

Rights of Surviving Spouse or Party to a Civil Union

A Guide to Resources in the Law Library

- "Connecticut law does not permit a deceased person to continue to own property. The statutes of this state set forth a procedure for the orderly transfer of a deceased person's assets either according to his will or the laws of intestacy. See e.g., Connecticut General Statutes §§ 45a-273, et seq. Under the laws of this state competent testators are free to leave their property as they wish, subject only to the limitations of a spousal elective share and a family allowance. Connecticut General Statutes §§ 45a-320, 45a-321, 45a-436." Skindzier v. Commissioner of Social Services, No. 0501376 (Conn. Super. Ct., New Britain, Jan. 4, 2001), 28 CONN. L. RPTR. 589 (March 5, 2001), 2001 WL 51663.
- **Right of Election:** "On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse.." CONN. GEN. STAT. § 45a-436(a) (2008). [Civil unions incorporated by CONN. GEN. STATS. § 46b-3800 (2008)]
- **Statutory share:** "means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.." CONN. GEN. STAT. § 45a-436(a) (2008). [Civil unions incorporated by CONN. GEN. STATS. § 46b-3800 (2008)]
- **Intestate share:** "If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to section 45a-320, which the surviving spouse shall take" [Civil unions incorporated by CONN. GEN. STATS. § 46b-3800 (2008)]
- **Civil Union:** "Wherever in the general statutes the terms 'spouse', 'family', 'immediate family', 'dependent', 'next of kin' or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-

45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act, and section 14 of this act, the term 'marriage' is used or defined, a civil union shall be included in such use or definition. 46b-38oo (2008) (EFFECTIVE OCTOBER 1, 2005).

- **"Parties to a civil union** shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman." CONN. GEN. STATS. § 46b-38nn (2008) (EFFECTIVE OCTOBER 1, 2005).

**Statutory provisions relating to Civil Unions are
effective October 1, 2005**

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Statutory Share in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the surviving spouse's statutory share of real and personal property despite provisions in a will. Also, legal arrangements by which statutory share may legally be avoided.
- CURRENCY:**
- 2008 Edition
- TREATED ELSEWHERE:**
- If there is no will—see [§ 2 Intestate share](#)
 - If estate is insolvent—see [§ 3 Insolvent estate](#)
- DEFINITIONS:**
- “Under a will, a spouse need only claim the spousal share if disinherited” Bezzini v. Department of Social Services, 49 Conn. App. 432, 443, 715 A.2d 791 (1998).
 - **Dower and curtesy:** “By and large, dower and curtesy have been supplanted by laws that entitle a surviving spouse to choose between accepting whatever is provided for the spouse in the decedent’s will or taking a statutorily fixed percentage of the estate.” Estate of Herrmann v. C.I.R., 85 F.3d 1032, 1034-35 (2d Cir. 1996).
- STATUTES:**
- CONN. GEN. STAT. (2008).
§ 45a-436. Succession upon death of spouse. [Statutory share see Table 1](#)
- CASES:**
- Sandford v. Metcalfe, 110 Conn. App. 162, 168-170 (2008). “The law governing descent and distribution emanates from the legislature and is purely statutory. . . . The legislature has, by statute, carved out exceptions to the statutes governing descent and distribution to deprive an ostensibly rightful heir, falling within the ambit of those exceptions, of an otherwise lawful inheritance. Under [General Statutes (Rev. to 1985)] § 45-273a (a) [now § 45a-436 (g)] a person who, without sufficient cause, abandons his or her spouse is foreclosed from receiving a statutory share of the estate of the deceased spouse. Under [General Statutes (Rev. to 1985)] § 45-279 (a) [now § 45a-447][fn7] a person
 - finally convicted of murder is precluded from inheriting any

part of the estate of the deceased victim. . . ." (Citations omitted.) *Hotarek v. Benson*, 211 Conn. 121, 125-28, 557 A.2d 1259 (1989). There is, however, no statute barring an attorney who drafted a testamentary instrument from inheriting by the instrument she drafted. Because there is no statute barring a distribution to Sandford, the heirs at law ask us to use our equitable powers to prevent such a distribution. We cannot do so. 'Even if the omission of such a statute were the result of legislative oversight or neglect, we have no power to supply the omission or to remedy the effect of the neglect. . . . [A]ny qualification [of the law of descent and distribution] pronounced by this court would be a judicial grafting of public policy restrictions on an explicit statutory provision. . . . The authorities make clear that judicial tribunals have no concern with the policy of legislation and they cannot engraft upon the provisions of the statutes of descent and distribution an exception to bar an inheritance. . . . The statutes cannot be changed by the court to make them conform to the court's conception of right and justice in a particular case. . . . To avoid trenching on legislative ground, the court must take the view that if the legislature had intended such an exception from the statutes as is sought in this case, it would have said so.' (Citations omitted; internal quotation marks omitted.) *Id.*, 128-29.

- *Skindzier v. Commissioner Of Social Services*, No. 0501376 (Conn. Super. Ct., J.D. New Britain, January 4, 2001), 2001 WL 51663 (Conn. Super. 2001). "A will is a unique kind of transfer, with special rules associated with the proper execution and administration thereof. *Barnes v. Viering*, 152 Conn. 243, 246, 206 A.2d 112 (1964); *Crane v. Manchester*, 143 Conn. 498, 500-501, 123 A.2d 752 (1956). The creation of a revocable trust is not a testamentary act and need not conform to the requirements of the common-law statute of wills. *Cramer v. Hartford-Connecticut Trust Co.*, 110 Conn. 22, 33-34, 147 A. 139 (1929). Under a will, a spouse need only claim the spousal share if disinherited; see General Statutes § 45a-436; *Del Vecchio v. Del Vecchio*, 146 Conn. 188, 192-93, 148 A.2d 554 (1959). Alternatively, a spouse is unable to claim a spousal share against a trust. *Cherniack v. Home National Bank & Trust Co.*, 151 Conn. 367, 370-71, 198 A.2d 58 (1964). . . . We conclude, therefore, that the rules applicable to wills should not be applied to the plaintiff's situation where a revocable trust was the chosen instrument of the plaintiff's spouse."
- *Elgar v. Elgar*, 238 Conn. 839, 840, 679 A.2d 937 (1996). "Prior to their marriage, they had executed an antenuptial agreement wherein each party had waived his or her rights to the other's property in the event of death or divorce."
- *Dalia v. Lawrence*, 226 Conn. 51, 69-70 (1993). "It is evident, therefore, that surviving spouse's elective share in

lieu of what he or she would take under a will does not include the proceeds of a § 36-110(a) account, because those proceeds cannot be regarded as 'passing under a will' within the meaning of § 45a-436(a)."

- Parniawski v. Parniawski, 33 Conn. Supp. 44, 46, 359 A.2d 719 (1976). "This state has placed its stamp of approval on a contract entered into in contemplation of marriage in which each prospective spouse released any claim to the property owned by the other at the time of the marriage or thereafter, agreeing that on the death of either, the survivor should have no claim to his or her property."
- Cherniack v. Home National Bank & Trust Co., 151 Conn. 367, 371, 198 A.2d 58 (1964). "It is true that under § 46-12 a surviving spouse is given a stated interest in all of the 'property, real and personal, legally or equitably owned by the other at the time of his or her death.' But this provision gives no interest in the property of the other before death. Since the plaintiff had no right or interest in the property of the decedent during his lifetime, a valid trust agreement could not be fraudulent as to her. One cannot be defrauded of that to which he has no right."
- Sacksell v. Barrett, 132 Conn. 139, 145, 43 A.2d 79 (1945). "Furthermore, since the adoption of the 1877 act, in deciding whether a widow could by agreement bar her claim to the share which the statute provides, we said: 'On principle there appears to be no good reason why such an agreement, if fairly made and entered into, by a woman of full age, for adequate consideration received, should not be binding upon her.' Staub's Appeal, 66 Conn. 127, 134, 33 Atl. 615. The same holds true of the plaintiff's agreement releasing his statutory interest."
- In re Williamson's Estate, 123 Conn. 424, 428, 196 A. 770 (1938). "Whether there has been abandonment within this provision of the statute presented a question of fact to be determined by the trial court upon evidence offered before it."
- Lewis v. Shannon, 121 C. 594, 599, 186 A. 540 (1936). "In the following cases it was held that a surviving spouse, having elected to take a statutory share instead of a provision under the will, could not, in addition, take under statutes of descent which apply only to intestate estates."
- Farmers' Loan & Trust Company v. McCarty, 100 Conn. 367, 371, 124 A.40 (1924). "The widow's election annuls all testamentary provisions in her favor, but it does not annul any testamentary provisions in favor of others The result is that the provision of section (b) for setting aside one quarter to the residue is temporarily suspended, the provision for the payment of the income of such quarter to

the widow is annulled; and since her statutory life is not defeated by remarriage, the provision that upon her remarriage the corpus of the fund disposed of in section (b) shall go to the testator's son Richard, becomes incapable of execution."

- Brown's Appeal. 72 Conn. 141, 154, 44 A. 29 (1899). "Both these colonies [New Haven and Massachusetts] adopted the English law of dower, giving to the wife a right of dower in any land of which the husband might be seized during coverture [marriage]. Connecticut extended and modified the right of a wife to share in all the estate her husband might leave at his death."
- Harris v. Spencer, 71 Conn. 233, 237, 41 A. 773 (1893). "That statute gives a surviving husband a share of the property owned by his wife at her decease; it does not prevent the wife during her life from disposing of her property in any lawful way she pleases, or incumbering it by any lawful agreement."
- Stewart v. Stewart, 5 Conn. 317 (1824).

WEST KEY NUMBERS

- Descent and Distribution #52. *Surviving husband and wife*
- Executors and Administrators #173 et seq. *Allowance to surviving wife, husband and children*
- Wills #778 et seq. *Election*
- Dower and Curtesy

DIGESTS:

- 7 WEST'S ALR DIGEST (2004): *Descent and distribution*
 - Surviving husband or wife
 - § 52. Nature of the right in general
 - (1). In general
 - (2). Rights of surviving wife in general
 - (3). Rights of surviving husband in general
 - § 53. Constitutional and statutory provisions
 - § 62. Estoppel, waiver, or release of right
 - § 63. Forfeiture of right
 - § 64. Election
 - In general
 - Right to and necessity for election
 - Sufficiency
 - Operation and effect

ENCYCLOPEDIAS:

- 25 AM. JUR. 2D Dower and Curtesy (2004).
 - Surviving spouse's rights and liabilities
 - § 30. Priority of dower and curtesy claims as to third parties
 - § 31. Statute of limitations
 - § 32. Assignment of dower or curtesy, generally
 - § 33. Estoppel
 - § 34. Rights before assignment
 - § 35. Tenancies created by assignment; tenancy by

- the dower and by the curtesy
 - § 36. Valuation of tenancy in dower or curtesy
 - § 37. Damages for detention of dower
 - § 38. Payments in lieu of dower
 - § 39. —Will provisions in lieu of dower; electing against the will
 - § 40. Nature and length of quarantine
 - § 41. Purpose
 - § 42. Distinction from dower
 - § 43. Abandonment of right
 - § 44. Property affected
 - § 45. Right to and necessity of possession
 - § 46. —Adverse possession
- 23 AM. JUR. 2D *Descent and Distribution* (2002).
 - § 109. Surviving spouse, generally
 - § 110. Share of surviving spouse
 - § 111. —Uniform Probate Code
 - § 112. —Share in nature of both dower or curtesy and inheritance
 - § 113. —Share by inheritance conjunctively or alternatively with dower or curtesy
 - § 114. No issue, parent or kindred
 - § 115. Changes in value after death of intestate; right to income
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 - § 117. Conveyances or encumbrances by intestate
 - § 118. Property in another state
 - § 119. Effect of misconduct by surviving spouse, generally
 - § 120. Desertion, abandonment, or nonsupport
 - § 121. —Consensual separation
 - § 122. —Separation for cause
 - § 123. Adultery
 - § 124. Feloniously killing a spouse
 - § 125. Void or voidable marriage
 - § 126. —Effect of prior institution of annulment proceedings
 - § 127. Remarriage after death of the intestate
 - § 128. Bigamous marriage of the surviving spouse
 - § 129. Divorce
 - § 130. —Interlocutory decree
 - § 131. Separation agreement
 - § 132. —Construction of agreement
 - § 133. —Effect of reconciliation
 - § 134. Liability for debts and remedies of creditors
 - § 135. Real property
 - § 136. Order of liability as between real and personal property
 - § 137. Debt of heir or distributee
- 28 C.J.S. *Dower and Curtesy* (1996).

- § 1. Introduction
- § 2. Definitions and general considerations
- § 6. Extent of dower
- § 7. Capacity to take
- § 8. Requisites
- § 9. —Marriage
- § 10. —Title or seisin of husband
- § 11. —Death of husband
- § 12. Lands, tenements, and hereditaments in general
- § 13. Personal property and choses in action in general
- § 14. Proceeds of sale or condemnation of land
- § 18. Estates of inheritance
- § 30. Priorities
- § 41. Inchoate right of dower
- § 47. Bar, release, or forfeiture

- David Carl Minneman, Annotation, *Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will*, 85 ALR4th 418 (1991).
- Caroll J. Miller, Annotation, *Prior Institution Of Annulment Proceedings Or Other Attack On Validity Of One's Marriage As Barring Or Estopping One From Entitlement To Property Rights As Surviving Spouse*, 31 ALR4th 1190 (1984).
- John P. Ludington, Annotation, *Liability For Administrative Expenses Of Spouse's Elective Share*, 89 ALR3d 315 (1979).
- V. Woerner, Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 ALR3rd 858 (1970).
- Annotation, *Waiver Of Right To Widow's Allowance By Post Nuptial Agreement*, 9 ALR3d 955 (1966).
- Annotation, *Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 446 (1967).
- Annotation, *Adultery On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 486 (1967).
- Annotation, *Separation Agreement As Barring Rights Of Surviving Spouse In Other's Estate*, 34 ALR2d 1020 (1954).
- Annotation, *Dower Or Curtesy Rights Of Stockholder's Spouse In Real Property Of Corporation*, 32 ALR2d 705 (1953).
- Annotation, *Right Of Widow Of An Heir To Dower, Where Heir Dies Before Decedent's Estate Is Closed*, 23 ALR2d 961(1952).

TEXTS &

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN,

- TREATISES:** CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
Chapter 8, "Dower and curtesy—property rights of a surviving spouse."
§ 8.1 In general
§ 8.2 Statutory share of the surviving spouse
§ 8.3 Relationship between statutory share and testamentary provisions
§ 8.4 Waiver of statutory share
§ 8.5 Forfeiture of statutory rights
§ 8.6 Effect on lifetime disposition of property
- LAW REVIEWS:**
- Barbara J. Stamm, Case Comment, *Dalia v. Lawrence: A Battle Of Statutory Interpretation Versus Public Policy*, 9 CONNECTICUT PROBATE LAW JOURNAL 357 (1995).
 - Mary Moers Wenig, *The Marital Property Law Of Connecticut: Past, Present And Future*, 1990 WISCONSIN LAW REVIEW 807 (1990). [Available at the Middletown Law Library].
 - Michael A. Neufeld, *Until Death Or Divorce Do Us Part: Estate Planning For Clients Who Wish To Insulate Their Assets From Their Spouses*, 58 CONNECTICUT BAR JOURNAL 267 (1984).
 - Elias Clark, *The Recapture Of Testamentary Substitutes To Preserve The Spouse's Elective Share: An Appraisal Of Recent Statutory Reforms*, 2 CONNECTICUT LAW REVIEW 513 (1970).
- COMPILER:** Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 1 Statutory Share

CONN. GEN. STAT. § 45a-436 (2008)	
Statutory share	<p>(a) On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse. The "statutory share" means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.</p>
Effect of will; right of election	<p>(b) If the deceased spouse has by will devised or bequeathed a portion of his or her property to his or her surviving spouse, such provision shall be taken to be in lieu of the statutory share unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse may elect to take the statutory share in lieu of the provision of the will.</p>
Time limitation; notice	<p>(c) The surviving spouse, or the conservator or guardian of the estate of the surviving spouse, with the approval, after notice and hearing, of the court of probate by which such conservator or guardian was appointed, shall, not later than one hundred fifty days from the date of the appointment of the first fiduciary, as defined in section 45a-353, file a notice, in writing, of his or her intention to take the statutory share with the court of probate before which the estate is in settlement, and if such notice is not so filed, the surviving spouse shall be barred of such statutory share . . .</p>

[cont'd]

CONN. GEN. STAT. § 45a-436 (2005) [cont'd]

Support allowance	(d) If the court of probate has allowed a support allowance under section 45a-320 from the deceased spouse's estate for support of the surviving spouse and for the support of his or her family, the surviving spouse shall not take his or her statutory share until the expiration of the time for which the support allowance is made.
Personal or real property	(e) The statutory share shall be set out by the fiduciary charged with the administration of the estate or, in the discretion of the probate court on its own motion or on application by any interested person, by distributors appointed by the court of probate. The statutory share may consist of personal property or real property, or both, according to the judgment of the fiduciary or distributors.

Table 2: Rights of surviving spouse: ALR Annotations

Rights of Surviving Spouse ALR Annotations	
Abandonment Desertion	<i>Annotation, Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate, 13 ALR3d 446 (1967).</i>
Adultery	<i>Annotation, Adultery On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate, 13 ALR3d 486 (1967).</i>
Alimony	<i>Gavin L. Phillips, Annotation, Death Of Obligor As Affecting Alimony, 79 ALR4th 10 (1990).</i>
Annulment	<i>Caroll J. Miller, Annotation, Prior Institution Of Annulment Proceedings Or Other Attack On Validity Of One's Marriage As Barring Or Estopping One From Entitlement To Property Rights As Surviving Spouse, 31 ALR4th 1190 (1984).</i>
Antenuptial Agreement	<i>V. Woerner, Annotation, Waiver Of Right To Widow's Allowance By Antenuptial Agreement, 30 ALR3rd 858 (1970).</i>
Contract to convey by Will	<i>David Carl Minneman, Annotation, Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will, 85 ALR4th 418 (1991).</i>
Conversion	<i>Sharon Haines, Annotation, Rights Of Surviving Spouse Taking Under Or Against Will As Affected By Provision In Will Directing Conversion, 33 ALR3d 1280 (1970).</i>
Earlier deceased spouse	<i>Annotation, Construction, Application, And Effect Of Statutes Providing For Descent Of Property Of Surviving Spouse Which Has Been Derived From Earlier Deceased Spouse, 49 ALR2d 391 (1956).</i>
Homicide	<i>Michael G. Walsh, Annotation, Homicide As Precluding Taking Under Will Or By Intestacy, 25 ALR4th 787 (1983).</i>
Post Nuptial Agreement	<i>Annotation, Waiver Of Right To Widow's Allowance By Post Nuptial Agreement, 9 ALR3d 955 (1966).</i>
Putative spouse	<i>Gregory G. Sarno, Annotation, Estoppel Or Laches Precluding Lawful Spouse From Asserting Rights In Decedent's Estate As Against Putative Spouse, 81 ALR3d 110 (1977).</i>
Separation Agreement	<i>Annotation, Separation Agreement As Barring Rights Of Surviving Spouse In Other's Estate, 34 ALR2d 1020 (1954).</i>
Tax refunds	<i>J.R. Kemper, Annotation, Right Of Surviving Spouse To Tax Refund Resulting From Joint Income Tax Return, 67 ALR3d 1038 (1975).</i>

Trusts	J.R. Kemper, Annotation, <i>Inclusion Of Funds In Savings Bank Trust (Totten Trust) In Determining Surviving Spouse's Interest In Decedent's Estate</i> . 64 ALR3d 187 (1975).
Wrongful death	Wade R. Habeeb, Annotation, <i>Right Of Spouse To Maintain Action For Wrongful Death As Affected By Fact That Injury Resulting In Death Occurred Before Marriage</i> (1976).

Section 2

Intestate Share in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the surviving spouse's or party to a civil union's intestate share of real and personal property. Also, legal arrangements by which intestate share may legally be avoided.

TREATED ELSEWHERE:

- If there is a will—see § 1 Statutory share
- If estate is insolvent—see § 3 Insolvent estate

STATUTES:

- CONN. GEN. STAT. (2008)
 - § 45a-436. Succession upon death of spouse. Statutory share
 - (g). [abandonment]. A surviving husband or wife shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section 45a-437, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

§ 45a-437. Intestate succession. Distribution to spouse

- Conn. Gen. Stats. § 46b-380o. "Wherever in the general statutes the terms 'spouse' . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition . . ." (EFFECTIVE OCTOBER 1, 2005). [Full text](#).

CASES:

- Dinan v. Marchand, 279 Conn. 558, 562, 903 A.2d 201

(2006). "The will did not provide for the contingency of marriage. Absent the codicil, the testator's marriage to the plaintiff would have revoked the will in its entirety; General Statutes (Rev. to 1995) § 45a-257; see also General Statutes § 45a-257e; leaving the plaintiff with an intestate share of the estate, in this case, one half outright. See General Statutes § 45a-437, which provides in relevant part: 'Intestate succession. Distribution to spouse. (a) If there is no will . . . the portion of the intestate estate of the decedent . . . which the surviving spouse shall take is . . . (4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely.'

We note that for wills executed after January 1, 1997, a testator's marriage after the execution of a will no longer revokes the will. Rather, it remains with a surviving spouse, who is to receive an intestate share in the decedent's estate. General Statutes § 45a-257a (a)." *Dinan v. Marchand*, supra, [492] 91 Conn. App. 494-95 n. 2."

- Elgar v. Elgar, 238 Conn. 839, 840, 679 A.2d 937 (1996). "Prior to their marriage, they had executed an antenuptial agreement wherein each party had waived his or her rights to the other's property in the event of death or divorce. In 1990 the decedent died intestate."
- Kucej v. Kucej, 34 Conn. App. 579, 582, 642 A.2d 81 (1994). "As the decedent's issue, the plaintiff is an heir for the purpose of intestacy . . . Pursuant to § 45a-303(c), an heir of the decedent can object to the appointment of an administrator or administratrix of the decedent's intestate estate. Therefore, the plaintiff in this case, as an heir, has a statutory right to object to the appointment of the named defendant as administratrix."
- Dalia v. Lawrence, 226 Conn. 51, 627 A.2d 392 (1993). "The principal issue in this appeal is whether a valid trust savings account, established by a decedent pursuant to General Statutes § 36-110(a), must be included in the statutory intestate share of the surviving spouse of the decedent pursuant to General Statutes (Rev. to 1989) § 45-273a (b)."
- Phoebe Lewis, et als, Appeal from Probate v. Estate of Anna J. Eno, 3 Conn. Supp. 444 (1936). *Cousins of the testatrix and the next of kin, claimed the right of distribution of the intestate estate when testatrix dies childless and without surviving parent.*
- Kingsbury v. Scovill's Administrator, 26 Conn. 349 (1857). *Widow dies before distribution of estate of decedent husband is made.*

WEST KEY NUMBERS

- Executors and Administrators #173-201. *Allowance to surviving wife, husband and children*
- Descent and Distribution #52-67. *Surviving husband and wife*
- Wills #778-803. *Election*

DIGESTS:

- 7 WEST'S ALR DIGEST (2004): *Descent and distribution*
 - Surviving husband or wife
 - § 52. Nature of the right in general
 - (1). In general
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 - (3). Rights of surviving husband in general
 - § 53. Constitutional and statutory provisions
 - § 54. Issue of intestate also surviving
 - § 55. —In general
 - § 56. —Issue of former marriage
 - § 57. Failure of issue of intestate
 - § 58. Failure of issue and of other kindred of intestate
 - § 59. Property acquired by intestate by gift, devise, or descent
 - § 60. —In general
 - § 61. —From former husband or wife
 - § 62. Estoppel, waiver, or release of right
 - § 63. Forfeiture of right

ENCYCLOPEDIAS:

- 26A C.J.S. *Descent and distribution* (1956).
- 23 AMERICAN JURISPRUDENCE 2D *Descent and distribution* (2002), §§ 109-133
 - Effect of misconduct §§ 119-124
- David Carl Minneman, Annotation, *Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will*, 85 ALR4th 418 (1991).
- Caroll J. Miller, Annotation, *Prior Institution Of Annulment Proceedings Or Other Attack On Validity Of One's Marriage As Barring Or Estopping One From Entitlement To Property Rights As Surviving Spouse*, 31 ALR4th 1190 (1984).
- John P. Ludington, Annotation, *Liability For Administrative Expenses Of Spouse's Elective Share*, 89 ALR3d 315 (1979).
- V. Woerner, Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 ALR3rd 858 (1970).
- Annotation, *Waiver Of Right To Widow's Allowance By Post Nuptial Agreement*, 9 ALR3d 955 (1966).
- Annotation, *Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 ALR3d 446 (1967).
- Annotation, *Adultery On Part Of Surviving Spouse As*

Affecting Marital Rights In Deceased Spouse's Estate, 13 ALR3d 486 (1967).

- Annotation, *Separation Agreement As Barring Rights Of Surviving Spouse In Other's Estate*, 34 ALR2d 1020 (1954).
- Annotation, *Dower Or Curtesy Rights Of Stockholder's Spouse In Real Property Of Corporation*, 32 ALR2d 705 (1953).
- Annotation, *Right Of Widow Of An Heir To Dower, Where Heir Dies Before Decedent's Estate Is Closed*, 23 ALR2d 961(1952).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (1999).
 - Chapter 8, Dower and curtesy—property rights of a surviving spouse
 - § 8.1 In general
 - § 8.2 Statutory share of the surviving spouse
 - § 8.3 Relationship between statutory share and testamentary provisions
 - § 8.4 Waiver of statutory share
 - § 8.5 Forfeiture of statutory rights
 - § 8.6 Effect on lifetime disposition of property

LAW REVIEWS:

- Barbara J. Stamm, Case Comment, *Dalia v. Lawrence: A Battle Of Statutory Interpretation Versus Public Policy*, 9 CONNECTICUT PROBATE LAW JOURNAL 357 (1995).
- Mary Moers Wenig, *The Marital Property Law Of Connecticut: Past, Present And Future*, 1990 WISCONSIN LAW REVIEW 807 (1990). [Available at the Middletown Law Library].
- Michael A. Neufeld, *Until Death Or Divorce Do Us Part: Estate Planning For Clients Who Wish To Insulate Their Assets From Their Spouses*, 58 CONNECTICUT BAR JOURNAL 267 (1984).
- Elias Clark, *The Recapture Of Testamentary Substitutes To Preserve The Spouse's Elective Share: An Appraisal Of Recent Statutory Reforms*, 2 CONNECTICUT LAW REVIEW 513 (1970).

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Table 3 Spouse's Intestate Share

Spouse's Intestate Share	
<p>CONN. GEN. STAT. § 45a-437 (2008). Intestate succession. Distribution to spouse</p>	<p>(a) If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to section 45a-320, which the surviving spouse shall take is:</p> <p>(1) If there is no surviving issue or parent of the decedent, the entire intestate estate absolutely;</p> <p>(2) If there is no surviving issue of the decedent but the decedent is survived by a parent or parents, the first one hundred thousand dollars plus three-quarters of the balance of the intestate estate absolutely;</p> <p>(3) If there are surviving issue of the decedent all of whom are also issue of the surviving spouse, the first one hundred thousand dollars plus one-half of the balance of the intestate estate absolutely;</p> <p>(4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely.</p> <p>(b) For the purposes of this section issue shall include children born out of wedlock and the issue of such children who qualify for inheritance under the provisions of section 45a-438.</p>
<p>CONN. GEN. STAT. § 45a-436(g) (2008)</p>	<p>A surviving husband or wife shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section 45a-437, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the</p>

	time of the other's death.
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Table 4 Dalia v. Lawrence

Dalia v. Lawrence
226 Conn. 51, 68, 627 A.2d 392 (1993)

Commentators have acknowledged other legal arrangements by which a Connecticut decedent may validly avoid his or her surviving spouse's intestate share.¹⁰

¹⁰ See M. Wenig, "The Marital Property Law of Connecticut: Past, Present and Future," 1990 Wis. L. Rev. 807, 855 (suggesting such arrangements as an "inter vivos trust with reserved life estate and power of appointment; revocable inter vivos trust; life insurance; refund annuity; revocable or irrevocable joint and survivorship holdings; IRAs and nonqualified retirement plans; pay-on-death U.S. bonds and other P.O.D. contractual benefits; and even a deed deliverable to grantee on death of grantor"); E. Clark, "The Recapture of Testamentary Substitutes to Preserve the Spouse's Elective Share: An Appraisal of Recent Statutory Reforms," 2 Conn. L. Rev. 513, 531 (1970) (suggesting insurance, annuities, pensions, United States bonds payable to children on parent's death, or various trust arrangements).

Insolvent Estate

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to an insolvent estate and the surviving spouse .
- DEFINITIONS:**
- “But even the fact of insolvency is not, in and of itself, a ground for denying an allowance if one is found to be necessary.” Baldwin v. Trademens National Bank, 147 Conn. 656, 662, 165 A.2d 331 (1960).
- STATUTES:**
- CONN. GEN. STAT. (2008).
§ 45a-435 Personal property that may be set out to spouse from insolvent estate
 - Conn. Gen. Stats. § 46b-380o. “Wherever in the general statutes the terms ‘spouse’ . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition” (EFFECTIVE OCTOBER 1, 2005). Full text.
- CASES:**
- Baldwin v. Trademens National Bank, 147 Conn. 656, 662, 165 A.2d 331 (1960). “Rather the statute contemplates the award of such amount as may be necessary, in addition to the other assets of the spouse, to maintain a household and manner of living appropriate to the decedent’s station in life, in view of the financial condition of his estate upon his death Of course, an allowance cannot be granted for the purpose of enriching the widow at the expense of others entitled to the estate or the rights of creditors in case of insolvency. But even the fact of insolvency is not, in and of itself, a ground for denying an allowance if one is found to be necessary.”
 - Barnum v. Boughton, 55 Conn. 117, 118, 10 A. 514 (1887). “If there are wife and children surviving, presumably they are without means for providing themselves with instant food and fuel, except as they may claim these necessities from the hand of public charity; and must so continue until the law has completed the work of division; a work of statutory necessity, spreading over a considerable space of time. In the interest of humanity and for the prevention of what in almost every case would be an unseemly and unnecessary demand upon public charity, the law provides that the probate court may make such temporary allowance

to the widow or children as shall supply their daily recurring needs. **Of course, if it shall finally result that the estate is not equal to the debts, these last are to bear the burden of the temporary necessities of the family. This is no hardship because every man knows when he gives credit to another that death may overtake the debtor when he is unable to pay and that a portion of such assets as he may have will be expended for the temporary support of his wife and children. It is a risk intentionally assumed, and the result therefore not to be complained of.**" (emphasis added).

WEST KEY #

- Executors and Administrators # 408-419

ENCYCLOPEDIAS:

- 34 C.J.S. *Executors and Administrators* (1998).
§§ 693-705. Insolvent estates
- 31 AM. JUR. 2D *Executors and Administrators* (2002).
§§ 832-835. Insolvent estates

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Support During Settlement Of The Estate

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the surviving spouse's allowance during the settlement of the estate.
- STATUTES:**
- CONN. GEN. STAT. (2008).
 - § 45a-320. Allowance for support of surviving spouse and family. Family car
 - § 45a-321. Custody of real property. Products and income of real property. Family may occupy homestead.
 - § 46b-380o. "Wherever in the general statutes the terms 'spouse' . . . or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition . . ." (EFFECTIVE OCTOBER 1, 2005). [Full text.](#)
- CASES:**
- Baldwin v. Trademens National Bank, 147 Conn. 656, 662, 165 A.2d 331 (1960). "Rather the statute contemplates the award of such amount as may be necessary, in addition to the other assets of the spouse, to maintain a household and manner of living appropriate to the decedent's station in life, in view of the financial condition of his estate upon his death Of course, an allowance cannot be granted for the purpose of enriching the widow at the expense of others entitled to the estate or the rights of creditors in case of insolvency."
 - Barnum v. Boughton, 55 Conn. 117, 118, 10 A. 514 (1887). "If there are wife and children surviving, presumably they are without means for providing themselves with instant food and fuel, except as they may claim these necessities from the hand of public charity; and must so continue until the law has completed the work of division; a work of statutory necessity, spreading over a considerable space of

time. In the interest of humanity and for the prevention of what in almost every case would be an unseemly and unnecessary demand upon public charity, the law provides that the probate court may make such temporary allowance to the widow or children as shall supply their daily recurring needs.

- Staub's Appeal from Probate, 66 Conn. 127, 133, 33 A. 615 (1895). "The principal question in the case relates to the effect of the ante-nuptial contract upon the right of the widow to claim or receive an allowance."

**WEST KEY
NUMBERS:
DIGESTS:**

- Executors and Administrators # 173-201
- ALR DIGEST: *Executors and Administrators* §§ 99-99.8

ENCYCLOPEDIAS:

- 34 C.J.S. *Executors and Administrators* (1998).
§§ 344-393. Allowance to surviving spouse or children
- 31 AM. JUR. 2D *Executors and Administrators* (2002).
§§ 677 – 723. Family allowance
- John D. Perovich, Annotation, *What Is "Necessary" Furniture Entitled To Exemption From Seizure For Debt*, 41 ALR3d 607 (1972).
- Annotation, *Family Allowance From Decedent's Estate As Exempt From All Attachment , Garnishment, Execution, And Foreclosure*, 27 ALR3d 863 (1969).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Inchoate Rights

A Guide to Resources in the Law Library

- SCOPE:**
- Bibliographic resources relating to inchoate rights
- DEFINITIONS:**
- **Inchoate right.** “The universal rule is that the right of either husband or wife in the real property of the other, of which said other died seized, is conditioned solely upon survivorship. If the one claiming such interest die before the one seized the fee, such death wholly extinguishes such interest. During the life of such consort such interest in realty is usually spoken of as ‘inchoate right.’” Long v. Long, 124 N.E. 161, 162 (1919).
- CASES:**
- Cherniack v. Home National Bank & Trust Co., 151 Conn. 367, 370, 198 A.2d 58 (1964). “It is important to bear in mind in this connection that under Connecticut law neither husband nor wife acquires, by virtue of the marriage, any interest in the real or personal property of the other during that other’s lifetime. General Statutes § 46-9. In other words either spouse may, in his lifetime, without the consent or knowledge of the other, make a valid gift, or otherwise dispose of his property, to a third party.”
- TEXTS & TREATISES:**
- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (1999).
 Chapter 8, “Dower and curtesy—property rights of a surviving spouse.”
 § 8.6 Effect on lifetime disposition of property
- COMPILER:** Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560.