Volume 9

CHAPTER 1. INTRODUCTION

- § 1:1 Overview
- § 1:2 Spanish and Mexican law
- § 1:3 1840 adoption of common law
- § 1:4 Probate legislation
- § 1:5 Scope

PART I. INTESTATE SUCCESSION

CHAPTER 2. INTRODUCTION TO INTESTACY

- § 2:1 Situations triggering an intestate distribution
- § 2:2 Policies supporting intestate succession
- § 2:3 Immediacy of title passage

CHAPTER 3. SPOUSAL RIGHTS IN INTESTATE PROPERTY

- § 3:1 Community property—Definition
- § 3:2 —Historical background—Spanish law
- § 3:3 ——1840 legislation
- § 3:4 ——1848 legislation
- § 3:5 —Distribution—If intestate not survived by children or descendants
- § 3:6 ——If intestate survived by children or descendants
- § 3:7 Separate property—Definition
- § 3:8 —Rights of surviving spouse—Historical background
- § 3:9 ———Early legislation of the Texas Republic
- § 3:10 ———The 1840 legislation
- $\S 3:11$ ———The 1848 legislation
- § 3:12 ——Distribution if intestate survived by spouse and children or other descendants
- § 3:13 ——Distribution if intestate survived by spouse but not children or other descendants
- § 3:14 ——Characteristics of the inherited estate

CHAPTER 4. NON-SPOUSAL RIGHTS IN INTESTATE PROPERTY

§ 4:1 Rights of descendants—Historical background—English and Spanish law

§	4:2	— —Texas legislation
§	4:3	—Distribution—Generally
§	4:4	——Per capita & per stirpes
§	4:5	— — Charging heir with actions of intermediary
8	4:6	—Posthumous children
§	4:7	Rights of ancestors—Historical background
§	4:8	—Distribution
-	4:9	Rights of collateral relatives—Historical background
-	4:10	——The doctrine of ancestral estates
8	4:11	— Chattel property and the statute of distribution of 1670
8	4:12	— The civil-law method of computing degrees of
		relationship
§	4:13	— —The canon-law system of computing degrees of
		relationship
§	4:14	—Ancestral property doctrine
§	4:15	—The parentelic system under Texas law—Brothers and sisters and their descendants
§	4:16	— — Uncles, cousins, and more remote collaterals
§	4:17	—Division of the estate into paternal and maternal
		moieties—Historical background
-	4:18	——Making the division
_	4:19	— — Unusual fact situations
§	4:20	——Assessment of results under parentelic system and "half-and-half" provision
§	4:21	— —The doctrine of representation and the "laughing heir"
§	4:22	—Per capita or per stirpes distribution—Introduction
_	4:23	— — Methods of computation—In general
§	4:24	— — —Texas
§	4:25	—Half and whole blooded heirs—Definition and historical background
§	4:26	——Computing distribution under Texas law
§	4:27	Rights of individuals resulting from alternative
		reproduction technologies
	4:28	Rights of non-marital partners
§	4:29	Genetic testing
C	НАІ	PTER 5. ADOPTED INDIVIDUALS
§	5:1	Historical background—In general
	5:2	—Spanish and Mexican law
	5:3	—Texas Adoption Act of 1850
8	5:4	——Effect on intestate succession
	5:5	—Amendments to 1850 Act
	5:6	—Necessity of transfer of custody under 1907 Amendment
	5:7	—1931 Act—In general
	5:8	— — Validity and sufficiency of caption
Ð		

§ 5:9 ——Summary of valid provisions of 1931 Act § 5:10 — —Interpretation § 5:11 — —Consequences § 5:12 ——Adoption of adults § 5:13 —1951 Act—In general ——Changes § 5:14 § 5:15 —1973 Legislation—In general § 5:16 —1973 legislation—Adoption of adults -2005 legislation-Adoption of adults § 5:17 § 5:18 Inheritance rules—Rights of adopted child -Rights of adoptive parent § 5:19 § 5:20 —Rights of natural parent § 5:21 —Adopted adults § 5:22 Retroactive effect of statutory changes—Introduction § 5:23 —The Hoch v. Hoch rule § 5:24 —Subsequent cases —Probate Code provisions § 5:25 Compliance with adoption statute—Who may adopt § 5:26 § 5:27 —Who may be adopted § 5:28 —Compliance with the required statutory procedure § 5:29 Contracts to adopt—In general § 5:30 —Validity § 5:31 Adoption by estoppel—In general § 5:32 —Proof required to establish § 5:33 —Analysis—In general § 5:34 —Persons against whom the estoppel may be asserted -Validation statutes and repeal of Article 46b § 5:35 § 5:36 Adoption in a foreign state or nation—In general —Conflicts rule as to existence and extent of rights to § 5:37 inherit § 5:38 —Statutory provisions § 5:39 Termination of inheritance rights

CHAPTER 6. NON-MARITAL CHILDREN

§ 6:1 Introduction § 6:2 Historical background—English and Spanish law § 6:3 —Early Texas statutes § 6:4 —Capacity to inherit § 6:5 —Capacity to transmit estates § 6:6 —Legitimation—Introduction § 6:7 — —Curative marital statutes ---Subsequent marriage § 6:8 § 6:9 -- Marriages deemed null in law § 6:10 — —Putative marriages

§ 6:11	—Family Code legislation
§ 6:12	•
§ 6:13	—The 1979 Amendments to Section 42 of the Texas Probate Code
§ 6:14	—The "recognition" issue
§ 6:15	—The 1987 Amendments to Section 42 of the Texas Probate Code
§ 6:16	The 1989 Amendments to Section 42 of the Texas Probate Code—When child without presumed father may inherit from natural mother
§ 6:17	—When child without a presumed father may inherit from natural father
§ 6:18	— — Determination of biological father
§ 6:19	—Protection of purchaser
§ 6:20	—Effect of void or voidable marriage
§ 6:21	Statute of limitations—Historical
§ 6:22	—2001 Uniform Parentage Act
§ 6:23	—Discovery rule inapplicable
§ 6:24	Effect on Wrongful Death Act
CHAPTER 7. POTENTIAL DISQUALIFICATIONS OF HEIRS	

- § 7:1 Introduction
- § 7:2 Criminal conduct of heir—English and Spanish law background
- § 7:3 —Constitutional and statutory provisions
- § 7:4 —Abandonment or other misconduct of spouse
- § 7:5 —Civil death
- § 7:6 Heir intentionally causing death of intestate—Introduction
- § 7:7 —Early Texas cases allowing heir to inherit
- § 7:8 —Constructive trust remedy
- § 7:9 Heir unintentionally causing death of intestate
- § 7:10 Suicide of intestate
- § 7:11 Alien status of heir-Common law and Mexican law background
- —Early Texas legislation § 7:12
- § 7:13 -Reciprocity Act of 1854
- —The alien land law of 1892 § 7:14
- -Removal of disqualification § 7:15
- § 7:16 Heir not in being—Historical
- § 7:17 —Current law
- § 7:18 "Bad" parent disqualification
- § 7:19 Voidable marriages

CHAPTER 8. SIMULTANEOUS DEATH

- § 8:1 Policy supporting survival requirement
- § 8:2 Survival period and effect of failure to survive
- § 8:3 Community property
- § 8:4 Joint tenants with rights of survivorship

CHAPTER 9. ADVANCEMENTS

- § 9:1 Introduction
- § 9:2 Development of Texas statute
- § 9:3 Meaning of the statutory term "advancement"
- § 9:4 Proof of advancement—Historical
- § 9:5 —Current law
- § 9:6 Distribution if advancement proved—In general
- § 9:7 —Advancee predeceasing advancer
- § 9:8 Valuation of the advanced property
- § 9:9 Requirement that the donor die intestate
- § 9:10 Persons affected by the doctrine of advancements

CHAPTER 10. DISCLAIMERS

- § 10:1 Introduction
- § 10:2 Texas Uniform Disclaimer of Property Interests Act

CHAPTER 11. TRANSFERS OF EXPECTANCY

- § 11:1 Release—Introduction
- § 11:2 —Viewed as advancement
- § 11:3 —Viewed as secret trust
- § 11:4 —Viewed as contract or conveyance
- § 11:5 —Effect on collateral heirs
- § 11:6 —Effect on releasor's children and descendants
- § 11:7 Assignment—Introduction
- § 11:8 —Texas statute

CHAPTER 12. OTHER INTESTACY MATTERS

- § 12:1 Escheat
- § 12:2 Conflicts of law
- § 12:3 Tortious interference with inheritance rights
- § 12:4 Disinheritance

PART II. WILLS

CHAPTER 13. NATURE AND EXTENT OF TESTAMENTARY POWER

§ 13:1 Introduction

§ 13:2	Forced heirship		
§ 13:3	-		
§ 13:4			
	PTER 14. HISTORICAL BACKGROUND OF		
WIL	LS ACTS		
§ 14:1	The English will before the statute of wills of 1540		
§ 14:2	S .		
§ 14:3			
§ 14:4	S .		
§ 14:5	1		
§ 14:6	History of the Texas wills statute		
CHA	PTER 15. LEGAL CAPACITY		
§ 15:1	Introduction		
§ 15:2			
	Marital status		
§ 15:4	Service in the armed forces		
СНА	PTER 16. TESTAMENTARY CAPACITY		
	Historical background		
§ 16.1 § 16:2	e e e e e e e e e e e e e e e e e e e		
§ 16.2 § 16:3	•		
	Comparison to contractual capacity		
§ 16:5			
СПУ	PTER 17. TESTAMENTARY INTENT		
	Introduction		
§ 17:1 § 17:2			
§ 17.2 § 17:3			
§ 17:4			
§ 17:5	S C		
CHAPTER 18. ATTESTED OR FORMAL WILLS			
_	Introduction ATTESTED OR FORMAL WILLS		
§ 18:1			
§ 18:2 § 18:3	Testator reading the will In writing—Historical background		
§ 18.3 § 18:4	—Character of required writing		
§ 18.4 § 18:5	Signed by testator—Historical background		
§ 18.6	—Sufficiency of signature		
§ 18.0 § 18:7	—Proxy signature		
§ 18:8	—Location—In general		
§ 18:9	——Effect of attestation of witnesses		
~			

§ 18:10	— —When testator's name is written at beginning by another person
§ 18:11	Attestation by witnesses—Historical background
§ 18:12	Attestation of witnesses—Number
§ 18:13	Attestation by witnesses—Meaning of the statutory term "attested"
§ 18:14	—Capacity—Meaning of "credible"
§ 18:15	——Age and mental capacity
§ 18:16	— — Prior criminal conduct
§ 18:17	—Intent
§ 18:18	—What facts must be attested by witness—In general
§ 18:19	—What facts must be attested by witnesses—Sufficiency of acknowledgement by testator to witnesses of signature
§ 18:20	—What facts must be attested by witness—Publication
§ 18:21	——Testator's request to the witnesses
§ 18:22	—Order of events—In general
§ 18:23	— —Texas interpretation
§ 18:24	—Character of signature—In general
§ 18:25	——By proxy
§ 18:26	—Location of subscription
§ 18:27	—In presence of testator—In general
§ 18:28	——Meaning of statutory language
§ 18:29	— —What testator must be able to see
§ 18:30	——Blind testators
§ 18:31	—Spouse as witness
§ 18:32	Attestation of witnesses—Beneficiary as witness— Historical background
§ 18:33	Attestation by witnesses—Beneficiary as witness—The supernumerary attesting witness
§ 18:34	Attestation of witnesses—Beneficiary as witness—Effect on will
§ 18:35	Attestation by witnesses—Beneficiary as witness—Effect on beneficiary's gift
§ 18:36	——Preservation of gift to attesting witness—Act of 1875
§ 18:37	— — —Article 8297
§ 18:38	— — — The 1955 Probate Code
§ 18:39	—Spouse of beneficiary as attesting witness—Historical background
§ 18:40	— — Wife of beneficiary
§ 18:41	——Husband of beneficiary
§ 18:42	—Executor as witness
§ 18:43	—Heir as witness
§ 18:44	Attestation of witnesses—Notary as witness
§ 18:45	—Indirect, remote, and incidental beneficiaries—In
	general

§ 18:46	——Stockholders, trustee, or trust beneficiaries as witness
§ 18:47	Attestation by witnesses—Indirect, remote, and incidental
	beneficiaries—Contingent beneficiary as witness
§ 18:48	——When two or more beneficiaries take under the same
9 10 10	gift and one of them is a witness
§ 18:49	—Recommendations on proper witnesses
§ 18:50	Self-proving affidavit—Historical background
§ 18:51	—Contents of affidavit
§ 18:52	—Testator's signature on self-proving affidavit but not will
§ 18:53	—Witnesses' attestation on self-proving affidavit but not will
§ 18:54	—One-step procedure
§ 18:55	—Unsworn declarations
§ 18:56	—Savings statute
§ 18:57	Will execution ceremony—Procedure
§ 18:58	Military testamentary instruments
§ 18:59	Savings statute
OTT A T	
	PTER 19. HOLOGRAPHIC WILLS
§ 19:1	Civil law background
§ 19:2	History of the Texas statute
§ 19:3	Effect of a valid holographic will
§ 19:4	Requirements—In testator's own handwriting
§ 19:5	—Wholly in testator's handwriting
§ 19:6	Character of testator's signature
§ 19:7	Location of testator's signature
§ 19:8	Date
§ 19:9	Publication
§ 19:10	Self-proving affidavit
§ 19:11	Deposit with county clerk
§ 19:12	Recommendations on use
CHAF	PTER 20. NUNCUPATIVE WILLS
§ 20:1	Historical background—In general
§ 20:2	—Soldier's and seamen's privileged wills
§ 20:3	Special considerations regarding testamentary capacity
0	and testamentary intent
§ 20:4	Property which may be disposed of by nuncupative will
§ 20:5	Requirements—Last sickness
§ 20:6	—Place of making
§ 20:7	—Request for witness
§ 20:8	—Presence of three witnesses
§ 20:9	—Competency of witnesses—In general
§ 20:10	——"Dead person's" statute
=	•

- § 20:11 —Reduction to writing within six days—In general § 20:12 —Contents of the writing
- § 20:13 ——Preparation of the writing

CHAPTER 21. CONDITIONAL WILLS AND GIFTS

- § 21:1 Introduction
- § 21:2 Effectiveness of will based on condition
- § 21:3 Effectiveness of bequest or devise based on condition— Introduction
- § 21:4 —Marriage or divorce
- § 21:5 —Religion
- § 21:6 —Other behavior
- § 21:7 —Drafting suggestions
- § 21:8 Special rules of construction

CHAPTER 22. COMBINATION WILLS

- § 22:1 Joint wills—Definition
- § 22:2 —Validity
- § 22:3 Reciprocal wills—Definition
- § 22:4 —Validity
- § 22:5 Contractual wills—Introduction
- § 22:6 —Validity in general
- § 22:7 —Capacity to contract
- § 22:8 —Limitations
- § 22:9 —What constitutes valid consideration
- § 22:10 —Failure of consideration
- § 22:11 —Proof of the contract—Current law
- § 22:12 ——Character & sufficiency of the evidence
- § 22:13 ——Intent to contract evidenced by form of wills and nature of dispositions
- § 22:14 ——Effect of recitation in adoption deed
- § 22:15 Motion for summary judgment
- § 22:16 —Statute of frauds—Generally
- § 22:17 ——Sufficiency of the writing
- § 22:18 ——The will itself as the required memorandum
- § 22:19 —Part performance—Contracts to devise or bequeath made upon consideration of marriage
- § 22:20 ——Contracts for the sale of real estate
- § 22:21 ——By execution of will
- § 22:22 —When repudiating party dies first
- § 22:23 —Effect of contract on after-acquired property
- § 22:24 —Death of intended beneficiary during lifetime of promisor
- § 22:25 —When surviving co-testator given fee simple

§ 22:26	—Revocability of the contract—In general
§ 22:27	· · · · · · · · · · · · · · · · · · ·
-	— —By surviving party
§ 22:29	—Survivor's title, rights, and powers—In general
§ 22:30	— —Where will is held to give the survivor a fee simple defeasible in decedent's property
§ 22:31	— — Where will gives survivor a life estate with remainder to others
§ 22:32	——Survivor's right to deal with the property during survivor's lifetime—In general
§ 22:33	— — — Where will gives survivor a fee simple
§ 22:34	— — —Implied limitation on survivor's right to deal with property
§ 22:35	———Importance of specific language in will authorizing survivor to deal with property
§ 22:36	— —Where each party makes absolute gift to survivor
§ 22:37	—Revocability of wills executed pursuant to contract
§ 22:38	—Enforcement of contract
§ 22:39	—Remedies for breach of contract—In general
§ 22:40	— — Remedies available during promisor's lifetime
§ 22:41	— Promisee's action for damages
§ 22:42	— Equitable remedies available to the promisee
§ 22:43	——Situations in which the taker's obligation is non-contractual
§ 22:44	Contracts not to make a will

CHAPTER 23. CLASSIFICATION OF TESTAMENTARY GIFTS

§ 23:1	Importance of classification
§ 23:2	Devise
§ 23:3	Bequest—In general
§ 23:4	—Specific
§ 23:5	—Specific bequest of a general nature
§ 23:6	Legacy—In general
§ 23:7	—General
§ 23:8	—Demonstrative
§ 23:9	Residual
§ 23:10	Charitable—In general
§ 23:11	—Duty to notify Texas attorney general
§ 23:12	Special satisfaction methods for pecuniary bequests

CHAPTER 24. ADEMPTION

- § 24:1 Definition and basic rule
- § 24:2 Case law exceptions

- § 24:3 Equitable conversion
- § 24:4 The special case of corporate stock
- § 24:5 Inadvertent ademption

CHAPTER 25. SATISFACTION

- § 25:1 Definition and basic rule
- § 25:2 Proof
- § 25:3 Conveyance and reacquisition

CHAPTER 26. EXONERATION

- § 26:1 Definition and basic rule
- § 26:2 Significance
- § 26:3 Relationship to abatement
- § 26:4 Recommendations

CHAPTER 27. CHANGES IN VALUE OF TESTATOR'S PROPERTY

- § 27:1 Introduction
- § 27:2 Appreciation
- § 27:3 Depreciation
- § 27:4 Securities
- § 27:5 Interest on legacies accruing after death

CHAPTER 28. LAPSE

- § 28:1 Definition and historical background
- § 28:2 Disposition of lapsed gift
- § 28:3 Anti-lapse statute—In general
- § 28:4 —Effect on class gifts
- § 28:5 Lapse in the residuary clause
- § 28:6 Lapsed charitable gifts and the cy pres doctrine

CHAPTER 29. SURVIVAL

- § 29:1 Survival period
- § 29:2 Change or elimination of survival period
- § 29:3 Relationship to anti-lapse statute

CHAPTER 30. CLASS GIFTS

- § 30:1 Definition
- § 30:2 Determining whether gift is to a class or to individuals
- § 30:3 Time of determining class membership
- § 30:4 Gift to "children"
- § 30:5 Gifts to "issue" or "born of"
- § 30:6 Recommendations

CHAPTER 31. ABATEMENT

- § 31:1 Definition
- § 31:2 Order of abatement—Case law
- § 31:3 —Statutory provision
- § 31:4 Ability of testator to control order of abatement

CHAPTER 32. TAX APPORTIONMENT

- § 32:1 Introduction
- § 32:2 Historical background
- § 32:3 Presumption of tax apportionment
- § 32:4 Type of property between which taxes are apportioned
- § 32:5 Types of taxes which are apportioned
- § 32:6 Basic apportionment rule
- § 32:7 Avoiding application of apportionment statute
- § 32:8 Estate tax deductions, exemptions, or credits due to relationship or purpose
- § 32:9 Credits for foreign gift or death taxes
- § 32:10 Credit for death taxes
- § 32:11 Exclusion of certain property from apportionment
- § 32:12 Temporary interest not subject to apportionment
- § 32:13 Apportionment with respect to Internal Revenue Code § 2032A and qualified property
- § 32:14 Tax extensions and federal apportionment
- § 32:15 Relationship between disclaimers and apportionment
- § 32:16 Apportionment of interest and penalties
- § 32:17 Apportionment of expenses
- § 32:18 Jurisdiction to act on application of interested persons
- § 32:19 Authority of representative to withhold taxes
- § 32:20 Duty of personal representative to recover taxes
- § 32:21 Rights of out-of-state representatives
- § 32:22 Award of expenses and attorney's fees
- § 32:23 Relationship between apportionment and abatement

CHAPTER 33. WILL REVOCATION—GENERALLY

- § 33:1 Meaning of "revocation"
- § 33:2 Distinguishing from related concepts
- § 33:3 Historical background
- § 33:4 Mental capacity
- § 33:5 Intent
- § 33:6 Burden of proof—Location
- § 33:7 —Presumption of non-revocation
- § 33:8 Lost wills—Elements to prove

§ 33:9	—Presumption	of re	evocation
3 00.0	1 1 CO dilipuloti	OIIC	Vocation

§ 33:10 Prohibition

CHAPTER 34. REVOCATION BY OPERATION OF LAW

§ 34:1	Historical background
§ 34:2	Marriage of testator
§ 34:3	Voidable marriages
§ 34:4	Divorce of testator
§ 34:5	—Distributions of voided gifts
§ 34:6	—Effect on trusts
§ 34:7	Pretermitted heirs—Definition
§ 34:8	—Relation to revocation statutes
§ 34:9	—Historical background—In general
§ 34:10	— — Posthumous children
§ 34:11	— Will executed when testator had living children
§ 34:12	-Modern law-If children living when will executed are
	not provided for
§ 34:13	——If children living when will executed are provided for
§ 34:14	—Historical background—Will executed when testator had
	no child living
§ 34:15	—Modern law—If no children living when will executed
§ 34:16	—Historical background—Meaning of "not mentioned" and "pretermitted"—Statutory history
§ 34:17	— — —Statutory interpretation
§ 34:18	———Admissibility of extrinsic evidence to show intent of
	testator
§ 34:19	——After-borns not provided for by settlement
§ 34:20	— —Non-marital children
§ 34:21	— —Adopted children
§ 34:22	— —Grandchildren and more remote descendants—Effect of death of after-born child during life of testator
§ 34:23	— — —Statutory provisions and interpretation
§ 34:24	—Modern law—Property liable for pretermitted child's share

Volume 10

CHAPTER 35. WILL REVOCATION BY PHYSICAL ACT

§ 35:1	Introduction—Language of the statute
§ 35:2	Necessity of performing the required physical act
§ 35:3	Revocation by proxy

§ 35:4 § 35:5 § 35:6 § 35:7 § 35:8	Intent to revoke —Duplicate originals Partial revocation by physical act—In general —Unattested holographic wills —Attested non-holographic wills		
_	PTER 36. WILL REVOCATION BY		
	SEQUENT WRITING		
§ 36:1	Introduction		
§ 36:2	Requirement that the revoking instrument be in writing and signed		
§ 36:3	Sufficiency of express words of revocation		
§ 36:4	Revocation by inconsistent dispositions in later will or codicil—Theories as to effect		
§ 36:5	—Consequences of implied revocation		
§ 36:6	—Evidence of execution of later instrument which cannot be produced		
§ 36:7	—Constructional tendency opposed to revocation by implication		
§ 36:8	—Effect of rule of construction that codicil republishes will with all its codicils		
	CHAPTER 37. REVOCATION OF REVOKING		
INST	RUMENT		
§ 37:1	Introduction		
§ 37:2	English law background		
§ 37:3	American law background		
§ 37:4	Texas law background		
§ 37:5	Texas rule of no revival		
CHA	PTER 38. CONDITIONAL REVOCATION		
§ 38:1	Conditional revocation by written instrument		
§ 38:2	Conditional revocation by destruction or cancellation		
§ 38:3	Revocation under mistake		
§ 38:4	Dependent relative revocation—In general		
§ 38:5	—Differences between revocation by written instrument and revocation by destruction or cancellation		
§ 38:6	—Importance of equitable principles in applying the doctrine		
CHA	CHAPTER 39. INTEGRATION		

§ 39:1 Generally § 39:2 Internal integration

- § 39:3 External integration
- § 39:4 Attested wills
- § 39:5 Holographic wills
- § 39:6 Nuncupative wills
- § 39:7 Other documents

CHAPTER 40. FACTS OF INDEPENDENT SIGNIFICANCE

- § 40:1 Introduction
- § 40:2 Acts controlled by the testator
- § 40:3 Acts not controlled by the testator
- § 40:4 Acts to be done by the beneficiary
- § 40:5 Contents of safe deposit box
- § 40:6 Other situations
- § 40:7 1993 contents statute

CHAPTER 41. INCORPORATION BY REFERENCE

- § 41:1 Definition
- § 41:2 Distinguished from integration
- § 41:3 Distinguished from facts of independent significance doctrine
- § 41:4 Distinguished from republication by codicil
- § 41:5 Treatment of incorporated material—Holographic wills
- § 41:6 —Attested wills

CHAPTER 42. POUR-OVER WILLS

- § 42:1 Introduction
- § 42:2 Historical background
- § 42:3 Statutory recognition—1961 Act
- § 42:4 —1993 Act
- § 42:5 Doctrine of incorporation by reference
- § 42:6 Relationship to facts of independent legal significance
- § 42:7 Recommendations
- § 42:8 Effect of divorce

CHAPTER 43. TESTAMENTARY POWERS OF APPOINTMENT

- § 43:1 Definition
- § 43:2 Historical background
- § 43:3 Ability of appointee to change will
- § 43:4 Requirement that donee survive testator
- § 43:5 Exercise of power of appointment by will

CHAPTER 44. THE RULE AGAINST PERPETUITIES

- § 44:1 Rule Against Perpetuities
- § 44:2 Reformation of interests violating rule against perpetuities
- § 44:3 Effect of invalidation
- § 44:4 2021 Legislation applicable to trusts

CHAPTER 45. THE "SECRET" TRUST

- § 45:1 Promise by beneficiary to hold in trust for another person
- § 45:2 Where the will shows an intent to create a trust but fails to identify the beneficiary—In general
- § 45:3 —Resulting trust
- § 45:4 Where the will contains no indication of intent to create a

CHAPTER 46. REPUBLICATION

- § 46:1 Definition
- § 46:2 Historical background
- § 46:3 Validation of instruments not theretofore effective as wills
- § 46:4 Republication as revival of a revoked will

CHAPTER 47. WILL CONSTRUCTION

- § 47:1 Introduction
- § 47:2 Admissibility of extrinsic evidence
- § 47:3 General rules
- § 47:4 Where will shows intent to give effect to event which may occur after execution of will and before death of testator
- § 47:5 Ambiguity—Judicial Modification and Reformation
- § 47:6 —Patent
- § 47:7 —Latent
- § 47:8 —No apparent ambiguity and the "plain meaning" rule
- § 47:9 Misdescription or ambiguous description of person or property
- § 47:10 Meaning of "child" or "children"—In general
- § 47:11 —Adopted children—Historical background
- § 47:12 ——Texas law prior to 1931 adoption statute
- § 47:13 ——Effect of 1931 and 1951 Amendments to adoption statute
- § 47:14 ——Family Code
- § 47:15 Meaning of "grandchild" or "great-grandchild"
- § 47:16 Meaning of "brothers" or "sisters" and "nieces" or "nephews"
- § 47:17 Meaning of "heirs"
- § 47:18 Meaning of "issue"

§ 47:19	Meaning of "descendants"
§ 47:20	Meaning of "simultaneous death" or "common disaster"
§ 47:21	Meaning of "personal property"
§ 47:22	Meaning of "personal effects"
§ 47:23	Meaning of "survivor(s) thereof"
§ 47:24	The presumption against intestacy
§ 47:25	Rule in Shelley's Case—In general
§ 47:26	—Presumption as to use of word "heirs" in its technical
	sense
§ 47:27	—Language added to or substituted for "heirs"
§ 47:28	Gift to estate of deceased beneficiary
§ 47:29	Rights of life tenant
§ 47:30	Statute of limitations
8 17.21	Arbitration clause

CHAPTER 48. ELECTION WILLS

§ 48:1	Introduction
§ 48:2	Basic elements
§ 48:3	Testator's intention to dispose of property not testator's
	own
§ 48:4	—Spouse's community estate
§ 48:5	-Spouse's homestead rights, allowance for support, etc
§ 48:6	Benefit conferred and election to accept it
§ 48:7	Contractual wills—When spouse is beneficiary
§ 48:8	—Election distinguished from equitable conversion
§ 48:9	—Election when non-spouse is beneficiary
§ 48:10	-Where benefit accepted and beneficiary attacks will a
	breach of contract
§ 48:11	Burden of proof—Of need for election
8 48.12	—Whether election was made

CHAPTER 49. PRECATORY LANGUAGE

§ 49:1	Definition
§ 49:2	To restrict or limit gifts to beneficiaries
§ 49:3	To instruct personal representative
§ 49:4	Recommendations

CHAPTER 50. THE DEAD PERSON'S STATUTE

§ 50:1	Introduction
§ 50:2	Historical background
§ 50:3	Persons precluded from testifying
§ 50:4	Type of evidence deemed inadmissible
§ 50:5	Exceptions

CHAPTER 51. WILL CONTESTS

§ 51:1 Introduction § 51:2 Procedural matters—Generally § 51:3 —Standing to contest § 51:4 —Right to jury § 51:5 —Statute of limitations —Temporary administration during pendency of contest § 51:6 § 51:7 —Temporary injunction § 51:8 —Disclosure of confidential material § 51:9 Lack of legal capacity § 51:10 Lack of testamentary capacity—Generally § 51:11 —Demonstrating with lay testimony § 51:12 —Demonstrating with expert testimony § 51:13 —Effect of court and jury emotions Insane delusions—Definition § 51:14 § 51:15 —Connection between insane delusion and disposition § 51:16 Lack of testamentary intent § 51:17 Improper execution § 51:18 Prevented revocation § 51:19 Breach of contractual will § 51:20 Provisions void as against public policy Undue influence—Definition § 51:21 § 51:22 —Burden of proof § 51:23 —Evidence to demonstrate § 51:24 —Confidential relationship—In general § 51:25 — Effect of mere opportunity — Effect of close family relationship § 51:26 § 51:27 — Effect of "unnatural" dispositions § 51:28 —Will drafter as beneficiary § 51:29 -Mortmain statutes § 51:30 Duress—Compared to undue influence § 51:31 —Severity § 51:32 Fraud—Generally § 51:33 —In the factum/execution —In the inducement § 51:34 § 51:35 Mistake—Generally § 51:36 —In the factum/execution § 51:37 — Presumption that testator knew contents of will § 51:38 — —Filling blanks § 51:39 — Effect of suspicious circumstances § 51:40 —In the inducement § 51:41 ——Ability to correct mistake § 51:42 — Effect of innocent misrepresentation § 51:43 Remedies—Generally

§ 52:28 § 52:29

jury

§ 51:44	—Denial of probate
§ 51:45	—Imposition of constructive trust
§ 51:46	—Damages
§ 51:47	—Specific performance of contract
§ 51:48	—Reformation of interests violating rule against
	perpetuities
§ 51:49	—Criminal liability
§ 51:50	Family settlement agreements—In general
§ 51:51	—Parties
§ 51:52	—Consideration
§ 51:53	—Court approval
§ 51:54	—Enforceability
СНАР	TER 52. PREVENTING WILL CONTESTS
§ 52:1	
§ 52:1 § 52:2	Reasons to anticipate a will contest—In general
8 97:7	—Disinheritance of close family members in favor of distant relative, friend, or charity
§ 52:3	—Unequal treatment of children
§ 52.5 § 52:4	—Sudden or significant change in disposition plan
§ 52.4 § 52:5	—Imposition of excessive restrictions on bequests
§ 52.5 § 52:6	—Elderly or disabled testator
§ 52.0 § 52:7	—Unusual behavior of testator
§ 52.7 § 52:8	In terrorem provision—In general
§ 52.8 § 52:9	—Validity and enforceability
§ 52.5 § 52:10	—Drafting guidelines
§ 52.10 § 52:11	In terrorem provisions—Sample provisions
§ 52.11	Reasons for disposition
§ 52.12 § 52:13	-
§ 52.13 § 52:14	Avoid bitter or hateful language—Encourages will contests —Potential for testamentary libel
§ 52.14 § 52:15	Holographic wills
§ 52.15 § 52:16	
§ 52.10 § 52:17	Enhance the will execution ceremony
-	Videotape the will execution ceremony—In general —Uses of will execution videotape
§ 52:18 § 52:19	—Admissibility of will execution videotape
-	
§ 52:20	—Advantages over other types of evidence
§ 52:21	—Potential problems
§ 52:22	—Procedure/format of will execution videotape
§ 52:23	—Conclusion
§ 52:24	Select witnesses thoughtfully—In general
§ 52:25	—Witnesses familiar with testator
§ 52:26	—Supernumerary witnesses
§ 52:27	—Youthful and healthy witnesses

Traceable witnessesWitnesses who would favorably impress the court and

§ 52:30	Obtain affidavits of individuals familiar with testator
§ 52:31	Document transactions with testator verifying intent
§ 52:32	"Coincidental" Doctor Appointment
§ 52:33	Obtain other evidence to document testator's actions
§ 52:34	Preserve prior will
§ 52:35	Reexecute same will on regular basis
§ 52:36	Suggest that testator make more traditional disposition
§ 52:37	Make significant inter vivos gift to disinherited heir
	apparent at time of will execution
§ 52:38	Recommend use of alternative estate planning techniques
§ 52:39	Ante-mortem probate—In general
§ 52:40	—Significant problems with post-mortem probate under
	Texas Law
§ 52:41	—Development
§ 52:42	—Current status
§ 52:43	—The future
§ 52:44	Contract not to contest

CHAPTER 53. MALPRACTICE AND PROFESSIONAL RESPONSIBILITY

§ 53:1	Negligent will drafting—Unhappy beneficiary as plaintiff
§ 53:2	—Personal representative as plaintiff
§ 53:3	Drafting attorney as beneficiary
§ 53:4	Attorney as executor
§ 53:5	Estate planning for both spouses—Introduction
§ 53:6	—Potential dangers of joint representation
§ 53:7	—Models of representation for married couples
§ 53:8	—Recommendations
§ 53:9	Attorney-client privilege
§ 53:10	Litigation privilege
§ 53:11	Negligent misrepresentation

PART III. PROBATE AVOIDANCE TECHNIQUES

CHAPTER 54. REASONS TO AVOID PROBATE

§ 54:1	Provide non-estate planning benefits
§ 54:2	Accelerate asset distribution
§ 54:3	Reduce estate planning and administration expenses
§ 54:4	Enhance confidentiality
§ 54:5	Minimize taxes
§ 54:6	Retain flexibility
§ 54:7	Change with less difficulty

§ 54:8	Protect from creditors
§ 54:9	Isolate from contest
§ 54:10	Increase understandability

CHAPTER 55. INTER VIVOS GIFTS

Introduction
Present donative intent
Delivery—Real property
—Personal property
Acceptance by donee
Texas Uniform Transfers to Minors Act—Generally
—Eligible transferees
—Eligible transferors
—Eligible custodians
—Method of transfer
—Administration of custodial property—Qualifications of
custodian
— — Duties of custodian
——Powers of custodian
— —Use of custodial property
——Administration expenses
——Accountings
—Liability
—Termination
—Other important concerns

CHAPTER 56. GIFTS CAUSA MORTIS

§ 56:1 Introduction§ 56:2 In contemplation of death§ 56:3 Elements of a gift causa mortis

CHAPTER 57. DEEDS EFFECTIVE UPON DEATH

§ 57:1	Introduction
§ 57:2	Statutory provision
§ 57:3	Delivery of instrument of conveyance
§ 57:4	Conditions and reservations expressed in the instrument of transfer
§ 57:5	Reservation of right to dispose of property or revoke conveyance—The Lady Bird Deed
§ 57:6	Effect of clause providing that "deed" or "conveyance" is not effective until grantor's death
§ 57:7	Admissibility of parol evidence
§ 57:8	Direct declarations of alleged testator

	Wills
§ 57:9	Texas Real Estate Property Transfer on Death Act— Generally
§ 57:10	Texas real estate transfer of death act—Deed creation requirements
§ 57:11	Texas real estate property transfer on death act—Effect while grantor alive
§ 57:12	—Revocation
§ 57:13	—Effect upon grantor's death
§ 57:14	—Impact on title insurance
CHA	PTER 58. INTER VIVOS TRUSTS
§ 58:1	
§ 58:2	Split of title
§ 58:3	•
§ 58:4	Purposes and uses of trusts
§ 58:5 § 58:6	Retention of powers by settlor—Modern law —Conveyance in trust—Historical development
§ 58:7	—Declaration of trust—Historical development
, 00.1	Declaration of trust Thistorical development
CHA	PTER 59. SURVIVORSHIP—NON-
COM	MUNITY PROPERTY
§ 59:1	Historical background
§ 59:2	Presumption
§ 59:3	*
§ 59:4	Joint tenancy under a trust
CHA	PTER 60. SURVIVORSHIP—COMMUNITY
	PERTY
§ 60:1	Introduction
§ 60:2	Historical background
§ 60:3	Formalities
§ 60:4	Effect of agreement during marriage
§ 60:5	Revocation
§ 60:6	Proof of agreement and effect of court order
§ 60:7	Protection of third parties
§ 60:8	Rights of creditors
§ 60:9	Recommendations
CHA	PTER 61. JOINT DEPOSITORY ACCOUNTS
§ 61:1	Definition
§ 61:2	Statutory provisions
§ 61:3	Historical background
§ 61:4	Language necessary to create a joint account with rights of survivorship

§ 61:5	Effect during lifetime of all parties—Beneficial ownership
§ 61:6	—Payment
§ 61:7	—Protection of others
§ 61:8	Payment after death
§ 61:9	Convenience signer
§ 61:10	Financial institution protection after death
§ 61:11	Creditor's rights after death
§ 61:12	Revocation or alteration by will
§ 61:13	Joint accounts created with community property
§ 61:14	Potential advantages and disadvantages
§ 61:15	Uniform account form

CHAPTER 62. TRUST DEPOSITORY ACCOUNTS

§ 62:1	Definition
§ 62:2	Historical background
§ 62:3	Intent to create a trust account
§ 62:4	Effect during lifetime of all parties—Beneficial ownership
§ 62:5	—Payment
§ 62:6	Effect after death of some but not all trustees
§ 62:7	Effect after death of all trustees—Ownership
§ 62:8	—Payment
§ 62:9	—Financial institution protection
§ 62:10	—Creditor's rights
§ 62:11	Convenience signer
§ 62:12	Revocation or alteration by will
§ 62:13	Potential advantages and disadvantages

CHAPTER 63. PAYABLE ON DEATH DEPOSITORY ACCOUNTS

§ 63:1	Definition
§ 63:2	Effect during lifetime of all parties—Beneficial ownership
§ 63:3	—Payment
§ 63:4	Effect after death of all original payees—Ownership
§ 63:5	—Payment
§ 63:6	—Financial institution protection
§ 63:7	—Creditor's rights
§ 63:8	Convenience signer
§ 63:9	Revocation or alteration by will
§ 63:10	Potential advantages and disadvantages

CHAPTER 64. CONVENIENCE DEPOSITORY ACCOUNTS

§ 64:1 Definition

§ 64:2	Purpose
	Effect during lifetime of party—Beneficial ownership
	—Payment
§ 64:5	—Financial institution protection
§ 64:6	Effect after death of party—Ownership
§ 64:7	—Payment
§ 64:8	—Financial institution protection

CHAPTER 65. CONTRACTS AND RELATED TECHNIQUES

§ 65:1	Introduction				
§ 65:2	Life insurance				
§ 65:3	—Beneficiary causing death of insured				
§ 65:4	—Divorce of insured and beneficiary				
§ 65:5	—Survival				
§ 65:6	—Accelerated payments and viatical settlements—				
	Background				
§ 65:7	— Evaluating the accelerated benefits/viatical settlement				
	option				
§ 65:8	— —Potential drawbacks				
§ 65:9	——Tax consequences				
§ 65:10	Other contracts performable at death—Background				
§ 65:11	—Estates Code authorization				
§ 65:12	United States savings bonds				

CHAPTER 66. PERSONA PROPERTY—THE RIGHT TO USE A DECEDENT'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

§ 66:1	Introduction
§ 66:2	Historical background
§ 66:3	Applicability of statutory scheme
§ 66:4	Recognition of persona property right
§ 66:5	Transferability of persona rights
§ 66:6	Ownership of persona rights after individual's death
§ 66:7	Registration of persona property
§ 66:8	Effect of registration of persona right claim
§ 66:9	Exercise of persona right during first year after individual's death
§ 66:10	Exercise of persona right after individual is dead for over one year
§ 66:11	Exercise of persona right by multiple owners
§ 66:12	Termination of persona rights
§ 66:13	Uses of persona rights permitted without owner's

- § 66:14 Uses of persona rights requiring owner's permission
- § 66:15 Liability for unauthorized use of persona rights

CHAPTER 67. PLANNING FOR INCOMPETENCE

§ 67:1 Durable power of attorney for property matters—Generally § 67:2 —Historical background § 67:3 —Durable Power of Attorney Act—Summary § 67:4 — — Applicability § 67:5 --- Agent Powers and Duties § 67:6 ——General Changes ——Acceptance and Reliance Provisions § 67:7 § 67:8 Statutory Durable Power of Attorney Form § 67:9 Medical power of attorney—Generally § 67:10 —Historical background § 67:11 -Requirements-Capacity of principal and agent § 67:12 ——Disclosure statement, execution and witnessing § 67:13 —Agent's authority to act § 67:14 —Limitations on agent's authority § 67:15 —Termination of agent's authority § 67:16 —Effect of durable power § 67:17 —Liability -Contest § 67:18 § 67:19 —Recommendations Self-declaration of guardian—Generally § 67:20 § 67:21 —Historical background § 67:22 -Requirements-Capacity of declarant § 67:23 ——Execution and witnessing § 67:24 -Proof —Contents of self-declaration § 67:25 § 67:26 —Effect of declaration § 67:27 —Revocation § 67:28 -Storage § 67:29 -Recommendations § 67:30 Stand-by trusts § 67:31 Consent to Medical Treatment Act—Generally § 67:32 —Potential surrogates § 67:33 -Procedures authorized and prohibited § 67:34 —Prerequisites for consent § 67:35 —Liability § 67:36 Declaration for mental health treatment—Generally § 67:37 —Eligibility to be a principal

—Formalities of declaration

—Effective date and duration

§ 67:38 § 67:39

- § 67:40 —Revocation
- § 67:41 —Effect of declaration

CHAPTER 68. PLANNING FOR DEATH

CILLI	TER 00. I ERNING FOR DERIN			
§ 68:1	Directive to physicians—Generally			
§ 68:2	—Definitions			
§ 68:3	—Patient's control of treatment decision—Written			
§ 68:4	— —Nonwritten			
§ 68:5				
	patient			
§ 68:6	—Control of treatment decision by interested persons			
§ 68:7	—Revocation of directive			
§ 68:8	—Effect of directive			
§ 68:9	—Liability			
§ 68:10	—Recommendations			
§ 68:11	Disposition of body—Generally			
§ 68:12	—Statutory law			
§ 68:13	—Texas case law			
§ 68:14	—Deceased's instructions—Inter vivos document			
§ 68:15	— — Will			
§ 68:16	——Preplanning			
§ 68:17	—Agent			
§ 68:18	—Limitation on right of surviving spouse to control			
Ü	disposition of deceased spouse's body			
§ 68:19	—Rights of interment in plot			
§ 68:20	—Limitation on right of person indicted for family violence			
§ 68:21	Out-of-hospital do-not-resuscitate orders—Generally			
§ 68:22	—Written			
§ 68:23	—Form			
§ 68:24	—Nonwritten			
§ 68:25	—Minors			
§ 68:26	—Persons who have not executed an out-of-hospital do-not-			
, 00.20	resuscitate order			
§ 68:27	—Compliance			
§ 68:28	—Revocation			
§ 68:29	—Conflicts with other instructions			
§ 68:30	—Effect on insurance			
§ 68:31	—Liability for honoring			
8 00.01	—Liability for honoring			

CHAPTER 69. ANATOMICAL GIFT ACT AND RELATED STATUTES

§ 69:1 Introduction

§ 68:32 —Liability for not honoring

§ 68:33 —Liability for concealing and forgery § 68:34 —Duties of governmental entities

§ 69:2	Persons who may make anatomical gifts			
§ 69:3	Purpose and recipient of anatomical gifts			
§ 69:4	Method of making anatomical gift—Will			
§ 69:5	—Driver's license			
§ 69:6	—Any communication			
§ 69:7	—Donor card or other record; donor registry			
§ 69:8	—After donor's death			
§ 69:9	Method of refusing to make an anatomical gift			
§ 69:10	Delivery of document			
§ 69:11	Amendment and revocation—Gift made before donor' death			
§ 69:12	—Refusal			
§ 69:13	—Gift made after donor's death			
§ 69:14	Preclusive effects			
§ 69:15	Resolving conflict with an advance directive			
§ 69:16	Procedure upon donor's death			
§ 69:17	Rights of donee			
§ 69:18	Criminal and civil liabilities			
§ 69:19	Hospital protocols; rights and duties of procurement organizations			
§ 69:20	Special powers of justice of the peace and medical examiner			
§ 69:21	Glenda Dawson Donate Life—Texas Registry			

CHAPTER 70. DIGITAL ASSETS

C	70	-	T /	- 1	
\sim	./[ı • ı	Int	radi	ıction
×	10		1110	Loui	ic morr

- § 70:2 Reasons fiduciary desires access to digital assets
- § 70:3 Access priority
- § 70:4 Types of access
- § 70:5 Impact on will drafting
- § 70:6 Personal representative access to the contents of the decedent's electronic communications?
- § 70:7 Personal representative access to the catalogue of decedent's electronic communications and other digital assets
- § 70:8 Trustee access
- § 70:9 Custodian compliance

APPENDICES

Appendix A. Conversion Chart—Probate Code to Estates Code

Appendix B. Conversion Chart—Estates Code to Probate Code

Table of Laws and Rules

Table of Cases

Index