

Intestate Succession

If somebody dies, the ownership and control of his possessions must be transferred to someone else. The deceased may dispose of these possessions by way of a valid will. If the will was valid, his wishes will be carried out.

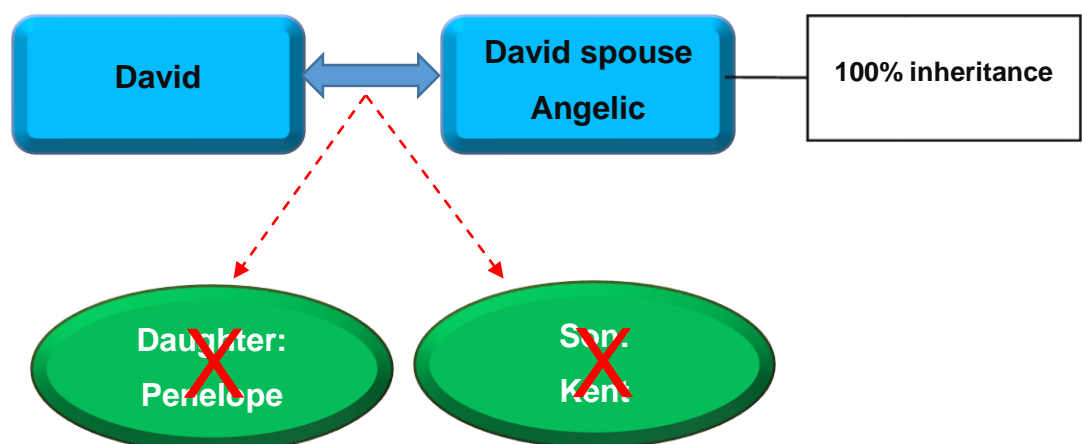
If a person dies without a will, or leaves an invalid will, his possessions must also be transferred. Fixed rules as laid down in the Intestate Succession Act will then determine who is to inherit his possessions.

Basic rules of Intestate Succession:

General rule: Except for the surviving spouse and legally adopted children, only blood relations of the deceased and their descendants may inherit on intestacy. Blood relations include children, grandchildren, parents, brothers, sisters, grandparents and anybody else that is financially dependent on the deceased.

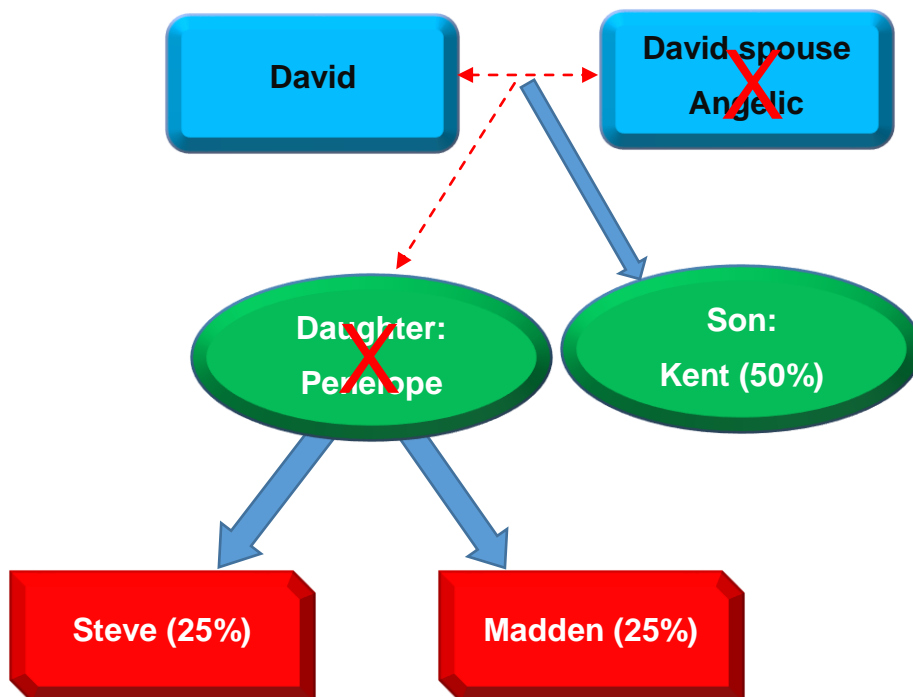
1. Deceased survived by spouse and no dependents s1(1)(a)

- Spouse inherits alone
- Example: David is married to Angelic. They have a daughter, Penelope and a son, Kent. David, Penelope and Kent are in a fatal car crash where all three individuals die. David is survived by Angelic, his parents and his brother.
- According to the laws of intestate succession, Angelic is the sole heir to David's estate. His parents and brother do not inherit.



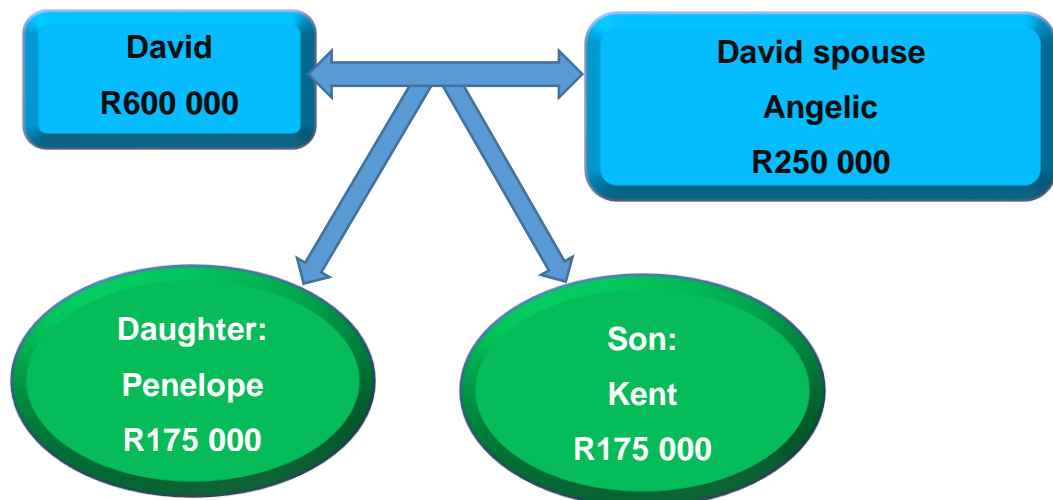
2. No surviving spouse **but deceased is survived by descendants s1(1)(b):**

- The deceased's children will inherit his possessions in equal shares. Children of a predeceased child inherit the latter's share equally.
 - Example: David is married to Angelic. They have a daughter, Penelope and a son, Kent. Penelope has two children, Steve and Madden. David, Penelope and Angelic are in a fatal car crash where all three individuals die. David is survived by his son Kent, his two grandchildren, his parents and his brother.
 - According to the laws of intestate succession, Kent will inherit 50% of David's estate and Penelope (or in this case her descendants) the other 50%.
 - Kent's parents and brother do not inherit.



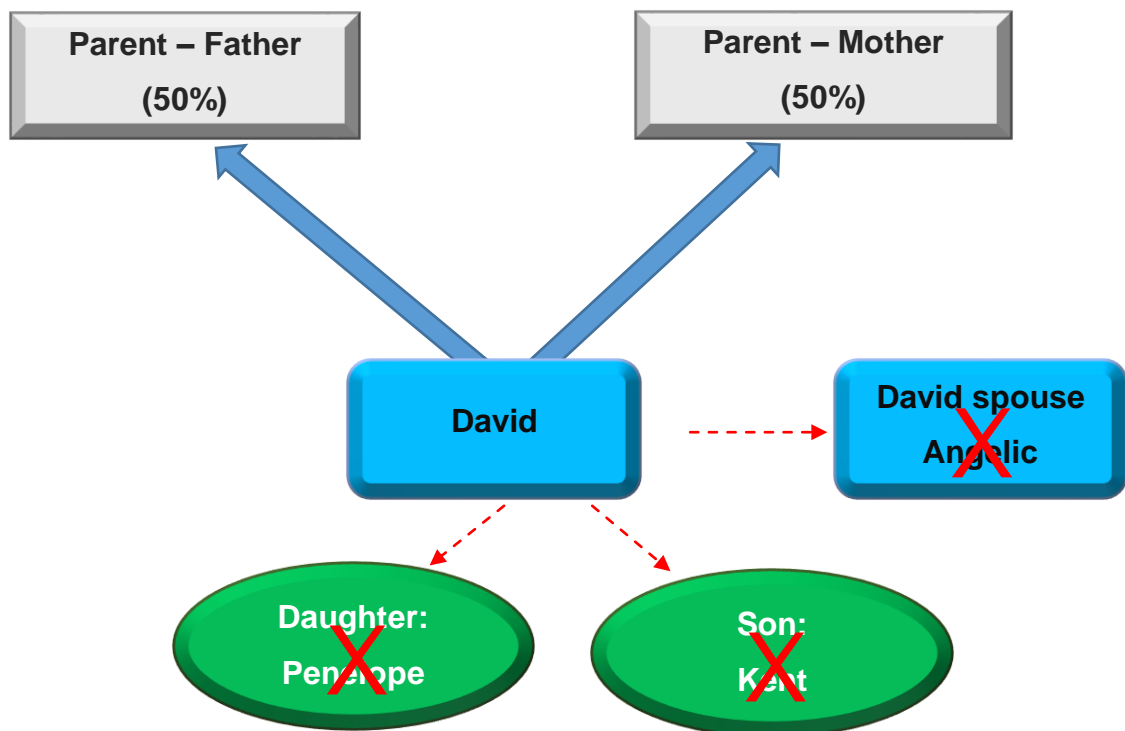
3. Deceased is survived by spouse and descendants s1(1)(c)

- The surviving spouse inherits a child's share or so much as does not in value exceed the amount of R250 000 (effective from 24/11/2014, previously R125 000), whichever is the greater amount.
- Example: David is in a car crash and dies. He is survived by his spouse, Angelic and his two children, Penelope and Kent. After all expenses have been paid, David's distributable estate is R600 000. Applying the above rule:
 - Angelic will receive the greater of R250 000 and a child's portion
 - Child's portion: $R600\ 000/3 = R200\ 000$ each
 - This means that Angelic is entitled to R250 000.
 - The remainder is then shared equally among the children ($R600\ 000 - R250\ 000 = R350\ 000$). Penelope and Kent will then inherit R175 000 each.



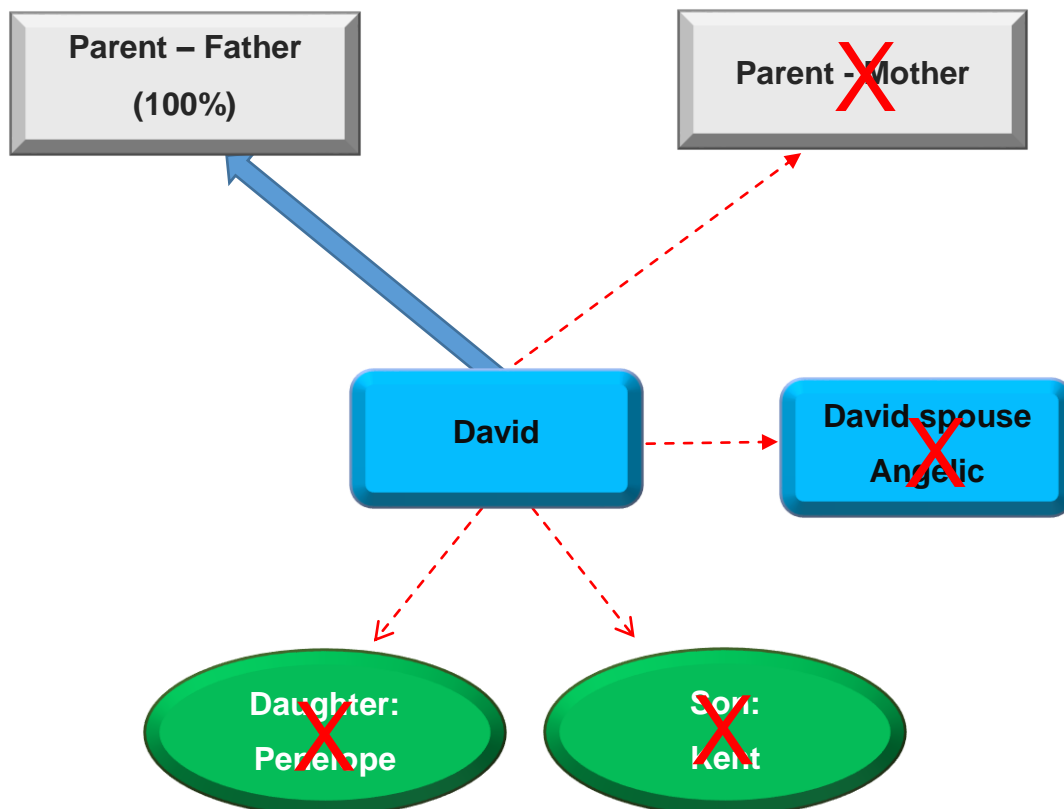
4. **No surviving spouse, no surviving descendants but survived by both parents s1(1)(d)(i):**

- The parents inherit the entire intestate estate in equal shares.
- Example: David and his family (spouse Angelic, children Penelope and Kent) are obliterated in a car crash. David is survived by both parents and one brother. Both parents inherit David's estate in equal shares.
- David's brother does not inherit.



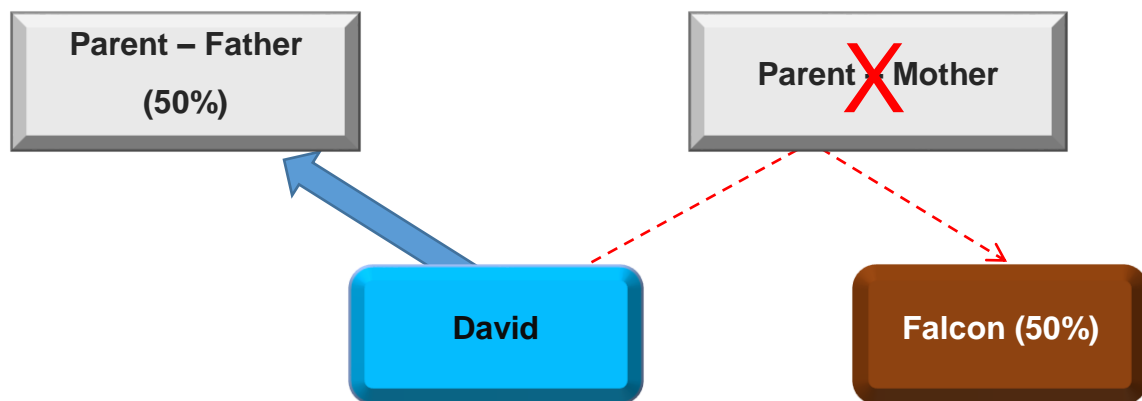
5. No surviving spouse, no surviving descendants but survived by one parent. The other predeceased parent did not leave any descendants:

- The surviving parent inherits the entire intestate estate.
- Example: David and his family (spouse Angelic, children Penelope and Kent) are obliterated in a car crash.
- David is survived by his dad who will inherit his entire estate.



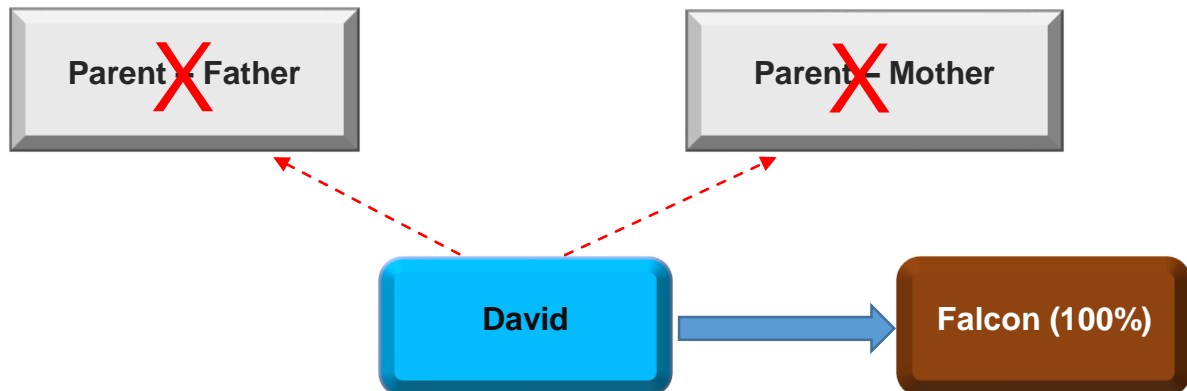
6. No surviving spouse, no surviving descendants but survived by one parent. The other predeceased parent left descendants s1(1)(d)(ii):

- The surviving parent inherits one half of the estate while the descendant(s) of the deceased parent inherits the other half.
- Example: David and his family (spouse Angelic, children Penelope and Kent) are obliterated in a car crash. David's mum is predeceased.
- David is survived by his dad and his brother, Falcon.
- David's father will inherit 50% of his estate.
- The 50% that David's mum would have inherited, had she been alive, will now devolve upon her surviving descendant, that being David's brother.



7. No surviving spouse, no surviving descendants, no surviving parents, but survived by descendants of (a) parent(s) s1(1)(e)(i)(cc):

- Both parents leave descendants:
- Example: David and his family are obliterated in a car crash. David is survived by his blood brother, Falcon. David's parents, had they been alive would have inherited his whole estate in equal shares. The parent's inheritance will devolve upon their surviving descendants which is Falcon



- One half of the intestate estate goes to the descendants who are related to the deceased through his deceased mother whilst the other half of the estate goes to descendants who are related to the deceased through the deceased father.
- Half-brothers and sisters will therefore inherit from the half share of only one of the parents.

8. No surviving spouse, no surviving descendants, no surviving parents, only one of the deceased parents leaves descendants s1(1)(e)(ii).

The entire intestate estate will be divided amongst the descendants of the deceased parent.

9. No surviving spouse, no surviving descendants, no surviving parents. And also no descendant or a parent or (a) descendant(s) of a parent.

The blood relations who are related to the deceased in the nearest degree will inherit the intestate estate in equal shares.

Illegitimate and Step Children

- A legally adopted child is in precisely the same position as the deceased's own child. An illegitimate child may inherit from both his father and his mother, as well as from their blood relations. Conversely these persons may also inherit from him on an intestate basis.
- A stepchild of the deceased does not qualify as an intestate heir, unless the deceased had legally adopted him.

Adopted Children

- A **child adopted legally** (in terms of the Children's Act) by a person who later dies, is **deemed to be the natural child of his deceased adoptive parent.** Likewise, the adoptive parent is deemed to be the natural parent of the adopted child.
- The adopted child is not deemed to be a descendant of his natural parents and conversely, the latter will not be deemed to be the natural parents of that child.
- **An adopted child can therefore inherit from his adoptive parents and from their blood relations and conversely, these persons will be entitled to inherit on intestacy from him.** If, therefore, a person has adopted children only and he/she dies intestate, the adopted children will, (providing there is no surviving spouse), inherit the deceased's entire intestate estate even though the deceased is survived by his parents, brothers or sisters, etc.
- The ties between the adopted child and his natural parents are severed and an adopted child can therefore not inherit on intestacy from his natural parents and their relatives and they, likewise, cannot inherit from him.
- It follows that where an adopted child has died intestate, his adoptive parents and/or their blood relations inherit his belongings whereas his natural parents and their blood relations inherit nothing.

Possible problems if a person dies intestate

- The person's estate will devolve as per the rules of intestate succession as discussed above. This distribution of his/her assets may not be in line with the wishes of the deceased.
- The Master of the High Court will nominate an executor, which could develop into a lengthy process and a delay in winding up the estate.
- Where the intestate heirs cannot reach an agreement, this may lead to the assets in the estate being sold, that would cause a delay in the administration and winding up of the estate and could lead to additional costs. A sale of property at an unfavourable time may be necessary.
- Depending on the facts of the case, the application of the above rules may lead to unfairness with regard to certain blood relations of the deceased.
- Stepchildren may not inherit on an intestate basis (unless the deceased had legally adopted them). Adult self-supporting children receive exactly the same share of the inheritance as the minor children.
- Certain assets may also not be apportioned from a legal perspective, e.g. fixed farm property that may not be owned by more than one person due to legislation prohibiting this. Intestate succession can thus also cause difficulties in this regard.
- Where the deceased owned business interests, intestate succession could also cause practical problems, especially from a business succession perspective.
- Where the deceased has minor children (or even in other circumstances) there may be a need to make provision for testamentary trusts (and the nomination of trustees in this regard), nomination of guardians etc. If there is no valid will regulating these aspects it could lead to practical problems.
- Distribution of assets may not be completed in the most tax efficient manner.
- If proper estate planning is not done, there may be a cash shortfall in the estate that could lead to assets being sold to make provision for such shortfall.

Customary Law

Prior to the Constitutional Court ruling, customary law of succession rules that only the male who is related to a deceased qualified as an intestate heir. Women did not participate in the intestate succession of deceased estates.

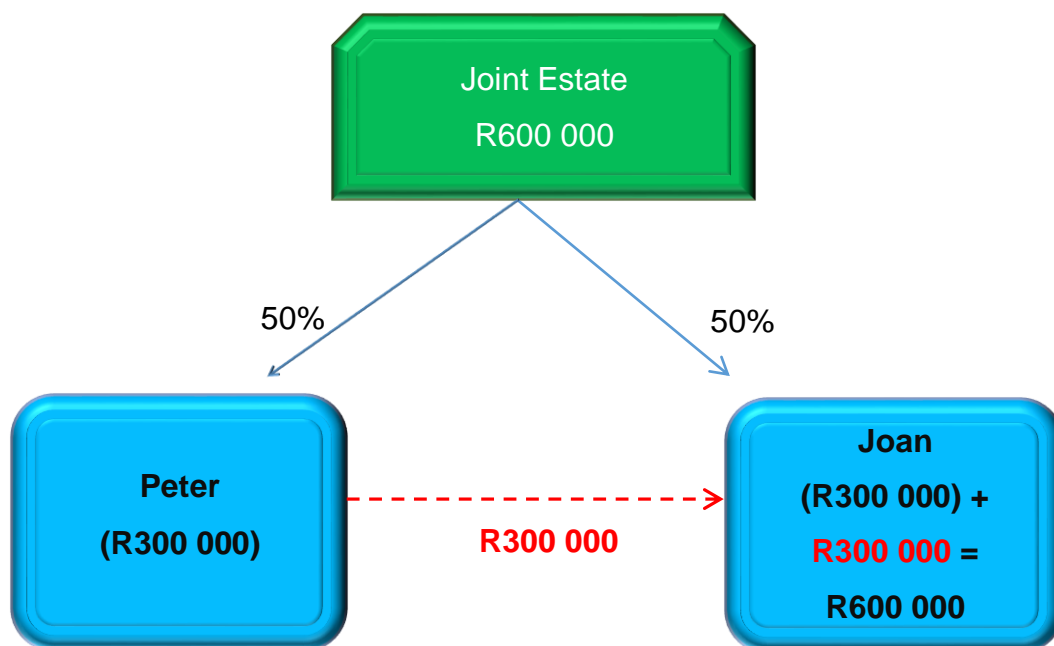
Since the Constitutional Court ruling, a child's share in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of the children of the deceased who have either survived or pre-deceased such deceased person but are survived by their descendants, plus the number of the spouses who have survived such deceased. **Each surviving spouse shall inherit a child's share of the intestate estate or R 250 000, whichever is the greater.**

Examples:

1. Peter and Joan are married in community of property with a joint estate of R600,000. Peter and Joan do not have any children. Peter dies without a valid will. According to the rules of intestate succession Joan will inherit Peter's whole estate.

Peters estate is calculated as follows (remember that they are married in community of property so Peter only owns half of the joint estate):

$R600,000 * 50\% = R300,000$. (Joan is entitled to her 50% of the joint property (R300,000) and she will inherit Peter's estate (R300,000)).



2. If Peter and Joan had 2 children, Jack and Jill, what would Joan's inheritance be?

Peter's estate = $R600,000 \times 50\% = R300,000$

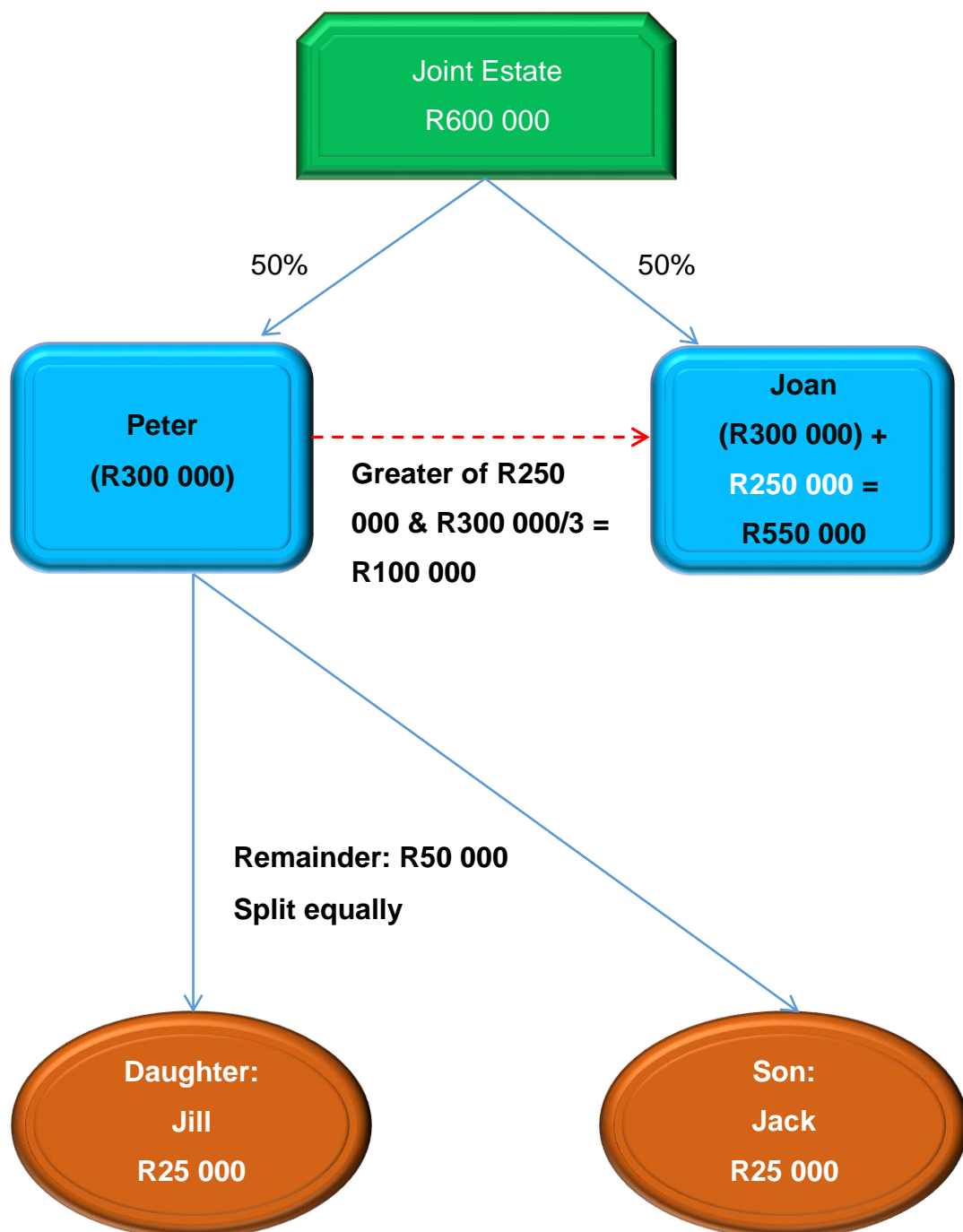
Joan will inherit the greater of a child's portion or R250,000

Child's portion: $R300,000/3 = R100,000$

Therefore Joan will receive R250,000 (greater of R250,000 & R100,000).

The two children will be entitled to equal shares of the remainder of Peter's estate:

R25 000 $[(R300,000 - R250,000)/2]$ each.



3. Peter and Joan had two children, Jack and Jill. Peter is survived by Joan, Jack and three grandchildren of his predeceased daughter Jill. Calculate how much each person receives at Peters death.

Peter's estate: $R600,000 \times 50\% = R300,000$

Peter's estate will be divided by 3 people namely Joan, Jack and Jill (her children will receive her share)

$R300,000/3 = R100,000$ but Joan receives the greater of $R250,000$ and $R100,000$.

Joan therefore receives = $R250,000$.

The remainder: $R300,000 - R250,000 = R50,000$ is divided by 2 people, Jack and Jill.

Jack will receive $R25,000$ whilst each grandchild will receive $R8,333$ ($R25,000/3$)

