

Business Law

Text & Exercises *6th Ed.*

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Chapter 39: Wills and Trusts

Learning Outcomes

LO1

- **Outline the requirements of a will.**

LO2

- **Discuss methods of revoking or modifying a will.**

LO3

- **Describe the distribution of the property of a party who dies without a will.**

Learning Outcomes

LO4

- **List the essential elements of a trust.**

LO5

- **State how different types of express and implied trusts are created or arise.**

Wills

- **Will:** final declaration of how a person wants to have his property disposed of after death.
- **Parties:** Testator (male), Testatrix (female).
 - Executor: personal representative named in the will.
 - Administrator: appointed by Probate Court.

Gifts

- **Devise: gift of real estate.**
- **Bequest (Legacy): gift of personal property.**
- **Gifts can be:**
 - Specific: describes particular property.
 - General: specifies value of property.
 - Residuary: pays for debts after gifts are made.

Requirements of Wills

1. **Capacity:** Testator must have legal capacity at the time the will is made (the “sound mind” requirement).
2. **Written:** Will must be in writing. (Holographic will in Testator’s handwriting.)
3. **Signed:** Will must be signed by Testator.



Requirements of Wills

- 4. **Witnessed:** a written will must be witnessed (attested to be genuine) by at least two competent witnesses.
- 5. **Publication:** will is published by Testator by an oral declaration to the witnesses that the document they are signing is in fact his last will and testament.

Undue Influence

- **Undue Influence:** improper pressure on a Testator, causing him to change his will and property distribution.
 - Court rules on issues of undue influence.
 - Inferred when Testator's plan of distribution of property favors a "non relative" who is in constant close contact and in a position to influence the making of the will.

Revocation of Wills

- **Revocation by Act of Testator.**
 - Physical Acts.
 - Subsequent Writings.
- **Revocation By Operation of Law.**
 - Marriage.
 - Divorce.
 - Children.

Intestacy Laws

- **Regulate how property is distributed when person dies without a will.**
- **Order of Distribution:**
 - First decedent's debts.
 - Then to Surviving Spouse and Children. If no surviving spouse or child, then to grandchildren, then brothers and sisters, and then parents.

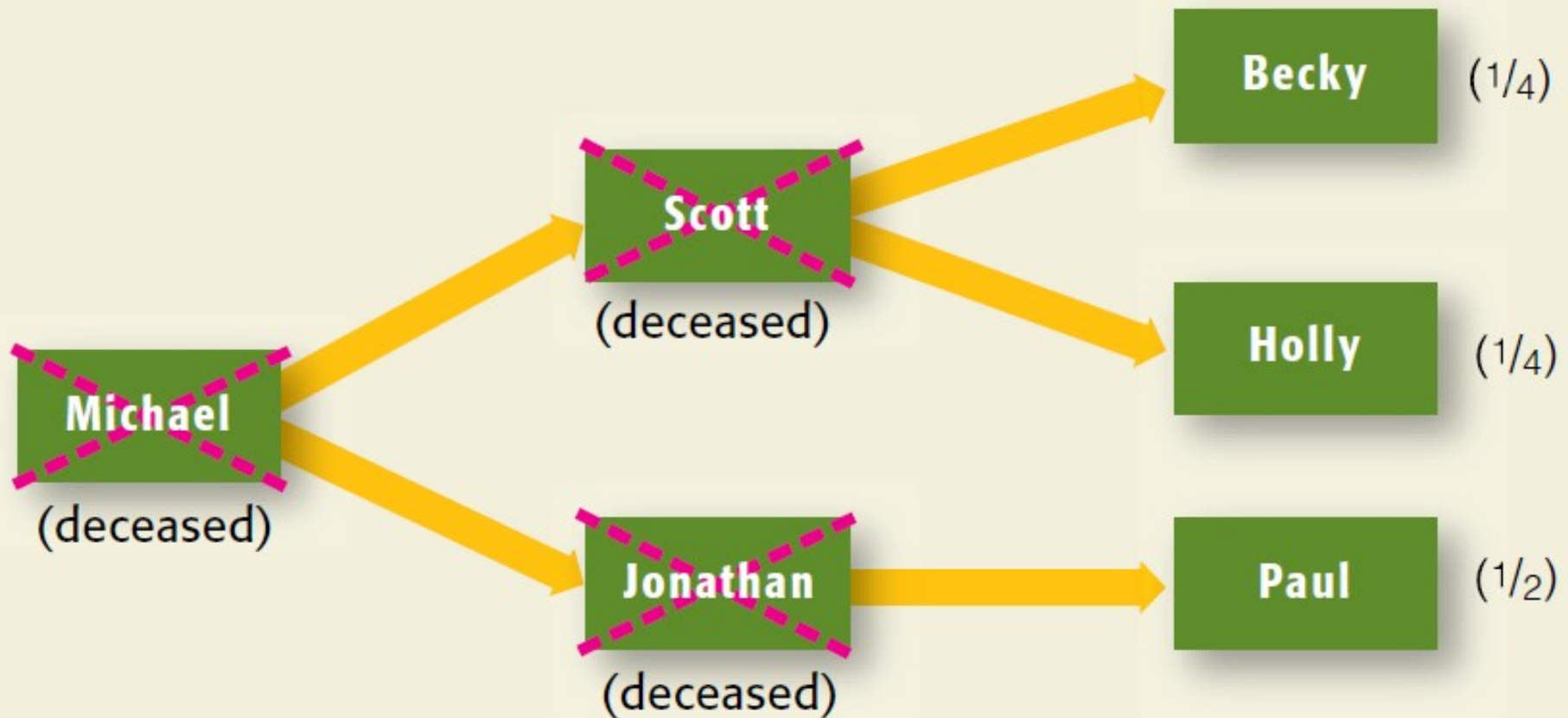
Intestacy: Surviving Spouse and Children

- **Surviving spouse usually receives the homestead and a share of the estate, as follows:**
 - 1/3 of estate if two or more children.
 - 1/2 of estate if one surviving child.
 - Entire estate, if no children or grandchildren.

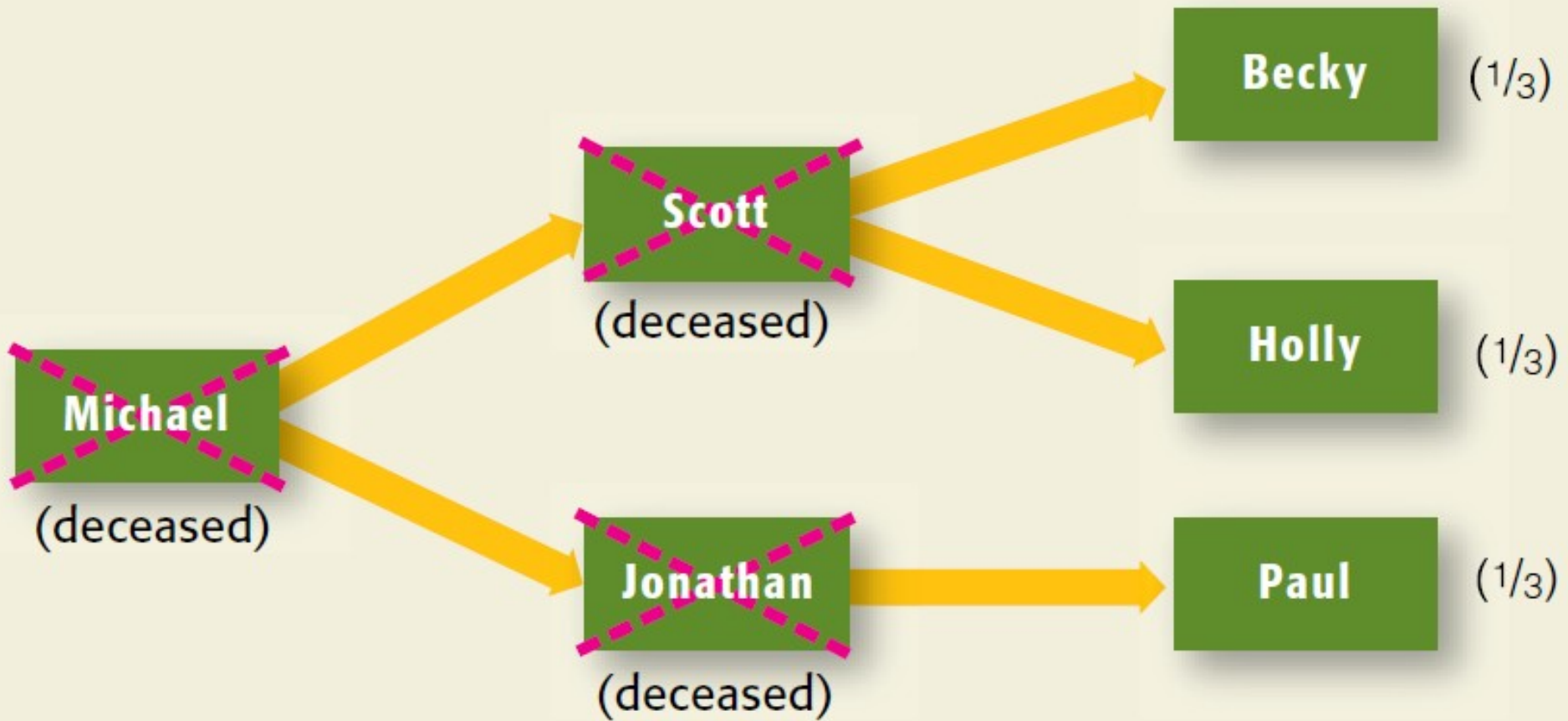
Intestacy: Grandchildren

- ***Per stirpes* distribution. →**
 - Method of dividing an intestate share by which a class or group of distributees take the share that their deceased parent would have been entitled to inherit had that parent lived.
- ***Per Capita* distribution. →**
 - Each person takes an equal share of the estate.

Per Stirpes Distribution



Per Capita Distribution



Trusts

- **Trust: A right of property (real or personal) held by one party for the benefit of another.**
- **Trustee: holds property on behalf of the Beneficiary.**
 - Act with honesty, good faith, and prudence in administering the trust and must exercise a high degree of loyalty toward the trust beneficiaries.

Elements of a Trust

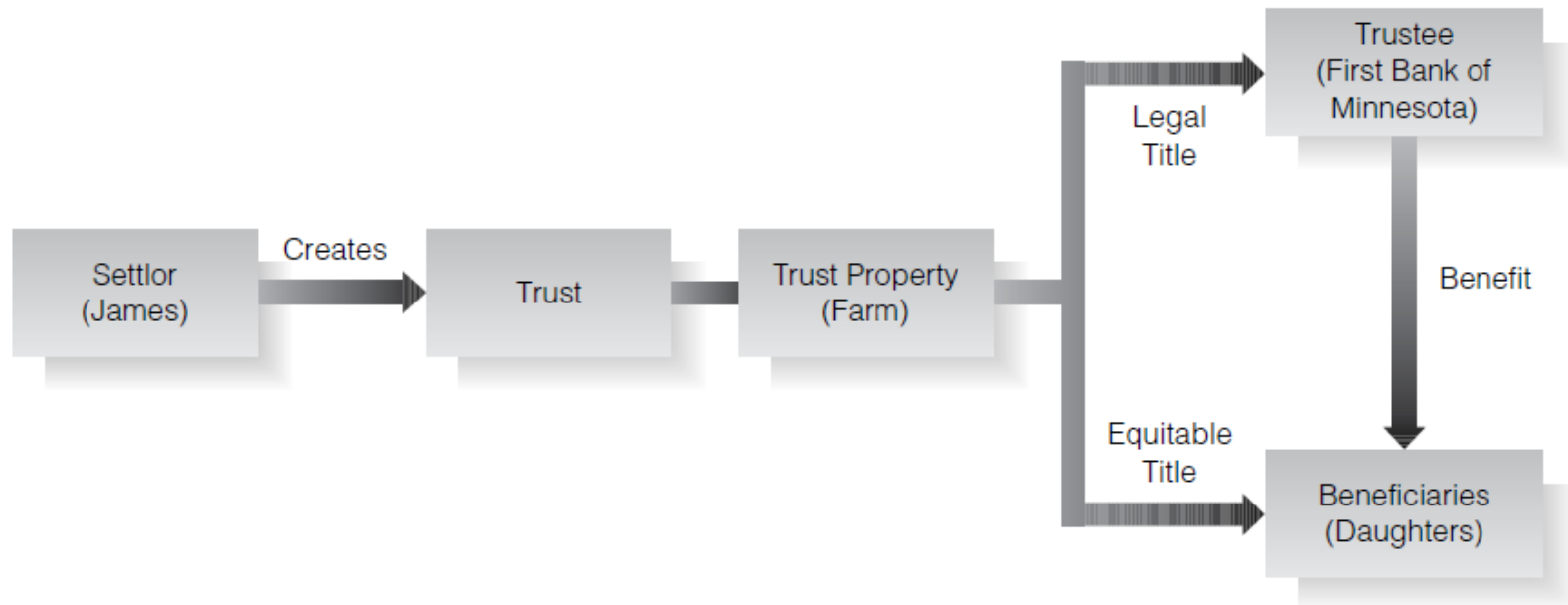
- **Designated beneficiary.**
- **Designated trustee.**
- **Fund sufficiently identified to enable title to pass to the trustee.**
- **Actual delivery to the trustee with the intention of passing title.**

Trust Arrangement

EXHIBIT 39-3

Trust Arrangement

In a trust, there is a separation of interests in the trust property. The trustee takes *legal* title, which appears to be complete ownership and possession but which does not include the right to receive any benefits from the property. The beneficiary takes *equitable* title, which is the right to receive all benefits from the property.



Express Trusts

- ***Inter Vivos* (Living Trusts):** created by grantor during her lifetime (revocable).
- **Testamentary Trusts:** created as part of a will, comes into existence at testator's death.

Implied Trusts

- **Constructive Trusts.**
 - Arises by operation of the law in the interest of equity and fairness.
- **Resulting Trusts.**
 - Arises from the conduct of the parties.