

Jeff's estate should be distributed as follows: one half to Irene and one half to the three children born to the marriage and to Will. Faye will receive nothing under the will or statutory law.

The will is valid, attested, and self-proven. Irene is the independent executor.

Faye will take nothing because she was adopted before the execution of the will and was specifically left out of the will. Texas allows for adopted children to inherit from their adopted families. Texas also allows the adopting of adults. However, it is the right of the testator to distribute property in a will as he chooses. Jeff specifically stated in the will that one-half of the property should be shared equally by the children born of my body during the marriage to Irene. Faye appears to have been specifically denied an inheritance under Jeff.

William's situation is different. Although he too is an adopted child, his adoption occurred after the will was executed. This makes William a pretermitted child. A pretermitted child is one not acknowledged in the will and that comes about after the will is executed. Additionally, William is not provided for by a non-probate transfer at death. As a result, he is a pretermitted child and will inherit according to the statutes.

A pretermitted child with no other siblings takes the intestate share of property. One with siblings born after the execution of the will, takes the intestate share. One with siblings born before the will was executed takes the same share as the children provided for by the will. As a result, William will take his share of one half of the property.

**END OF EXAM**

Jeff's will should be distributed as follows:

Irene –  $\frac{1}{2}$  of 5M cash,  $\frac{1}{2}$  of real property & securities. This is a proper devise under the will & nothing to the contrary affects her gift.

William – William was adopted in 2006. For purposes of probate, an adopted child is considered just as a blood child and may inherit from the adopted parents. If a child is born or adopted after the execution of a will, he is considered a pretermitted child & may take under the will in the same portions as the other children if there are any. This is assuming that the child was not provided for by any other non-probate means. No facts here indicated that William was provided for otherwise. Because he is considered a child under the code, he may take a share equal to the other children. So  $\frac{1}{2}$  of Jeff's estate will be divided equally between Williams & the other 3 children.

Faye – Faye is an adopted child. He is considered a child of Jeff under the Probate code, & may inherit from Jeff. However, Jeff's will specified for children "born of my body". This precludes Faye. He was adopted prior to Jeff's will, so he will not be considered pretermitted. Faye's adult status is of no consequence as he can still inherit under Jeff's will. However, he was precluded purposely and therefore will take nothing.

3 children born of Jeff's body – each will take an equal interest in  $\frac{1}{2}$  of Jeff's estate subject to William's share as a pretermitted child.

**END OF EXAM**

12)

Question 12:

(1) Irene keeps her half of the estate and William takes an equal share of the half that was granted to the three children born naturally to Jeff and Irene. Faye does not get anything.

Faye & William:

An adopted child inherits from the adoptive parents as a natural child would. An adopted adult will also inherit from the adoptive parents. (An adopted adult, though, will not inherit from her biological parents). What makes Faye's situation different from William's is that Faye does not get protection under the pretermitted child statute. Under this statute, a child born after a parent's execution of a will, who was not provided for under the will, can take an intestate share that was not given to the living parent. This means that intestacy rules govern the disposition to the after-born or adopted child. The decedent parent is treated as though he died unmarried and intestate. In determining what the pretermitted child gets under intestacy rules, the court will apply either one of the following applicable situations:

(a) if there were no other children in the marriage, the pretermitted child takes an intestate share of property not granted to the surviving spouse, or

(b) if there were other children in the marriage before the will was executed, but were *not* provided for in the will, the pretermitted child takes an intestate share of property not granted to the surviving spouse, or

(c) if there were other children in the marriage before the will was executed, but *were* provided for in the will, the pretermitted child takes an equal share of the interest left for the other children.

In this case, Faye does not fall into any of these categories because she was adopted in 2004, *before* Jeff executed the will. The will explicitly provided that only natural born children would inherit from Jeff. Jeff could have accounted for Faye, but chose not to and the court will honor that if all will formalities were followed.

William on the other hand was adopted *after* the will was executed, thus William is a pretermitted child entitled to his share. In this situation, he falls under prong (c) because there were three other children in the marriage. William will receive an equal share of the 1/2 that the children were left by their father. On a side note, the court will likely not apply the language in Jeff's will against William ("...my children born of my body..."). The only way the court would remove the protection of the pretermitted child statute is if Jeff had later executed a new will or through a republication of codicil, had again specifically left out the adopted children-- this time including William. Only then would the court rule against William getting any interest because there Jeff's intent to leave out his adopted child would be clear.

Three Children:

The three children each get 1/8. William gets 1/8.

Irene:

She keeps her 1/2 of the 5 million.

**END OF EXAM**