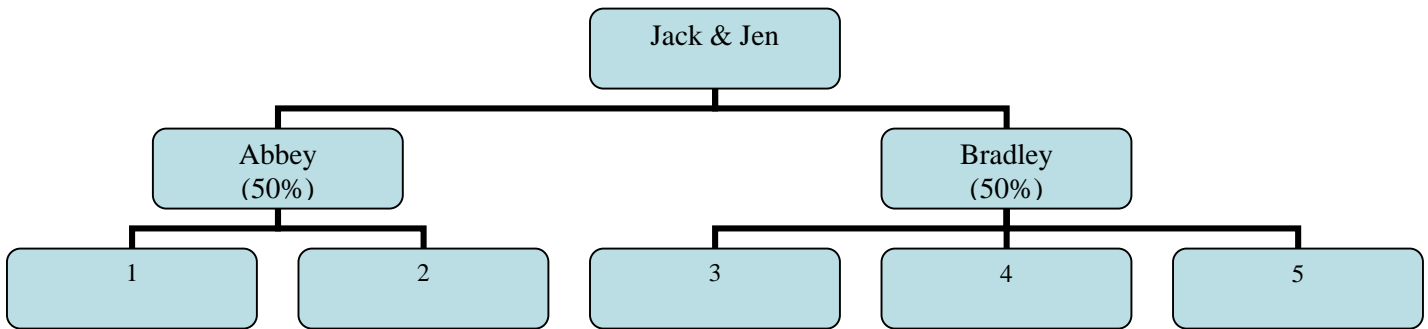


“Per Stirpes” vs. “Per Capita” vs. “By Representation”

What Does All This Mean?

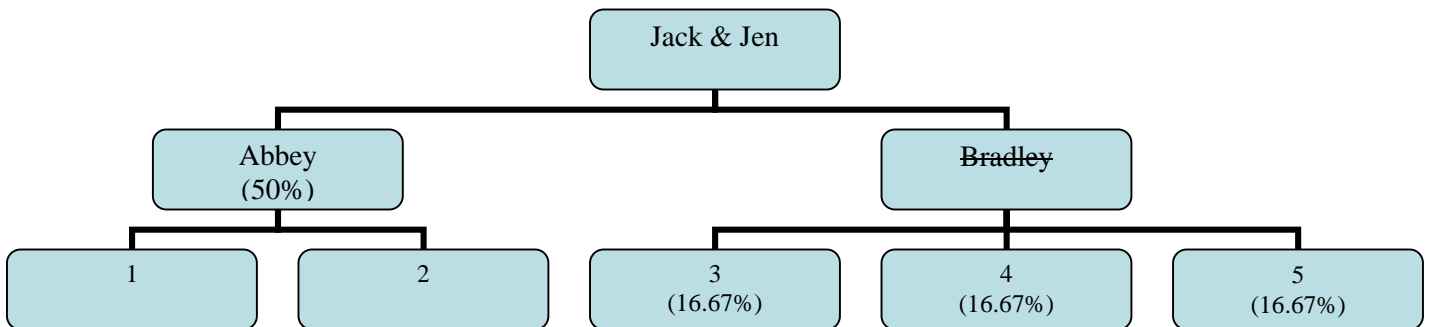
When planning to divide an estate among linear descendants (*i.e.* children & grandchildren), consideration should be given to what happens in the event a descendant should predecease the testator. Without proper planning, the amounts passing to the ultimate beneficiaries may not be in accordance with the testator’s wishes.

Hypothetical Family: Let’s say Jack and Jen are the parents of Abbey and Bradley, as follows. Abbey has two (2) children. Bradley has three (3) children. The parents want their combined estate to be distributed in equal shares to their children, Abbey and Bradley. However, if one child or both children should predecease, the question becomes what happens to the shares passing to the grandchildren.

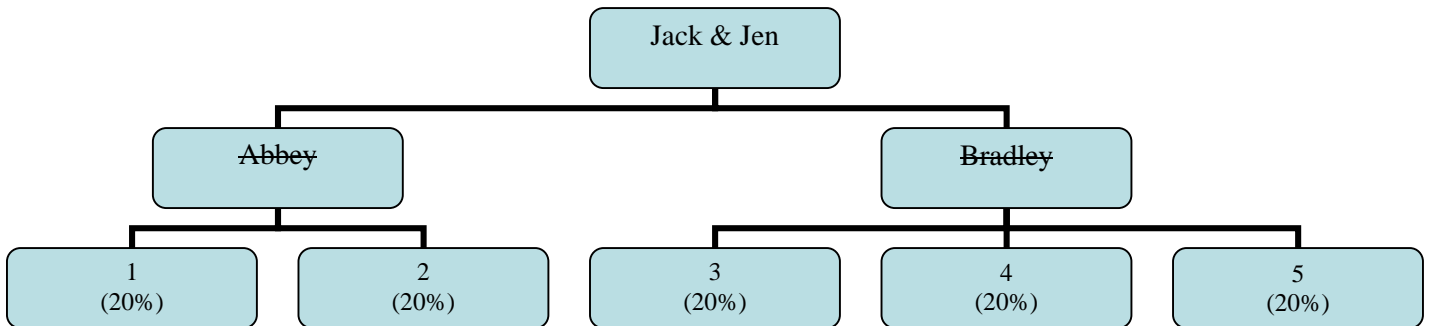


By Representation

If Jack & Jen’s Wills provide for equal distribution to their children “**by representation**” and if Bradley should predecease, Abbey would inherit 50% and grandchildren 3, 4, & 5 would each take one-third (1/3) of Bradley’s 50% interest or 16.67% each.

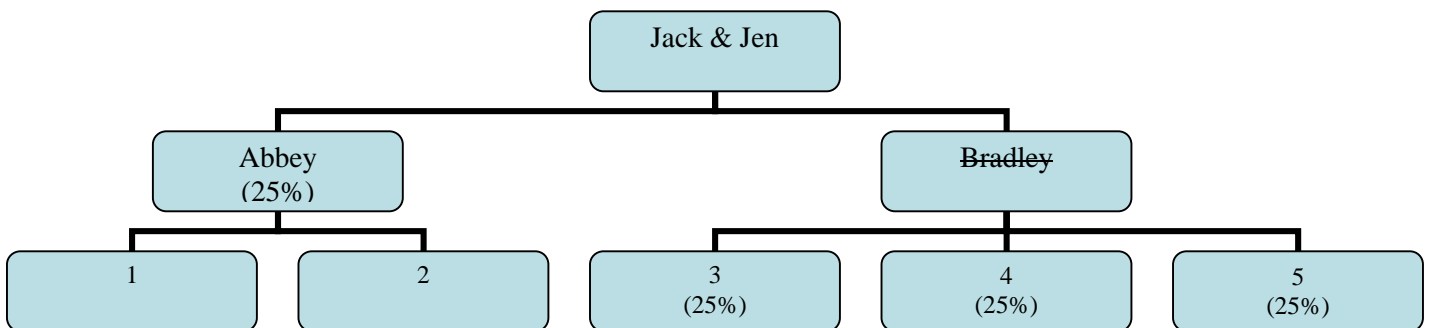


However, if both Abbey and Bradley should predecease, each grandchild would take an equal 20% share of the estate. In this instance, a **“by representation”** direction treats each grandchild equally and Bradley’s side of the family would receive a total of 60% whereas Abbey’s side of the family would receive just 40%.



Per Capita

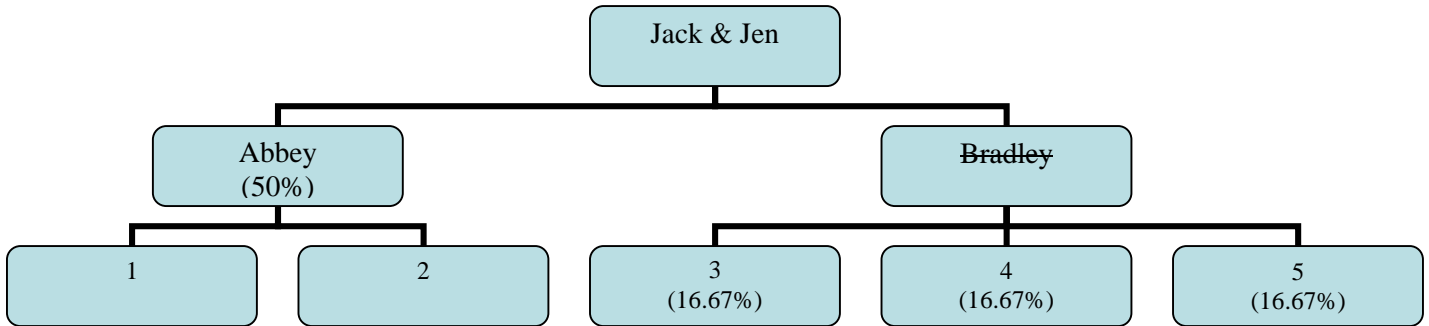
If their Wills instead provide for equal distribution **“per capita”** and Bradley should predecease, then all beneficiaries would be lumped together as follows:



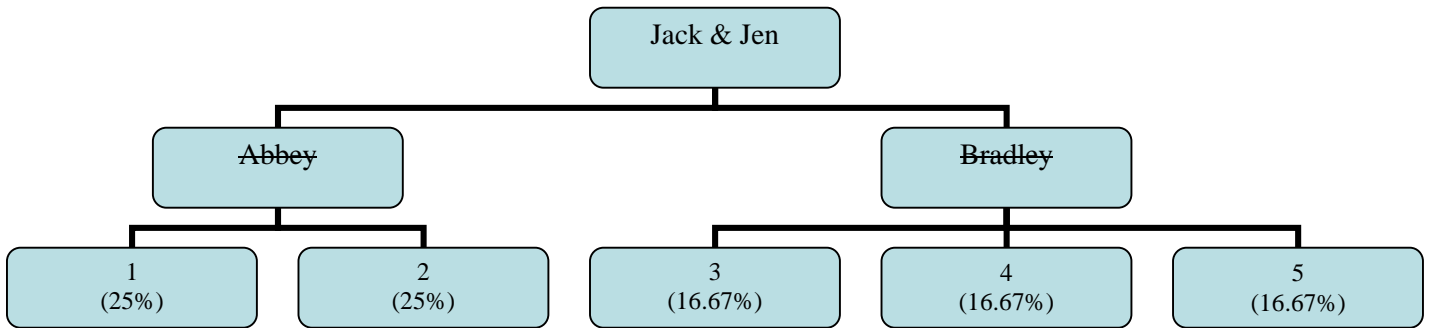
All beneficiaries would be treated equally regardless of their place in the family. This would give Bradley’s side of the family a 75% interest whereas Abbey’s side would receive just a 25% interest. Note also that upon Abbey’s death, grandchildren 1 & 2 would split the 25% interest, giving them half of what the other grandchildren receive. Few testators choose this method of distribution.

Per Stirpes

If their Wills instead provide for equal distribution “**per stirpes**” and Bradley should predecease, the outcome would be identical to the “**by representation**” distribution noted above.



However, in the event both Abbey and Bradley predecease, the result would be different.



A “**per stirpes**” direction treats each side of the family equally with Abbey’s side splitting a 50% interest and Bradley’s side splitting a 50% interest.

Conclusion

In New Jersey, in the absence of language to the contrary, the default distribution scheme is “by representation”. However, the question is one of equality and each testator has the right to determine for him or herself what type of equality is sought. For testator’s wanting to treat the branches of a family equally, a “**per stirpes**” designation is the appropriate choice.