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## **Per Stirpes, Per Capita & Per Capita With Representation**

### **1.1 Welcome.**

Hi, and welcome. This video is one in a series discussing various topics my clients have asked me to address. This discussion addresses the terms “Per Stirpes, Per Capita & Per Capita With Representation” as those terms are commonly used in wills and trust instruments. This is a “30,000-foot” look at these terms and their implications varies from state to state. Your states’ implications will certainly be different. You must consult a licensed professional in your jurisdiction.

### **1.2 No Legal Advice.**

***I cannot and do not provide any advice;*** only a licensed professional in your jurisdiction can do that. You should assume I am not licensed in any jurisdiction and am not addressing any of your specific concerns. You must consult a licensed professional in your jurisdiction.

## **Per Stirpes.**

### **2.1 Provision.**

This provision is from West’s Legal Forms, Fourth Edition, Volume 16, Page 333.

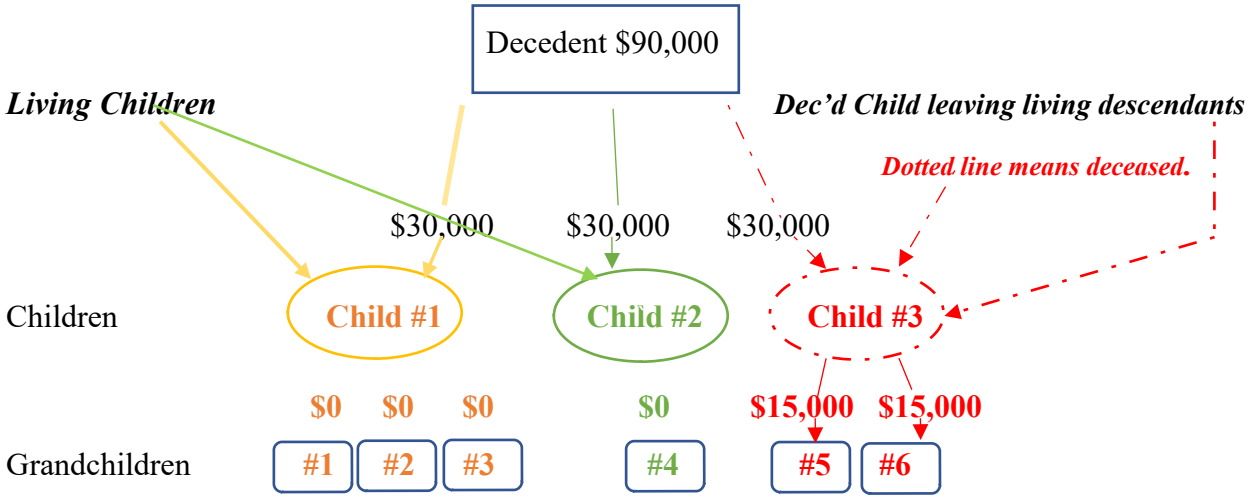
**9.14 Per Stirpes.** All references in this Will to “*per stirpes*” shall mean a distribution in accordance with this Section. Except for discretionary distributions that may be made unequally among a group of beneficiaries, whenever a distribution is to be made to the descendants of any person, the property to be distributed shall be divided into as many shares as there are <sup>①</sup> then living children of the person and <sup>②</sup> deceased children of the person who left descendants who are then living. Each then living child (if any) shall take one share and the share of each deceased child shall be divided among his then living descendants in the same manner.

**2.2 To Reiterate,**

Regarding the descendants of any person there is then (1) One share each for the then living children of the person, and (2) One share for a deceased child who left (*leave?*) descendants who are living, -- then that share shall be divided among his then living descendants in the same manner.

**2.3 Examples.**

**Example (1):** Assume a Decedent willed \$90,000 to his descendants, *per stirpes*:



**Example (2):** If **Child #1** were deceased, Grandchild #1, #2, and #3 would receive \$10,000 each.

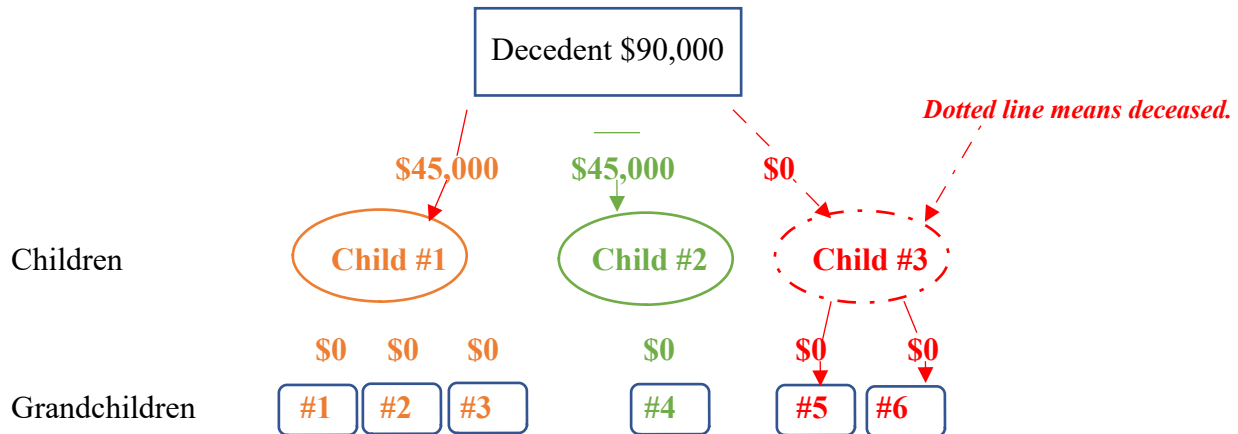
**Example (3):** If **Child #2** were deceased, then Grandchild #4 would receive \$30,000.

**Example (4):** If **Child #3** left no living descendants, then **Child #1** and **Child #2** would receive \$45,000 each. (\$90,000 divided by 2)

## Per Capita

### 3.1

I have no example of such a provision, nor have I ever seen such a provision. Essentially, only those devisees who are alive can take the legacy. So, the disposition would be as follows:



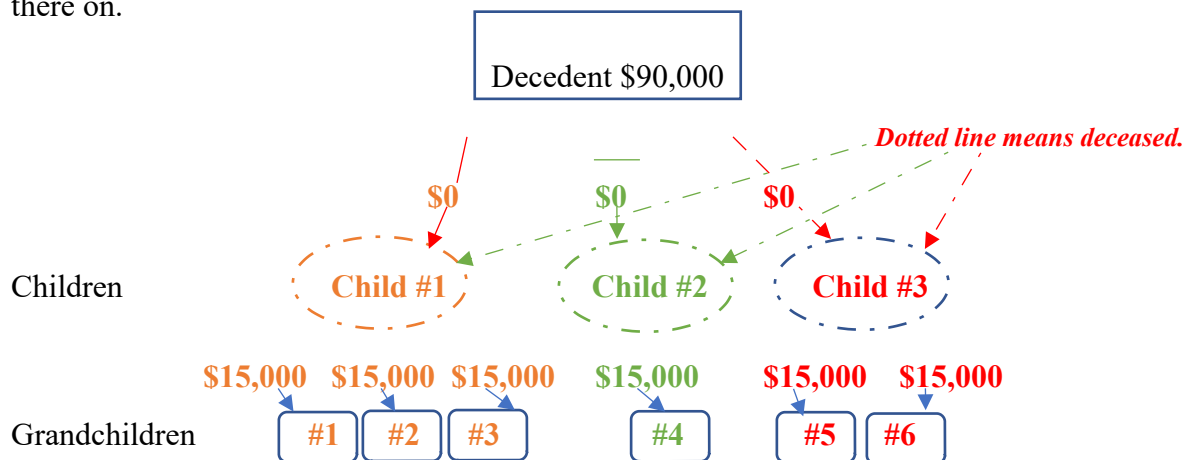
**Example (5):** Since **Child #3** is deceased, then **Child #1** and **Child #2** receive \$45,000 each.

**Example (6):** Since **Child #3** is deceased, and receives nothing, so Grandchild #5 and #6 receive nothing.

## Per Capita, with Right of Representation.

### 4.1 In General.

This regime uses both Per Capita and Per Stirpes. The first step uses Per Capita until the first level where there are living descendants. Then, at that level, the regime uses Per Stirpes from there on.



**Example (7):** Since there are no living children, neither per capita nor per stirpes applies at that level. The first level where there are living devisees is at the grandchildren level, so each grandchild receives 1/6<sup>th</sup> of \$90,000, or \$15,000 each. So, the Decedent treats each grandchild the same, regardless of how many children individuals in the first level actually have.

**Example (8):** If a grandchild is deceased, but leaves living descendants, then those descendants share what their parents would have received, had they survived the Decedent.

#### 4.2 Texas Statute.

Here is the Texas *Intestacy* Statute, however it does not have to be used in an intestacy setting. A provision could be fashioned in a testate or trust setting, with changes to the wording. It is used here only as an example.

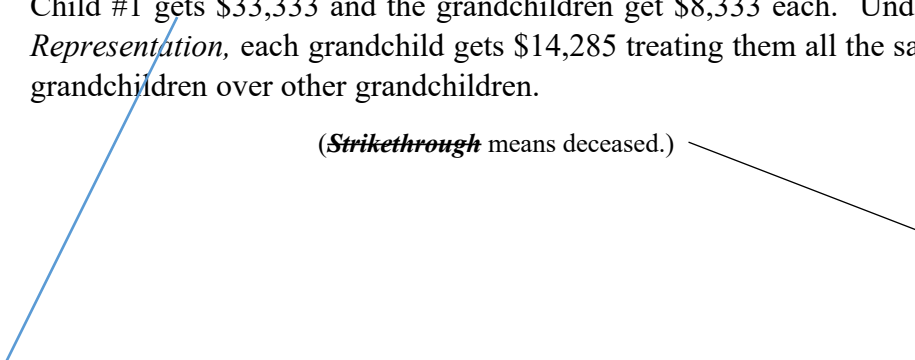
**4.3 §201.101. Determination Of Per Capita With Representation Distribution** (a) The children, descendants, brothers, sisters, uncles, aunts, or other relatives of an *intestate* who stand in the first or same degree of relationship alone and come into the distribution of the *intestate's* estate take per capita, which means by persons.

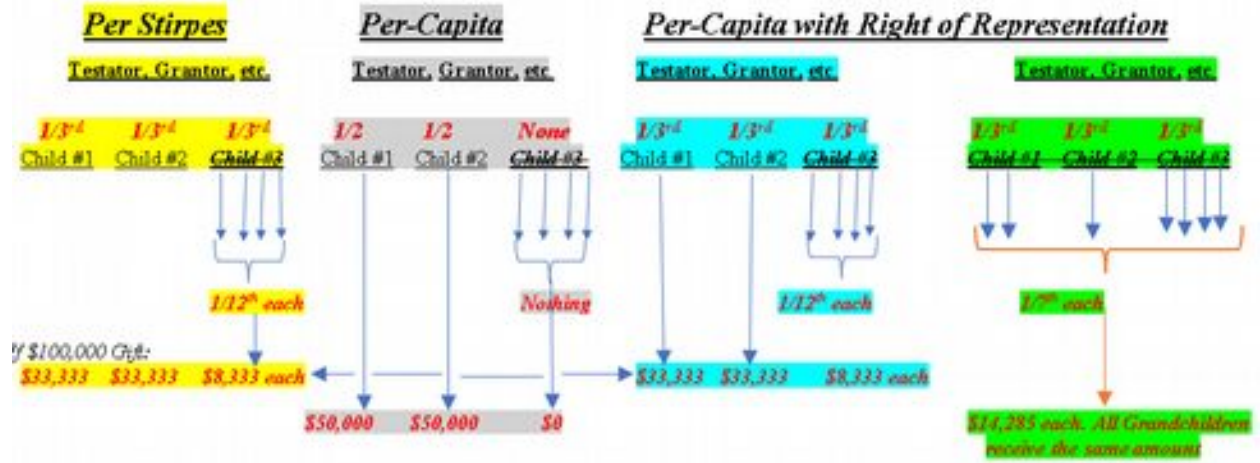
(b) If some of the persons described by Subsection (a) are dead and some are living, each descendant of those persons who have died is entitled to a distribution of the *intestate's* estate. Each descendant inherits only that portion of the property to which the parent through whom the descendant inherits would be entitled if that parent were alive. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. [2502](#)), Sec. 1, eff. January 1, 2014.

**4.4 Another example** What distributions would be under the three alternatives for a \$100,000 devise:

If Child #1, #2 and #3 predecease the Testator/Grandfather, then **note** that under *Per Stirpes*, Child #1 gets \$33,333 and the grandchildren get \$8,333 each. Under *Per-Capita with Right of Representation*, each grandchild gets \$14,285 treating them all the same and not preferring some grandchildren over other grandchildren.

(~~Strikethrough~~ means deceased.)





Johanson's Texas Estates Code Annotated page 178 (2021).