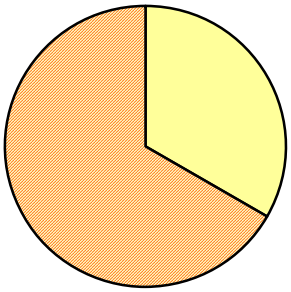
Texas Descent and Distribution[1]

The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

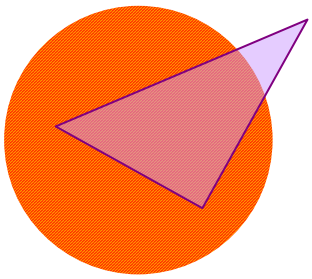
1. Married Person with Child[ren] or Other Descendants

A. Decedent's separate personal property (all that is not real property) (TPC § 38(b)(1))



- 1/3 to surviving spouse
- Children take 2/3 equally

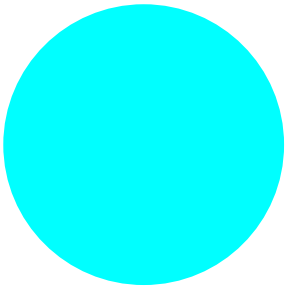
B. Decedent's separate real property (TPC § 38(b)(1))



- Surviving spouse gets 1/3 life estate
- Children take all equally, subject to surviving spouse's 1/3 life estate

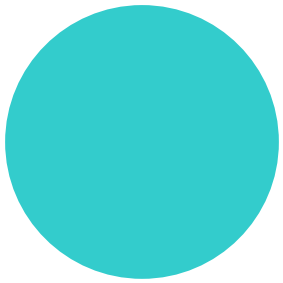
All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (TPC § 45(a)(2))



- All to surviving spouse

C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (TPC § 45(b))



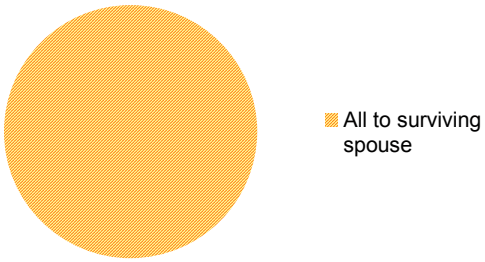
- All to children, who take equally
- Surviving spouse takes none, but retains own share

[1] The charts in this handout illustrate the general rules of descent and distribution under Texas law. In addition to the statutory references noted throughout, see § 43 of the Texas Probate Code, Determination of Per Capita and Per Stirpes Distribution, as well as the following sections: § 40, Inheritance By and From an Adopted Child; § 41, Matters Affecting and Not Affecting the Right to Inherit; § 42, Inheritance Rights of Children; § 44, Advancements; and § 47, Requirement of Survival by 120 Hours.

Compliments of Judge Kimberly Sullivan, Galveston County Probate Court

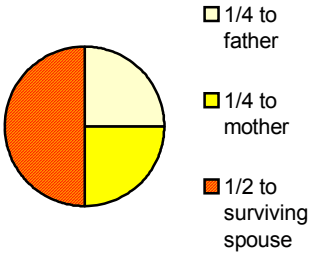
2. Married Person with No Child or Descendant

A. Decedent's separate personal property (all that is not real property) (TPC § 38(b)(1))

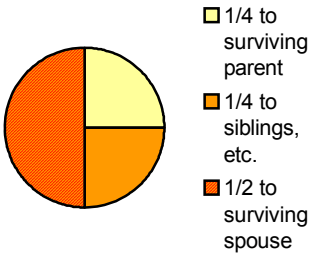


B. Decedent's separate real property (TPC § 38(b)(2))

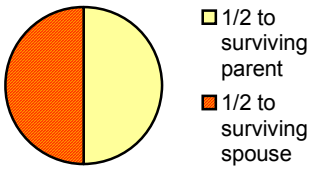
If decedent is survived by **both** mother and father.
TPC § 38(b)(2) & (a)(2).



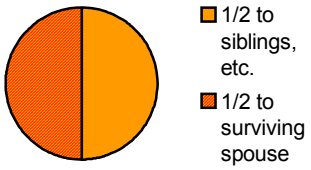
If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants.
TPC § 38(b)(2) & (a)(2).



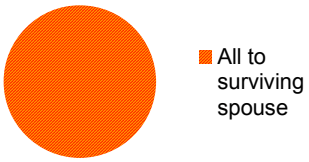
If decedent is survived by mother **or** father, **but is not** survived by any sibling(s) or their descendants.
TPC § 38(b)(2) & (a)(2).



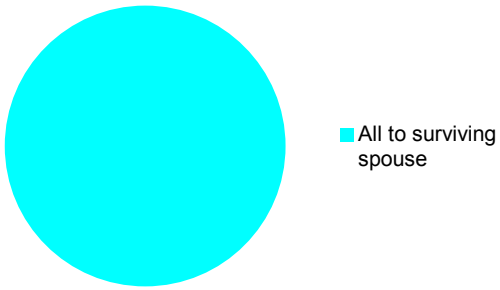
If decedent is survived by neither parent, but **is** survived by sibling(s) or their descendants.
TPC § 38(b)(2) & (a)(3).



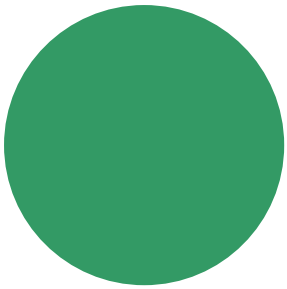
If decedent is survived by no parent, no sibling, and no descendant of a sibling.
TPC § 38(b)(2).



C. Decedent's share of community property (TPC § 45(a)(1))



3. Unmarried Person with Child[ren] or Other Descendants (TPC § 38(a)(1))

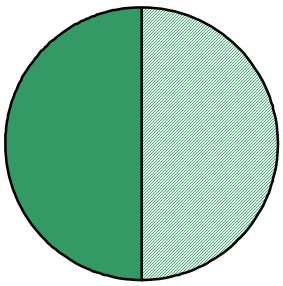


All to children, who take equally

4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:[1]

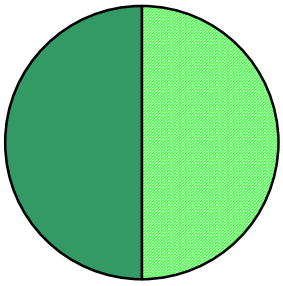
TPC § 38(a)(2). If decedent is survived by **both** mother and father.



1/2 of all property to father

1/2 of all property to mother

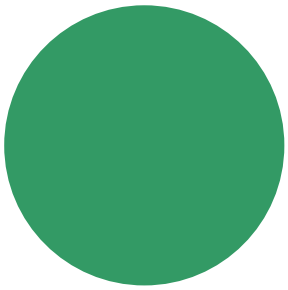
TPC § 38(a)(2). If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants.



1/2 to siblings or to descendants of deceased siblings

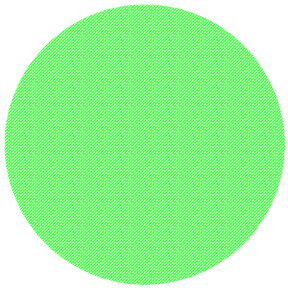
1/2 to surviving parent

TPC § 38(a)(2). If decedent is survived by mother **or** father, **but is not** survived by any sibling(s) or their descendants.



All to surviving parent

TPC § 38(a)(3). If decedent is survived by neither parent, but **is** survived by sibling(s) or their descendants.



All to siblings or to descendants of deceased siblings

[1] If none of the four situations above applies, see TPC § 38(a)(4).

Compliments of Judge Kimberly Sullivan, Galveston County Probate Court