# Volume 38

# PART I. INTRODUCTION TO MARITAL PROPERTY LAW

# CHAPTER 1. DEVELOPMENT OF MARITAL PROPERTY LAW

- A. Development of Community Property Concept in Antiquity
- Sec.
- 1.1 In General.
- 1.2 Babylonia.
- 1.3 Egypt.
- 1.4 Greece.
- 1.5 Romans.
  - B. Spread of Community Property Concept Through Western Europe
- 1.6 In General.
- 1.7 Germanic Development of Community of Property.
- 1.8 Growth of Community of Property Encouraged Through Economic Need.
- 1.9 Division of Common and Community Law.
- 1.10 Characteristics of Community Property Under Visigothic/Germanic Culture.
  - C. Development of Community Property in France and Spain
- 1.11 France.
- 1.12 Spain Before the Visigoth Invasion.
- 1.13 Visigoths in Spain.
- 1.14 Moorish Influence in Spain.
- 1.15 Spanish Control.
- 1.16 Community Property as It Existed During Spain's Colonization of the "New World".
  - D. Texas Colonization Laws of the Spanish and Mexican Governments and Laws of Texas While in Process of Forming a Republic (1821–1836)
- 1.17 The Colony of Texas Under Spanish Control.

#### Sec.

- 1.18 The Texas Colony Under the New Mexican Government.
  - E. Establishment of Republic of Texas (1836-1845)
- 1.19 Texas Laws as a Republic.
- 1.20 Community Property Law in Texas Until the Formation of the Republic.
- 1.21 Adoption of the Common Law.
- 1.22 Adoption of the Community Property System.
  - F. Statehood and a New Constitution (1845-1866)
- 1.23 Community Property in the Constitution.
- 1.24 The Statutes of 1846.
- 1.25 The Statutes of 1848.
- 1.26 The Statutes of 1856.
  - G. The Constitutional Restatement
- 1.27 The Constitution of 1869.
- 1.28 The Constitution of 1876 and Subsequent Statutes.
  - H. The Wife's Management Rights (1911-1926)
- 1.29 The Wife's Separate Property Management.
- 1.30 Wife's Management of Certain Community Property.
- 1.31 Legislative Attempts to Extend Wife's Separate Property and Management.
  - I. Changes From 1926-1962
- 1.32 Enlargement of Married Women's Rights.
- 1.33 Partition of Community Property.
- 1.34 Further Control of Women's Separate Property.
- 1.35 The Survivorship in Community Property Attempt.
- 1.36 Notification of Sole Management of Separate Property.
  - J. Statutory Developments (1963-1980)
- 1.37 Amendments in 1963.
- 1.38 Amendments in 1965.
- 1.39 Amendments in 1967.
- 1.40 Amendments in 1969; Adoption of the Family Code.
- 1.41 Amendments in 1971.
- 1.42 Amendments in 1973.
  - K. 1980-Present
- 1.43 Amendments in 1980.
- 1.44 Amendments in 1983.
- 1.45 Amendments in 1985.
- 1.46 Changes in 1987.

#### Sec.

1.47 Changes in 1989.

#### PART II. COMMUNITY AND SEPARATE PROPERTY

#### CHAPTER 2. SEPARATE OR COMMUNITY PROPERTY

- 2.1 The Nature of Marital Property Title.
- 2.2 Community Property.
- 2.3 Separate Property—Before Marriage.
- 2.4 Separate Property—During Marriage.
- 2.5 Separate Property—By Agreement.
- 2.6 Separate Property—Under the Texas Family Code.
- 2.7 Increase in Marital Property.

#### CHAPTER 3. PERSONAL INJURY

- A. Separate Recovery in Personal Injury
- 3.1 Introduction to Separate Recovery in Personal Injury.
- 3.2 Pain and Suffering.
- 3.3 Disfigurement.
- 3.4 Loss of Earning Capacity Not During Marriage.
- 3.5 Loss of Consortium.

# B. Community Recovery in Personal Injury

- 3.6 Introduction to Community Recovery in Personal Injury.
- 3.7 Expenses.
- 3.8 Loss of Earnings.
- 3.9 Loss of Earning Capacity During Marriage.
- 3.10 Exemplary Damages.

## C. Defenses in Personal Injury Recovery

- 3.11 Introduction to Personal Injury Defenses.
- 3.12 Community Property Defense.
- 3.13 Interspousal Immunity.
- 3.14 Joint Commercial Enterprise.

# CHAPTER 4. TITLE TO MINERALS IN A MARITAL ESTATE

- A. Introduction to Mineral Estates and Marital Title
- 4.1 Mineral Estates.
- 4.2 Marital Title to Minerals.

#### B. Lessor's Interest

- 4.3 Bonus.
- 4.4 Delay Rental.
- 4.5 Royalty.

#### Sec.

4.6 Shut-in Royalty.

#### C. Lessee's Interest

- 4.7 Lessee's Working Interest.
- 4.8 Overriding Royalty.
- 4.9 Production Payment.
- 4.10 Partnerships and Corporations.

# CHAPTER 5. STOCKS, BONDS, AND OTHER INVESTMENTS

#### A. General Considerations of Ownership

- 5.1 Introduction to Stocks, Bonds, and Other Investments.
- 5.2 Separate and Community Property Ownership of Stocks, Bonds, and Other Investments.
- 5.3 Mutations of Stocks, Bonds, and Other Investments.
- 5.4 Tracing of Separate and Community Stocks, Bonds, and Other Investments.

#### B. Earned Increases

- 5.5 Introduction to Earned Increases in Stocks, Bonds, and Other Investments.
- 5.6 Earned Increases in Separate Stocks, Bonds, and Other Investments.
- 5.7 Earned Increases in Community Property Stocks, Bonds, and Other Investments.

#### C. Capital Increases

- 5.8 Introduction to Capital Increases in Stocks, Bonds, and Other Investments.
- 5.9 Capital Increases in Separate Property Stocks, Bonds, and Other Investments.
- 5.10 Capital Increases in Community Property Stocks, Bonds, and Other Investments.

# CHAPTER 6. TRUST PROPERTY AS DEALT WITH IN THE MARITAL RELATIONSHIP

# A. General Trust Principles

- 6.1 Introduction to Trusts.
- 6.2 Definition of a Trust.
- 6.3 Five Methods of Creating an Express Trust.
- 6.4 Charitable Trusts.
- 6.5 Noncharitable Private Trusts.
- 6.6 Constructive Trusts.

#### B. Spouse Beneficiary of Trust Property

#### Sec.

- 6.7 Introduction to Trusts in Community Property.
- 6.8 General Designation of Community Property.
- 6.9 Trust Principal Acquired Through Gift.
- 6.10 Trust Principal Acquired Through Devise or Inheritance.
- 6.11 Income From Trust Property Considered Community Property.
- 6.12 Beneficiary's Right of Possession.
- 6.13 Trust Property Income Intended to Become Trust Corpus.

#### C. Trusts Created by Operation of Law

- 6.14 Introduction to Equitable Trusts.
- 6.15 Purchase Money Resulting Trust.
- 6.16 Constructive Trusts.

#### CHAPTER 7. PARTNERSHIP AND MARITAL PROPERTY

- A. The Theories Concerning the Title to Partnership Property
- 7.1 Introduction to the Theories Concerning the Title to Partnership Property.
- 7.2 The Aggregate Theory.
- 7.3 The Entity Theory.

### B. The Effects of Marriage on a Partnership

- 7.4 Introduction to the Effects of Marriage on a Partnership.
- 7.5 Partnership Existing Prior to Marriage.
- 7.6 Partnership Created During Marriage.
- 7.7 The Nature of Property Used to Contribute to the Partnership.
- 7.8 Partnerships and the Homestead Exemption.
- 7.9 Profits and Surplus.
- 7.10 Mutation Theory With Regard to a Mineral Partnership.
- 7.11 Liability Incurred by the Partnership, Partners, and Nonpartner Spouses.
- 7.12 Management Interests of the Partnership.
- 7.13 Right to an Accounting.
- 7.14 Commingling of Partnership Assets.
- 7.15 Burden of Proof.

## C. The Effects of Divorce and Death on a Partnership

- 7.16 Introduction to the Effects of Divorce and Death on a Partnership.
- 7.17 Division of Partnership Property Interests by the Court Upon Divorce.
- 7.18 Premarital Agreements Pertaining to Property Division.
- 7.19 Dissolution or Termination of Partnership.
- 7.20 The Death of a Partner Spouse.
- 7.21 The Death of a Nonpartner Spouse.
- 7.22 Professional Partnerships and Entities.

_					
з	2	٠	٠.	٠	
ā	31		٠		

7.23 Valuation of Goodwill and Rights Thereto.

#### **CHAPTER 8. REAL ESTATE**

### A. Real Estate and the Community Property System

- 8.1 Introduction to Real Estate and Community Property.
- 8.2 The Act of 1848 and Increases.

#### B. Acquisition

- 8.3 Introduction to Acquisitions.
- 8.4 Credit Transactions.
- 8.5 Contracts for Sale.
- 8.6 Adverse Possession.

#### C. Recitations and Conveyancing Instruments

- 8.7 Introduction to Recitations and Conveyancing Instruments.
- 8.8 Recitations and Conveyancing Instruments.

#### D. Capital Increases

- 8.9 Introduction to Capital Increases.
- 8.10 Improvements.
- 8.11 Community Time, Talent, and Effort.
- 8.12 Damages to Real Estate.
- 8.13 Appreciation in Value.
- 8.14 Timber, Sand, and Gravel.

### E. Earned Increases

- 8.15 Introduction to Earned Increases.
- 8.16 Rents and Revenues.
- 8.17 Crops.
- 8.18 Mineral Interests.

#### F. Characterization and Conflicts of Law

- 8.19 Introduction to Characterization and Conflicts of Law.
- 8.20 Characterization of Texas Real Estate Owned by Out-of-State Residents and of Out-of-State Real Estate Owned by Texas Residents.

### CHAPTER 9. LIFE AND OTHER INSURANCE

#### A. Life Insurance

- 9.1 Introduction to Life Insurance.
- 9.2 Inception of Title Doctrine in Life Insurance Policies.
- 9.3 Life Insurance Policies Incidental to Employment.
- 9.4 Community Estate Reimbursement for Premiums Paid on Separate Property Life Insurance Policies.
- 9.5 Life Insurance Proceeds.

Sec.	
9.6	Cash Surrender Value in Life Insurance Policies.
9.7	Federal Estate Tax Issues in Life Insurance Proceeds.
9.8	Disposition of Life Insurance Proceeds—Simultaneous Death of In-
	sured Spouse and Beneficiary Spouse.
9.9	Disposition of Beneficial Interests in Life Insurance in Divorce.
	•
	B. Property and Other Insurance
9.10	Characterization of Property Insurance Proceeds.
9.11	Disposition of Beneficial Interests in Property Insurance in Divorce.
0.11	Disposition of Denomina Interests in Property Institutes in Divorce.
	CHAPTER 10. DISABILITY AND RETIREMENT
	A. Treatment of Disability Benefits
10.1	Introduction to Disability Benefits.
10.2	Types of Disability Benefits.
10.3	Apportionment of Disability Benefits.
10.4	Disability Benefits Under Special Programs.
B.	Disability Benefits Under the Texas Workers' Compensation Act
10.5	Introduction to Workers' Compensation.
10.6	Nature of the Benefits.
10.7	Title to Benefits.
	C. Treatment of Retirement Benefits
10.8	Introduction to Retirement Benefits.
10.9	Types of Retirement Plans.
10.10	Apportionment of Retirement Benefits.
10.11	Valuation of Pension Interests.
	D. Retirement Benefits Under Special Programs
10.12	Federal Retirement Benefits.
10.13	Military Retirement Benefits.
10.14	State, County, and Municipal Pensions.
10.15	Qualified Domestic Relations Orders.
	CHAPTER 11. INTERSPOUSAL AGREEMENTS, INCLUDING SURVIVORSHIP AGREEMENTS
	A. Statutory and Constitutional Provisions Generally
11.1	Interspousal Agreements—Present Texas Law.
11.2	—— Historical Background.
<b>:-</b>	
	B. Agreements Concerning Income or Property From Separate Property

11.3 Agreements Concerning Income or Property From Separate Property—In General.

XXIII

Sec. 11.4	Effect and Enforcement of the Income and Property From Separate Property Agreement.
	C. Partition or Exchange of Community Property
11.5 11.6	Partition or Exchange of Community Property—In General. Effect and Enforcement of Partition or Exchange Agreements.
	D. Separation Agreements and Other Considerations
11.7 11.8 11.9 11.10 11.11	Separation Agreements—In General.  The Ability to Waive the Homestead Right.  Overturning Enforcement of Interspousal Agreements.  Oral Interspousal Agreements.  Rights of Creditors; Recording.
	E. Survivorship Agreements
11.12 11.13 11.14	Introduction to Survivorship Agreements in Separate Property.  Joint Tenancies as to Marital Property.  Right to Survivorship in Multiple Party Accounts.
11.15 11.16 11.17	Introduction to Survivorship Agreements in Community Property. Formalities of the Community Property Survivorship Agreement. Ownership and Management in Survivorship Agreements in Community Property.
11.18 11.19 11.20	Revocation of Survivorship Agreements in Community Property.  Adjudication of Survivorship Agreements in Community Property.  Protection of Innocent Parties in Reference to Survivorship Agreements in Community Property.
11.21	Protection of Rights of Creditors as Related to Survivorship Agreements in Community Property.
	CHAPTER 12. PREMARITAL AGREEMENTS
12.1 12.2 12.3 12.4	Introduction to Premarital Agreements.  Formalities of a Premarital Agreement.  Content of a Premarital Agreement—Property Covered.  Making Separate Property.
12.5	Disposition of Property.
12.6 12.7	Amendment and Revocation of Premarital Agreements.  Enforcement and Burden of Proof of Premarital Agreements.
	CHAPTER 13. TRACING THROUGH MUTATIONS
	A. General Tracing Considerations
13.1	Introduction to General Tracing Considerations.
13.2	The Role of the Inception of Title Rule in the Tracing Process.
13.3	The Interplay of the Community Property Presumption With the Tracing Process.
13.4	Burden of Proof in Tracing.

B. Tracing Methods

C. Legal Premises Underlying the Tracing Methods

Introduction to Legal Premises Underlying the Tracing Methods.

Legal Presumptions Used in Value Tracing: Community-Out-First, Family Living Expense, and the Minimum Balance Rules.

Introduction to Tracing Methods.

Community Credit Presumption.

Separate Property Presumptions.

13.13 Tracing Spreadsheets and Computerized Tracing Aids.

Item Tracing.

Value Tracing.

Advanced.

Effect of Commingling Separate Property With Community Proper-

**Sec.** 13.5

13.6 13.7

13.8

13.9 13.10

13.11

13.12

13.14	Expert Evidence.
	D. Proof of Tracing
13.15	Introduction to Proof of Tracing.
13.16	Burden of Proof and Presumptions Against Parties Controlling or Destroying Evidence.
13.17	Discovery Methods—Interrogatories, Stipulations, Inventory, and Appraisal.
13.18	Parol Evidence.
	CHAPTER 14. REIMBURSEMENT RIGHTS
	A. General Overview of Reimbursement Issues.
14.1	Introduction to Reimbursements.
14.2	Equitable Right of Reimbursement.
14.3	Types of Reimbursement Claims.
14.4	Family Living Expenses or Necessaries Expended From the Separate Estate.
	B. Right of Reimbursement for Improvements.
14.5	Introduction to the Right of Reimbursement for Improvements.
14.6	Establishing and Measuring the Right of Reimbursement for Improvements.
14.7	Enforcement of the Right of Reimbursement for Improvements.
	C. Right of Reimbursement for Funds Advanced.
14.8	Introduction to the Right of Reimbursement for Funds Advanced.
14.9	Establishing and Measuring the Right of Reimbursement for Funds

#### Sec.

- 14.10 Enforcement of the Right of Reimbursement for Funds Advanced.
  - D. Right of Reimbursement for Time, Talent, and Effort of a Spouse.
- 14.11 Introduction to the Right of Reimbursement for Time, Talent, and Effort of a Spouse.
- 14.12 Establishing and Measuring the Right of Reimbursement for Time, Talent, and Effort of a Spouse.
- 14.13 Enforcement of the Right of Reimbursement for Time, Talent, and Effort of a Spouse.

#### CHAPTER 15. MANAGEMENT OF MARITAL PROPERTY

- A. Management of Marital Property in General
- 15.1 Introduction to Management of Marital Property in General.
- 15.2 Categories of Marital Property.
- 15.3 Homesteads.

### B. Management of Separate Property

- 15.4 Introduction to the Management of Separate Property.
- 15.5 Statutory Authority for Management of Separate Property.
  - C. Management of Sole Management Community Property
- 15.6 Introduction to Management of Sole Management Community Property.
- 15.7 Statutory Authority for Management of Sole Management Community Property.
- 15.8 The Disposition of Sole Management Community Property.
- 15.9 The Sole Management Community Property Presumption to Innocent Parties.
- 15.10 Actions by the Nonmanaging Spouse.
  - D. Management of Joint Management Community Property
- 15.11 Introduction to Management of Joint Management Community Property.
- 15.12 Statutory Authority for Management of Joint Management Community Property.
- 15.13 Disposition of Joint Management Community Property.
- 15.14 Effect of Commingling of Sole Management Property.
- 15.15 The Earnings of Children.
  - E. Change in Management (Management Agreements)
- 15.16 Introduction to Change in Management (Management Agreements).
- 15.17 Agency Between Spouses.

	F. Management Under Abnormal Circumstances
<b>Sec.</b> 15.18 15.19	Introduction to Management Under Abnormal Circumstances.  Management Under Abnormal Circumstances.
	G. Management on Death of Spouse
15.20 15.21	Introduction to Management on Death of Spouse.  Division of Authority Between Decedent's Personal Representative and the Surviving Spouse.
	Volume 39
	PART II. COMMUNITY AND SEPARATE PROPERTY—Continued
	CHAPTER 16. LIABILITY OF MARITAL PROPERTY
	A. Personal Versus Property Liability
16.1 16.2 16.3	Introduction to Personal Versus Property Liability. Property Liability—Generally. Personal Liability—Generally.
E	3. Actions of the Parties Bringing About Changes in Liability
16.4 16.5 16.6 16.7 16.8 16.9 16.10	Introduction to Actions Concerning Change in Liability. Changes in Management to Change Liability. Agency Between the Spouses to Change Liability. Imputed Negligence to Change Liability. Implied Assent to Change Liability. Divorce to Change Liability. Taxes to Change Liability.
	C. Liabilities Incurred Before Marriage
16.11 16.12 16.13	Introduction to Liabilities Incurred Before Marriage. Property Liability Incurred Before Marriage. Personal Liability Incurred Before Marriage.
	D. Tort Liability
16.14 16.15 16.16	Introduction to Tort Liability. Property Liability in Torts. Personal Liability in Torts.
	E. Contractual Liability
16.17 16.18 16.19	Introduction to Contract Liability. Property Liability in Contract. Personal Liability in Contract.

XXVII

	F. Liabilities Remaining After Death	
Sec.		
16.20	Liability After Death.	
	G. Interspousal Immunity	
16.21	Liability—Interspousal Immunity.	
	H. Necessaries	
16.22	Introduction to Liability for Necessaries.	
16.23	Defining Necessaries.	
16.24	Personal and Property Liability in Necessaries.	
	CHAPTER 17. INCEPTION OF TITLE	
	A. Inception of Title—Adverse Possession	
17.1	Introduction to Inception of Title Through Adverse Possession.	
17.2	Inception of Title by Adverse Possession With Property Right.	
17.3	Inception of Title by Adverse Possession Without Property Right.	
	B. Inception of Title—Contract Law	
17.4	Introduction to Inception of Title in Contract Law.	
17.5	Inception of Title—Parol Contracts in Land Purchases.	
17.6	Personal Services as Consideration.	
17.7	Purchase Contracts.	
	C. Inception of Title—Credit	
17.8	Introduction to Inception of Title in Credit.	
17.9	Inception of Title—Credit Purchases.	
17.10	Credit as a Gift.	
	CHAPTER 18. PRESUMPTIONS AND RECITALS	
	A. The Community Property Presumption	
18.1	Introduction to the Community Property Presumption.	
18.2	Application and Effect of the Presumption.	
	B. Rebutting the Presumption	
18.3	Introduction to Rebutting the Presumption.	
18.4	Tracing to Overcome the Presumption.	
18.5	Commingling and the Presumption.	
18.6	Mutations and the Presumption.	
18.7	Property Acquired Prior to Marriage—Inception.	
18.8	Property Acquired by Gift—Overcoming the Presumption.	
18.9	Property Acquired by Devise and Descent—Overcoming the Pre- sumption.	

XXVIII

Sec.	
18.10 18.11	Personal Injuries—Overcoming the Presumption.  Agreements Between Spouses and the Presumption.
	C. Recitals in Contracts and Deeds
18.12	Introduction to Recitals.
18.13	Conveyances Between Spouses.
18.14	Conveyances From Third Parties.
	D. Overcoming a Recital With Parol Evidence
18.15	Introduction to Parol Evidence.
18.16	Fraud.
	Accident.
	Mistake.
	Confidential Relationship.
18.20	Parol Evidence and Bona Fide Purchasers.
	E. Secondary Presumption
18.21	Introduction to Secondary Presumptions.
18.22	Gift.
18.23	Resulting Trust.
CH	IAPTER 19. RECOVERY UNDER THE DEATH STATUTE
	A. Recovery Under the Death Statute, in General
19.1	Introduction to the Death Statute.
19.2	Classes of Death Beneficiaries.
19.3	Recovery of Damages—Pecuniary Loss.
19.4	Loss of Society and Companionship and Mental Anguish.
19.5	Exemplary Damages.
	B. Marital Title of Wrongful Death Recoveries
19.6	Introduction to Marital Title of Wrongful Death Recoveries.
19.7	The Constitutional Role in Determining Title and the Community Property Presumption.
19.8	Separate Property Recoveries; Exemplary Damages.
	C. Defenses to Recovery in Death Actions
19.9	Introduction to Defenses.
19.10	Imputed Fault.
19.11	Interspousal Immunity.
19.12	Contributory Negligence and the Comparative Responsibility Doctrine.
	CHAPTER 20. DIVISION ON DIVORCE

### CHAPTER 20. DIVISION ON DIVORCE

A. General Division Considerations

20.1 Introduction to General Division Considerations.

Sec.	
20.2	Constitutional Foundations of District Court's Power to Divide the Estate of the Parties.
20.3	Statutory Foundations of District Court's Power to Divide the Estate of the Parties.
20.4	Jurisdictional Considerations.
20.5	Filing Suit.
20.6	General Evidentiary Considerations.
	B. Temporary Orders, Pending Divorce
20.7 20.8	Introduction to Temporary Orders, Pending Divorce.  Statutory Provisions Governing Temporary Orders, Pending Divorce.
	C. Characterization of the Marital Property
20.9	Introduction to Characterization of the Marital Property.
20.10	Types of Property That Are Subject to Division.
20.11	Types of Property That Are Not Subject to Division.
20.12	Taxes, Debts, and Other Liabilities of the Marital Estate.
	D. Factors Affecting Division
20.13	Introduction to Factors Affecting Division.
20.14	Factors Affecting Division of Marital Property.
	E. Methods of Dividing Marital Property
20.15	Introduction to Methods of Dividing Marital Property.
20.16	Methods of Division.
	F. Enforcement of Property Division Postdivorce
20.17	Introduction to Enforcement of Property Division Postdivorce.
20.18	Methods of Enforcement.
	G. Property That Is Not Divided Upon Divorce
20.19	Introduction to Property That Is Not Divided Upon Divorce.
20.20	The Effects of the Court's Failure to Divide Certain Property.
C	HAPTER 21. DIVISION OF PROPERTY ON VOID OR VOIDABLE RELATIONSHIPS
	A. Void Relationships

Nature and Characteristics of Putative Marriages.

Disposition of Property of a Putative Marriage.

Introduction to Void Relationships.

21.1

21.2

21.3

21.4

	TABLE OF CONTENTS			
Sec. 21.5	Disposition of Property of Meretricious Relationships.			
	B. Voidable Marriages			
21.6 21.7 21.8	Nature and Characteristics of Voidable Marriages. Nature and Characteristics of Annulment. Disposition of Property of a Voidable Marriage.			
	C. Live-in Relationships			
21.9 21.10	Nature and Characteristics of Live-in Relationships.  Disposition of Property in Live-in Relationships.			
	CHAPTER 22. DIVISION OF MARITAL PROPERTY ON DEATH			
	A. General Intestate Succession Considerations			
22.1 22.2 22.3 22.4 22.5 22.6 22.7 22.8 22.9 22.10	Introduction to Intestate Succession.  How Title Passes Under a Will and Upon Intestacy. Intestate Division of Community Property. Recipients of Separate Property Upon Intestacy. The Property's Source Is Not a Concern in Intestacy. Adoption and Inheritance. Various Matters Dealing With the Right to Inherit. Legitimated Children's Inheritance Rights. Per Capita and Per Stirpes Distribution of Marital Property. The Survival Requirement and the Distribution of Marital Property.			
22.11 22.12 22.13 22.14 22.15 22.16	B. General Election of Wills Considerations Introduction to Election of Wills. Election, the Requirement to Take as an Heir Under a Will, or Next of Kin Under Rules of Intestate Succession. Types of Property for Which an Election May Be Made. How to Compel Elections. Methods and Requirements of Making Elections. Effect of Making an Election.			
PART III. HOMESTEADS				
	CHAPTER 23. INTRODUCTION TO HOMESTEADS			
23.1 23.2 23.3 23.4 23.5	Homesteads—History Prior to 1839.  ——1839 to 1845.  ——1845 to 1869.  ——1869 to 1876.  ——1876 to Present.			

# **CHAPTER 24. TYPES OF HOMESTEADS**

# A. The Family Homestead

Sec.	
24.1	Introduction to the Family Homestead.
24.2	Property of the Family Homestead.
24.3	The Family Estate Right.
24.4	The Family Definition.
24.5	Social Status.
24.6	Obligation of Support.
24.7	Corresponding Dependence.
24.8	The Traditional Family.
24.9	The Extended Family.
24.10	•
	B. The Single Adult Homestead
24.11	Introduction to the Single Adult Homestead.
24.12	P
24.13	
24.14	After-Acquired Rights.
24.15	Improvement Contracts.
	C. The Constitutional Survivor's Homestead
24.16	Introduction to the Constitutional Survivor's Homestead.
24.17	
24.18	
24.19	
24.20	
24.21	The Survivor's Estate Right.
24.22	Second Marriages.
	D. The Statutory Survivor's Homestead
24.23	Introduction to the Statutory Survivor's Homestead.
24.24	Claimants—Statutory Survivors.
24.25	Right to Cut Off Creditors' Claims.
24.26	No Right to Prevent Partition.
	CHAPTER 25. ACQUISITION AND ABANDONMENT OF HOMESTEADS
	OF HOMESTEADS
	A Acquiring a Hamastand

	A. Acquiring a Homestead
<b>25.1</b>	Introduction to Acquiring a Homestead.
<b>25.2</b>	Intent Required to Establish a Homestead.
25.3	Requirement of Physical Occupancy.
25.4	Acquiring a Family Homestead.
25.5	Acquiring a Single Adult Homestead.

25.5 Acquiring a Single Adult Homestead.25.6 Acquiring a Survivor's Homestead.

	B. Changes Affecting the Homestead
Sec.	
25.7	Introduction to Change in the Homestead Situation.
25.8	Change Resulting From Constitutional Amendment.
25.9	Change in Personal Status.
25.10	Change in Homestead Character.
	C. Abandonment of Homestead
25.11	Introduction to Abandonment.
	Abandonment Requirements.
25.13	
25.14	
	_
	CHAPTER 26. HOMESTEAD EXEMPTION AND USE
	A. The Homestead Exemption
26.1	Introduction to the Homestead Exemption.
26.2	Purpose of the Homestead Exemption.
26.3	Constitution Construed Liberally.
26.4	Retroactive Application of Homestead Provisions.
26.5	State Law Governing.
26.6	Urban Excess.
26.7 26.8	Rural Excess. Partition Is Prohibited.
26.9	
26.10	
26.11	
26.12	<del>-</del>
26.13	
26.14	
26.15	
26.16	
26.17	Burden of Proof.
	B. Urban Homestead Use
26.18	Introduction to Urban Homestead Use.
26.19	
26.20	
26.21	
26.22	•
26.23	<del>-</del>
26.24	- · · · · · · · · · · · · · · · · · · ·
26.25	Urban Business Use.
26.26	Urban Business in Relation to Urban Residential.
26.27	Urban Residential Noncontiguous Lots.

26.28 Rental Property and the Urban Homestead.

26.29 Intent to Use as Urban Homestead.

# C. Rural Homestead Use

Sec.	
26.30	Introduction to Rural Homestead Use.
26.31	Rural Residential Use.
26.32	Rural Business Use.
26.33	Rural Noncontiguous Lots.
26.34	Rental and the Rural Homestead.
26.35	Intent to Use as Rural Homestead.
20.00	intent to Ose as Itulai Homesveau.
	CHAPTER 27. TRANSFER AND MORTGAGE OF THE HOMESTEAD
	A. Conveyancing of the Homestead
27.1	Introduction to Conveying Homestead Property.
27.2	Joinder of Spouses Necessary in the Conveyance of Family Home stead Property.
27.3	Unusual Circumstances That Allow for the Conveyance or Encumbrance of a Separate Property Homestead Without Spousa Joinder.
27.4	Unusual Circumstances That Allow for the Conveyance or Encumbrance of a Community Property Homestead Without Spous al Joinder.
	B. Mortgages and Other Encumbrances on the Homestead
27.5	Introduction to Encumbrances on a Homestead—Generally.
27.6	Liens on Real Property Created Prior to Designation as Home stead.
27.7	Purchase Money Lien on the Homestead in Texas.
27.8	Renewal and Extension of Liens on Homestead Property.
27.9	Mechanic's and Materialman's Liens on Homestead.
27.10	State Ad Valorem Tax Liens on Homestead.
27.11	"Pretended Sales" of Homestead Property Construed as Mortgages
27.12	Creditor's Remedy for Default of Payment—The Foreclosure Sale of Homestead Property.
	Page
Table	of Statutes 377
<b>Table</b>	of Court Rules 397
<b>Table</b>	of Cases
T-do-	405