

Selected Answer #1

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1) Jim's estate should be distributed wholly to Bob as is stated in Jim's will. The issue which determines how Jim's estate should be distributed is whether Fred is entitled to a pretermitted child's share of the estate by statute. After-born or after-adopted children (those who are born or adopted after the will was executed) who are not mentioned in the will or provided for with non-probate transfers which take effect at the testator's death are entitled to take a share of the testator's estate to avoid inadvertent omission from the will. Jim's will was executed in 2000, and Fred was not born until 2002. Illegitimate children are eligible for a pretermitted child's share of a testator's estate. However, for an illegitimate child to be eligible, paternity of the testator must be established. Paternity is established by 1) adjudication, 2) un rebutted paternity presumption, 3) adoption, 4) assisted reproduction, or 5) formal acknowledgment. In this case, paternity has not been established by any of these methods. Jim did not formally acknowledge Fred as his son because he did not sign to birth certificate or an acknowledgment of paternity. He also cannot be adjudicated Fred's father because it is too late to challenge the presumption that Susan's husband is Fred's father. Susan's husband is presumed to be Fred's father because he was married to Susan at the time of Fred's birth. A challenge to a presumption of paternity cannot be made after the 4 year statute of limitations has run. In this case, it has been more than 4 years since Fred was born and since Susan's husband was presumed the father. Because Susan cannot establish that Jim is Fred's father by any method for establishing paternity, the pretermitted child statute does not apply to Fred. With no other claims against the will, Jim's will should be probated in accordance with its provisions, and Bob would be the sole beneficiary.

2) Susan does not have standing to sue for wrongful death on behalf of Fred. As explained above, Jim's paternity cannot be established because adjudication of paternity is barred by the statute of limitations and paternity is unproven by other available methods. Only spouses and children of deceased persons have standing to maintain wrongful death actions against those parties responsible for the death of the deceased. Because Susan is not Jim's spouse and the relationship between Fred and Jim cannot be established, neither Susan nor Fred has standing to bring a wrongful death action against Maverick.

END OF EXAM

Selected Answer #2

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(1) If a child is born to a parent after a validly executed will, the child is termed a pretermitted child. If no other children exist, and the child has not otherwise been provided for, then the child is entitled to an intestate share of the decedent's property not left to the other spouse.

Here, Jim has no other spouse. Therefore, if Fred is a pretermitted child of Jim, he will take all of Jim's estate. The issue is whether Fred is Jim's child for inheritance purposes.

A male is presumed the father of a child if the child was: (1) born during the marriage or within 300 days thereafter, and either (i) the male is voluntarily placed on the child's birth certificate, or (ii) the father agrees to call the son his own, and voluntarily provides support. Additionally, a male is presumed father if, during the first two years of the child's life, the male lives with the child and holds out to others that the child is his own.

Here, Jim did none of these, and arguably, Susan's husband has done them all. Jim and Susan were never married, nor did Jim live with Fred the first two years of the child's life. Jim is not the presumed father, and Susan's husband is.

There are two ways to rebut the presumption of fatherhood: (1) genetic testing of the presumed father and the child, with confirmation of at least 99% on a paternity index of at least 100 to 1, or (2) a written statement by the presumed father denying parenthood, and a written statement by another male claiming parenthood.

Here, no genetic testing of Jim was ever performed, nor did J ever execute a written statement admitting parenthood.

If the presumed father of a child refuses to submit to genetic testing, or is unavailable, the presumed father's kin can be genetically tested. However, when there is a presumed father, a challenge to paternity presumption must be brought within 4 years.

Here, Fred was born in 2002 to his presumed father, Susan's husband. Susan is trying to bring a paternity suit in 2007 (5 years), which is beyond the statute of limitations for such a suit. Therefore, Susan's husband will remain Fred's presumed father, and Bob cannot be genetically tested to confirm whether Fred was Jim's son.

Since Jim is deemed not to be Fred's son, the pretermitted child statute does not apply. Therefore, Jim's estate will be probated in accordance to his validly executed will, and his entire estate will go to brother Bob.

(2) Next friend of a minor child has standing to bring suit for the minor child. Susan, as mother, would be the next friend of Fred, and therefore Susan would have standing in any suit in which Fred would have standing. However, Fred does not have standing to bring a wrongful death action.

Fred is not Jim's child, as explained above. A wrongful death action must be brought by the decedent's next of kin, or by his estate.

Here, Jim's next of kin is his brother Bob. Bob is also the executor of Jim's estate. Therefore, the only party who has standing to bring a wrongful death action on behalf of Jim is Bob. No, Susan may not intervene in the suit.

END OF EXAM

Selected Answer #3

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1. *Jim's entire estate should be distributed to Bob under the valid self proved will in 2000 because Fred will not be characterized as a pretermitted child.* Susan is contending that Fred is Jim's son and therefore should take Jim's entire estate. Basically, if Susan is able to show that Jim had a son after Jim's will was executed, Fred would be deemed a pretermitted child and would then take his intestate share of all property not left to the testator's spouse. In this case, the result of Fred being characterized as pretermitted child would be that he receive Jim's entire estate, as he would through intestacy. However, Susan and Fred will be unsuccessful here because there is insufficient evidence that Jim is Fred's father. In order to determine paternity, such must be established by clear and convincing evidence, through genetic testing, which has not been done here. Furthermore, Jim never executed a statement of paternity or undertook any proceeding to adopt or legitimize Fred. Finally, because Fred was born to a marital household, he had a presumed father and now 4 years have passed; therefore, the statute of limitations for bringing a paternity action has passed. The only argument that Susan may make is that Fred was adopted by estoppel. However, even though there is some evidence that there was a present agreement to support Fred, there was not a promise to adopt him and Jim never took possession of Fred. The fact that Jim promised to support Fred is of no moment. Therefore, Susan/Fred will be unable to establish Fred as a pretermitted child and Fred will not take under the will.

2. *No, Susan, as next friend of Fred, does not have standing to intervene in the wrongful death action against Maverick because there is insufficient evidence that Fred is Jim's son.* In this case, Bob was awarded the entire estate of Jim through Jim's 2000 will. The wrongful death action was then brought by Jim's estate; therefore, any award would be to the estate which was awarded to Bob. In order to have standing to contest a will, the contestant must be able to show that they have an economic interest in the outcome of the suit. In this case, Fred has no interest in the outcome of the suit because there has been no showing that he is Jim's son. Because he has no economic interest, he will not be able to challenge the will itself or intervene in the wrongful death suit.

Additionally, to have standing to bring a wrongful death action, you must be a person authorized by the statute to bring such a suit. The statute limits the authorized persons to family members and the decedent's estate. Because it has not been established that Fred is the son of Jim, he will not be able to intervene as a proper party in the suit.

END OF EXAM