

CHAPTER 573

PERSONAL REPRESENTATIVES, HEIRS; ACTIONS

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573.01 SURVIVAL OF CAUSES.

A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter.

History: (9656) *RL s 4502; 1941 c 440; 1967 c 158 s 1; 1983 c 243 s 4; 1983 c 347 s 1*

573.02 ACTION FOR DEATH BY WRONGFUL ACT.

Subdivision 1. When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed as provided in subdivision 3 may maintain an action therefor if the decedent might have maintained an action, had the decedent lived, for an injury caused by the wrongful act or omission. An action to recover damages for a death caused by the alleged professional negligence of a physician, surgeon, dentist, hospital or sanitarium, or an employee of a physician, surgeon, dentist, hospital or sanitarium shall be commenced within the time set forth in section 541.07, subdivision 1. An action to recover damages for a death caused by an intentional act constituting murder may be commenced at any time after the death of the decedent. Any other action under this section may be commenced within three years after the date of death provided that the action must be commenced within six years after the act or omission. The recovery in the action is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death, and shall be for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court then determines the proportionate pecuniary loss of the persons entitled to the recovery and orders distribution accordingly. Funeral expenses and any demand for the support of the decedent allowed by the court having jurisdiction of the action, are first deducted and paid. Punitive damages may be awarded as provided in section 549.20.

If an action for the injury was commenced by the decedent and not finally determined while living, it may be continued by the trustee for recovery of damages for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court on motion shall make an order allowing the continuance and directing pleadings to be made and issues framed as in actions begun under this section.

Subd. 2. When injury is caused to a person by the wrongful act or omission of any person or corporation and the person thereafter dies from a cause unrelated to those injuries, the trustee appointed in subdivision 3 may maintain an action for special damages arising out of such injury if the decedent might have maintained an action therefor had the decedent lived.

Subd. 3. Upon written petition by the surviving spouse or one of the next of kin, the court having jurisdiction of an action falling within the provisions of subdivisions 1 or 2, shall appoint a suitable and competent person as trustee to commence or continue such action and obtain recovery of damages therein. The trustee, before commencing duties shall file a consent and oath. Before receiving any money, the trustee shall file a bond as security therefor in such form and with such sureties as the court may require.

Subd. 4. This section shall not apply to any death or cause of action arising prior to its enactment, nor to any action or proceeding now pending in any court of the state of Minnesota, except, notwithstanding section 645.21, this section shall apply to any death or cause of action arising prior to its enactment which resulted from an intentional act constituting murder, and to any such action or proceeding now pending in any court of the state of Minnesota with respect to issues on which a final judgment has not been entered.

History: (9657) *RL s 4503; 1911 c 281 s 1; 1935 c 325 s 1; 1943 c 538 s 1; 1951 c 697 s 1; 1955 c 407 s 1; 1957 c 712 s 1; 1965 c 837 s 1; 1967 c 158 s 2; 1971 c 43 s 1; 1973 c 717 s 30; 1978 c 593 s 1; 1983 c 347 s 2,3; 1986 c 444*

573.03 DEFAULT JUDGMENT; JUDGMENT NOT LIEN UPON REAL ESTATE.

When a judgment is taken against an executor or administrator upon failure to answer it shall not be deemed evidence of assets in hand unless the complaint alleged assets and was personally served on the executor or administrator. No judgment against any executor or administrator shall bind, or in any way affect, the real property which belonged to the decedent, nor shall the same be liable upon execution issued upon such judgment.

History: (9658) *RL s 4504; 1986 c 444*

573.04 EXECUTOR'S WRONG, TO WHOM LIABLE.

No person shall be liable to an action, as executor of a wrong committed by that person, for having taken, received, or interfered with the property of a deceased person, but shall be responsible to the executor, or general or special administrator, of such decedent for the value of all property so taken or received and for all damages caused by the person's acts to the estate.

History: (9659) *RL s 4505; 1986 c 444*

573.05 ACTION BY FOREIGN EXECUTOR.

Any foreign executor or administrator may commence and prosecute an action in this state, in a representative capacity, in the same manner and under the same restrictions as in case of a resident. Before commencing such action the foreigner shall file an authenticated copy of appointment as executor or administrator with the probate court of the county in which such action is to be commenced.

History: (9660) *RL s 4506; 1986 c 444*

573.06 NEXT OF KIN; LIABILITY FOR DEBTS; CONTRIBUTION.

The next of kin of a deceased person are liable to an action by a creditor of the estate, to recover the distributive shares received by them out of such estate, or so much thereof as shall be necessary to satisfy the deceased person's debt, which action may be against all or against any one or more of them. The plaintiff may recover the value of all assets received by all the defendants, if necessary to satisfy the plaintiff's demand, and the plaintiff's recovery shall be apportioned among the defendants in proportion to the value of the assets received by each without deduction on account of there being other relatives who have received assets. Any one against whom such recovery has been had may maintain an action for contribution against all or any other relatives of the decedent to whom assets have been paid, and may recover of each defendant such pro-

portionate share of the amount paid by plaintiff as the value of assets received by each bears to the value of all the assets distributed to all the relatives.

History: (9661) *RL s 4507; 1986 c 444*

573.07 LEGATEES; WHEN LIABLE.

Legatees are liable to an action by a creditor of the testator to recover the value of legacies received by them. Such action may be brought against all or any one or more of the legatees. The plaintiff cannot recover without showing:

- (1) That no assets were delivered by the executor or administrator to the heirs or next of kin; or
- (2) That the value of the assets so delivered has been recovered by another creditor; or
- (3) That such assets are not sufficient to satisfy the demands of the plaintiff, in which case the plaintiff can recover only the deficiency.

The whole amount which the plaintiff can recover shall be apportioned among all the legatees, in proportion to the amount of their legacies, respectively, and each legatee's proportion only can be recovered of each legatee.

History: (9662) *RL s 4508; 1986 c 444*

573.08 COSTS; JUDGMENT, WHEN DISCHARGED.

If an action be brought against several next of kin jointly, or several legatees jointly, for assets delivered to them, and a recovery be had against them, the costs shall be apportioned among the several defendants in proportion to the amount of the damages recovered against each. In either case, the payment or satisfaction of the judgment recovered against any one of the defendants shall discharge that defendant and that defendant's property from such judgment.

History: (9663) *RL s 4509; 1986 c 444*

573.09 HEIRS AND DEVISEES; WHEN LIABLE.

Heirs and devisees are liable to an action by a creditor of a deceased person to recover a debt, to the extent of the value of any real property inherited by or devised to them. If such action be against the heirs, all heirs who are liable shall be made parties thereto. The heirs shall not be liable for the debt unless it shall appear that the personal assets were not sufficient to discharge it, or that, after due proceedings before the probate court, the creditor is unable to collect the debt from the personal representatives of the decedent, or from the next of kin or a legatee; and if the personal assets were sufficient to pay a part of the debt, or in case a part thereof has been collected, as hereinbefore mentioned, the heirs of such deceased person are liable for the residue. Nothing in this section shall affect the liability of heirs for a debt of their ancestors, where, by will, such debt was expressly charged exclusively on the real property descended to such heirs, or directed to be paid out of the real property so descended, before resorting to the personal property.

History: (9664) *RL s 4510; 1986 c 444*

573.10 APPORTIONMENT OF LIABILITY; CONTRIBUTION.

When the heirs, devisees, or legatees have received real or personal estate, and are liable by law for any debts, such liability shall be in proportion to the estate they have, respectively, received, and a creditor may recover the creditor's claim against a part or all of them to the amount of such liability. If, by the testator's will, any part of the testator's estate, or any devisees or legatees, are made exclusively liable for the debt, the devisees or legatees shall contribute among themselves accordingly.

History: (9665) *RL s 4511; 1986 c 444*

573.11 NEW PARTIES; ISSUES; APPORTIONMENT.

If all the persons liable for the payment of any such debt shall not be included as defendants, the action shall not thereby be dismissed or barred; but the court may order any other parties brought in, and allow such amendments as may be necessary, on such terms as it may prescribe. If more than one person is liable, and the creditor shall bring action against all or any of them, and those liable shall dispute the debt, or the amount claimed, the court may order an issue to be framed, and direct the amount to be ascertained by a jury, and shall determine how much each is liable to pay.

History: (9666) *RL s 4512*

573.12 ESTATE OF DECEASED HEIRS, WHEN LIABLE.

If any of the heirs, devisees, or legatees die without having paid a just share of the debts, the estate shall be liable therefor as for a personal debt, to the extent of liability if living.

History: (9667) *RL s 4513; 1986 c 444*

573.13 CONTRIBUTION AMONG HEIRS.

When any heir, devisee, or legatee pays more than a proportional share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same.

History: (9668) *RL s 4514; 1986 c 444*

573.14 PRIORITY AMONG DEBTS.

When the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestor, or testator, they shall give preference in the payment of the same, and be liable therefor, in the following order:

- (1) Debts entitled to a preference under the laws of the United States;
- (2) Judgments against the ancestor or testator, according to the priority thereof, respectively;
- (3) Debts due to other creditors.

History: (9669) *RL s 4515*

573.15 NO PREFERENCE BETWEEN DEBTS OF SAME CLASS.

No preference shall be given by any next of kin, legatee, heir, or devisee to one debt over another of the same class, except one specified in section 573.14, clause (2); nor shall a debt due and payable be entitled to a preference over one not due; nor shall the commencement of an action against any next of kin, legatee, heir, or devisee, for the recovery of a debt, entitle it to preference over others of the same class.

History: (9670) *RL s 4516*

573.16 DEFENSES; OTHER DEBTS OUTSTANDING OR PAID.

The next of kin, legatees, heirs, and devisees may show, in their defense, that there are unsatisfied debts of a prior class, or others of the same class as the debt in action; and if it shall appear that the value of the personal property delivered, or of the real estate descended or devised, to them does not exceed the debts of a prior class, judgment shall be rendered in their favor. If the value of such property exceeds the amount of debts which are entitled to preference over the debt in action, judgment shall be rendered against them only for such a sum as bears a just proportion to the other debts of the same class. If a debt of a class prior to the one in action, or of the same class, is paid by any next of kin, legatees, heirs, or devisees, they may prove such payment, and the amount thereof shall be treated, in ascertaining the amount to be recovered, as if it were unpaid.

History: (9671) *RL s 4517*

573.17 REAL PROPERTY DESCENDED; LIEN OF JUDGMENT.

If it appears that the real property so descended was not alienated by the heir at the time of the commencement of the action, the court shall order that plaintiff's debt, or the proportion thereof which the plaintiff is entitled to recover, be levied upon such real estate, and not otherwise; and every judgment rendered in such action has preference as a lien on such real estate, to any judgment obtained against such heir for a personal debt.

History: (9672) *RL s 4518; 1986 c 444*

573.18 PERSONAL LIABILITY; ALIENATION BEFORE SUIT.

If it appears in the action that before the commencement thereof the heir has aliened the real property descended to that heir, or any part thereof, that heir shall be personally liable for the value of that aliened; and judgment may be rendered therefor, and execution awarded, as in actions for personal debts. No real property aliened in good faith by an heir, before action commenced against the heir, shall be liable to execution or in any manner affected by a judgment against the heir.

History: (9673) *RL s 4519; 1986 c 444*

573.19 HEIRS AND DEVISEES; LIMIT OF RECOVERY.

In actions brought against several heirs or several devisees jointly, the amount of plaintiff's recovery shall be apportioned among all the heirs of the ancestor, or all the devisees of the testator, in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each.

History: (9674) *RL s 4520*

573.20 DEVISEES, WHEN LIABLE; LIMITATIONS.

Devisees made liable to creditors of their testator by the provisions of this chapter shall not be held liable unless it shall appear that the testator's personal assets and the real property descended to the testator's heirs were insufficient to discharge the debt, or that after due proceedings before the probate court the creditor has been unable to recover the debt, or any part thereof, from the personal representative of the testator, or next of kin, legatees, or heirs. In either of these cases, the amount of the deficiency of the personal assets, and of the real property descended to satisfy the debt of the plaintiff, and the amount which the plaintiff may have failed to recover from the personal representative, next of kin, legatees, and heirs of the testator, may be recovered of the devisees, to the extent of the real property devised to them, respectively. Nothing in this section shall affect the liability of the devisees for a debt of their testator which was charged by will exclusively upon the real property devised, or made payable exclusively by such devisees, or out of the real property devised before resorting to the personal property or to any other real property descended or devised.

History: (9675) *RL s 4521; 1986 c 444*

573.21 DEVISEES; APPLICATION.

The provisions of this chapter with regard to heirs, and to proceedings by and against them, and to judgments and executions against them, are applicable to actions and proceedings against devisees, and they must in like manner be jointly sued.

History: (9676) *RL s 4522*