.

Article 21

If both parents of the intestate be alive, they succeed absolutely upon failure of children and descendants of remoter degree.

Article 22

If both [or one, - this is not applicable in Cape law; see the Charter of 1661] of the parents be dead, the succession must go absolutely to the intestate's brothers and sisters and their children and grandchildren *per stirpes* or by representation.

Article 23

Half-brothers and half-sisters, their children and grand-children, and other collateral relations who were related to the intestate through one parent only, take with the half hand and according to the degree of consanguinity in which they stood related to him.

Article 24

Failing all descendants, father, mother, brothers and sisters and their children and grandchildren, the uncles and aunts, and their children, take *per stirpes*.

Article 25

But, however, if grandfather and grandmother on the one side be both alive, they succeed, as regards property derived from that side, in preference to the uncles and aunts and their children descended from these grandparents of the intestate; but these grandparents do not oust the intestate's brothers and sisters as regards such property.

Article 26

In the case of [parents and] other ascendants, when the bed has been severed and one alone survives, the latter does not participate in the succession. [See Charter of 1661.]

Article 27

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The estate of the deceased shall go to his next of kin on the father's and mother's side, and be divided into two equal parts, without any distinction being made whether the deceased inherited more from his father than from his mother, or vice versa [per De Villiers CJ in *Raubenheimer v Executors of Van Breda*].

Now, the context clearly shows that this section was intended to apply to the case in which the deceased died without either descendants or parents surviving him. In such a case the general rule is laid down that the succession shall be *per lineas*, one-half of the estate going to the next of kin on the paternal side, and the other half to the next of kin on the maternal side.

Article 28

Representation shall not be admitted among collaterals, further than the grandchildren of brothers and sisters, and the children of uncles and aunts, inclusively, and all other collaterals, being the next of kin of the deceased, and in equal degrees, shall take *per capita*, to the exclusion of all who are in a more remote degree of consanguinity, the nearest excluding those more remote.

Article 29

Children who have received from their parents any money or property given as a marriage gift or for the purpose of benefiting the children in business affairs or otherwise in such matters, must collate or bring into the estate of their parents such money or property before sharing the estate with the other successors. The amount to be collated is the value of the donation at the time it was made, if the property had not had a valuation placed upon it; but if such was the case, the valuation must be followed in collating. The property must then be divided into equal parts, one half going to the surviving spouse, and the other half the heirs take: whether the marriage was a first, second, or third one. The foregoing rules regarding succession and collation rule when no contrary provisions exist by virtue of a testament, antenuptial contract, deeds executed before the Orphan Chamber, or any other contracts.

[\[Double-click here to access a version of the original ordinance in Dutch.\]](#)



Dutch Law (1) -
Ordonnantie_van_de

INTERPRETATION OF 13 MAY 1594

This Interpretation essayed to elucidate the difficult and doubtful points that arose in regard to the terms of the Political Ordinance:

“Half-brothers and half-sisters must succeed with the half-hand if both of the parents of the intestate predeceased him; that is, the full brothers and sisters or their children or grandchildren by representation must take one-half of the estate, whilst the other half they share equally with the half-brothers and half-sisters, or their children or grandchildren by representation, who are related to the intestate on the one side only. But if that parent alone is dead through whom the half-brothers and half-sisters have their claim upon the intestate, the other parent of the intestate being still living, they, or their children or grandchildren by representation, succeed with a full hand, not otherwise, however. The same applies to the case of other collaterals, in their various degrees, when related to the intestate on the one side only. (Compare, however, the rule stated below, regarding collaterals related through other ascendants.) Further descendants of brothers and sisters, in the fifth and remoter degrees, rank before grandparents and remoter ascendants, as also uncles and aunts, their children and grandchildren, and further descendants, and they

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succeed *per capita*, not *per stirpes*. If, on the one side, only one of the ascendants [as in art 26, the application hereof to parents is nullified by the Charter of 1661] be alive, neither he, nor any persons related to the intestate through the deceased spouse alone, will succeed to the intestate. (Those so related on the side of the surviving grandparent are naturally excluded by him or her, *ipso facto*.) The division of the intestate's estate *per lineas*, to the father and the mother's side equally, occurs only when the parents are both dead. And the above rules must govern.”

[\[Double-click here to access a version of the original interpretation in Dutch.\]](#)



Dutch Law (2) -
Verklaringhe_van_de.

OCTROOI OF 10 JANUARY 1661

In applying the above laws to the Indies, this Charter partially altered art 26 of the Ordinance:

“When the marriage of the intestate’s parents has been dissolved, and only one of them is living, he or she will succeed to the intestate along with the brothers and sisters, whether of the full or the half blood, or their children or grandchildren by representation. That is, the surviving parent takes one-half, and the brothers and sisters, or their children or grandchildren by representation, take the other half; but the half relations in order to succeed must be related to the intestate through his deceased parent. If there be neither brothers nor sisters alive, their children or grandchildren by representation will in like manner take one half, the parent taking the other. If there be neither brothers, sisters, their children nor grandchildren alive, the surviving parent of the intestate will succeed to the estate absolutely, and exclude all collaterals. Land, houses, and other immovable property must follow the law and customs of the Provinces, Districts of places wherein it is situated.”

[\[Double-click here to access a version of the original charter in Dutch.\]](#)



Dutch Law (3) -
Plakkaatboek Deel 02