

1) Blanche, Curtis, Xavier, Yanni, and Zoe are entitled to inherit from Joe Earl. When a person dies intestate, the Probate Code dictates who qualifies as heirs of the estate. When the deceased is unmarried at death, the deceased's descendants are to take his estate per stirpes.

- Blanche and Curtis: As unquestioned children of Joe, Blanche and Curtis are direct descendants and are entitled to inherit from Joe Earl.
- Xavier, Yannie, and Zoe: (X, Y and Z) X, Y and Z are the children of Rex. Had Rex been alive at Joe Earl's death, he would have inherited. (An adopted child inherits like a natural child). Since Rex has passed, intestate succession dictates that X, Y, and Z divide equally the portion that would have gone to Rex. They are takers.
- Robbie: Robbie is not descendant of Joe Earl and therefore cannot inherit from Joe Earl, under intestate succession rules.
- Andy: Andy, as of now, cannot inherit from Joe Earl. Andy as an illegitimate child who was not adopted by Joe Earl, could only inherit from Joe Earl if he showed by i) clear and convincing evidence Joe Earl was his father or ii) Joe Earl was a presumed father according to standards of the Family Code. Here, there appears to be no clear & convincing evidence Joe Earl is Andy's dad. Moreover, he is not a presumptive father according to the Family Code. (In order to be a presumptive father would have to be i) married to the mother at the birth, ii) married the mother or attempted to shortly thereafter and took an affirmative step to demonstrate he was the parent (like name on birth certificate) or lived with child for first two years of life and held himself out as the father). Here the only indication Joe is the father is Vera's word and her putting his name on Andy's birth certificate. This is not clear & convincing evidence of paternity, nor is it enough to establish a presumption of paternity.

- 2) a) The Retirement account is a non-probate asset and consequently passes according to its terms-1/2 to Blanche and 1/2 to Curtis.
- b) The life insurance policy is also a non-probate asset and passes according to its terms- 50% to Blanche, 50% to Curtis.
- c) The C.D. was a joint tenancy with right of survivorship. Assuming Joe Earl signed it (Blanche didn't have to as taken), the C.D. becomes Blanche's in its totality.
- d) The automobiles were registered with right of survivorship. Assuming Joe Earl signed the document that created this right, Robbie takes 100% ownership. If not a valid creation of the right, 1/2 of the automobiles would go to Robbie and 1/2 to Joe Earl's heirs (see e for distribution).
- e) The other property of Joe Earl's should be distributed by intestate succession to his descendants per stirpes. This means Blanche takes 1/3, Curtis takes 1/3, and Xavier, Yannie, and Joe each take 1/9.

END OF EXAM

1)

Blanche, Curtis, and Rex's children are entitled to inherit from Joe Earl. Conversely, Robbie and Andy are not entitled to inherit from Joe Earl. Under the Texas Probate Code, (TPC) when a person dies without a surviving spouse, his or her descendants take per capita by representation. Per capita by representation means that each child shares the estate equally with their siblings and if one child does not survive the person whose estate is being distributed, their share is split equally between their children. These grandchildren step into the shoes of their parent. In addition, an adopted child is given the same effect and rights as a natural child.

Here, Joe Earl died intestate leaving no spouse but, two kids Curtis and Blanch and three grandchildren of Rex, Xavier, Yanni and Zoe. Rex will be considered a child even though he was adopted. Thus, Blanch, Curtis and Rex's children will take his estate as follows: Blanche 1/3, Curtis 1/3, and Xavier, Yanni and Zoe splitting 1/3.

Robbie will not take because he is not a descendant of Joe Earl. Robbie was Joe Earl's brother-in-law. The TPC does not provide for any relief for brother-in-laws.

Lastly, Andy will not take because he will not be considered Joe Earl's child. Under the TPC in order for a child not of the marriage to be considered the decedent's child the paternity presumption must appear. This is accomplished by (1) a child born during marriage, an attempted marriage or 300 days thereafter, (2) A paternity test showing that the man is the father (99% accuracy), (3) that the man has acknowledged he is the father in an official record or (4) that the child lived with the man for two years and he represented to others that he was the father.

In this case, Joe Earl never attempted to marry Vera, Andy's mother. In addition, he never lived with the child or took a paternity test. The birth certificate, which indicated he was the father, was not signed by him, so it can't be used against him at this time. Thus, Andy will not be considered Joe Earl's child and he cannot take under intestacy.

2) The assets of Joe Earl should be distributed as follows:

(A) Retirement Account

This asset should be distributed to Blanche and Curtis, the named beneficiaries. Under the TPC, when a contract identifies the beneficiaries of an asset, those named beneficiaries shall take in death of the maker. Joe Earl placed them as beneficiaries in his retirement account contract and as such, they should take.

(B) Life insurance policy

Just as indicated earlier, a contract that names beneficiaries shall be distributed to those beneficiaries upon the death of the maker. As such, Blanche and Curtis should take because they were named by Joe Earl.

(C) C.D.

As this is a valid joint tenancy with right of survivorship, Blanche should take the C.D. Under the TPC, if an asset is held with someone under a joint tenancy with right of survivorship, the survivor takes the whole interest upon the other's death. Texas requires valid signatures by the party to be bound. Not enough facts are given as to the point. Thus, since Blanche and Joe Earl held the C.D. as joint tenants with rights of survivorship, Blanche should take upon Earl's death.

(D) Automobiles

As the automobiles were registered in Texas as joint owners, Robbie will take upon Joe Earl's death. As stated earlier when a joint tenancy with rights of survivorship is created, the survivor takes. Thus, Robbie takes the automobiles.

(E) Other Property

The other property will pass through intestacy as Joe Earl died without a will. It will be distributed to his children per capita by representation, as he did not leave a spouse.

Thus, Blanche will take 1/3, Curtis will take 1/3, and Rex's children, Xavier, Yanni and Zoe will share Rex's 1/3 share equally.

END OF EXAM

8)

1. All of the Claimants except Andy and Robbie may inherit from Joe Earl. When a person is predeceased by his spouse, the Texas Probate Code provides for distribution per stirpes to the decedent's descendants. Here, that unquestionable entitles Blance and Curtis to a share of Joe Earl's estate. Although the anti-lapse statute does not apply in an intestate distribution, distribution is per capita with representation, which means descendants further down the line can inherit to the extent that their parents have predeceased the testator. Importantly, adoption establishes familial ties identical to natural birth for the purposes of intestate distribution. Thus, Xavier, Yanni, and Zoe are entitled to share in Joe Earl's estate as the offspring of Joe Earl's adopted son Rex, who predeceased Joe Earl.

Andy, on the other hand, probably does not have a valid claim to inherit. For a child born out of wedlock to have inheritance rights, Texas law requires (1) a statutory presumption of paternity, (2) a sworn acknowledgement of paternity by the alleged father, (3) a court adjudication of paternity during the alleged father's lifetime, or (4) a finding of paternity by the probate court by clear and convincing evidence. The statutory presumption applies in three circumstances: first, where the child was born during (or within 300 days after) the alleged father's marriage to the mother; second, where the alleged father marries the mother and acknowledges paternity in a birth certificate or other vital record; or third, where the alleged father resides in the same household as the child during the first two years of the child's life and holds himself out as the father. If the presumption applies, it can only be negated by contrary DNA evidence or denial of paternity coupled with acceptance of paternity by another man. Here, none of the statutory presumptions apply. Likewise, there was no sworn acknowledgement or court adjudication of paternity in Fred's lifetime. Thus, the only way for Andy to inherit would be upon a finding of paternity by clear and convincing evidence in the probate court. The court, on good cause, may order DNA testing of Fred for the purposes of making this judgment. In the absence of this finding of paternity, Andy will be unable to inherit.

Likewise, Robbie is not entitled to inherit from Joe Earl. By law, intestate distribution is to spouses and descendants unless the decedant has neither. Here, Joe Earl is survived by issue, which means that they are the exclusive takers of his intestate estate. Robbie is not a descendant

of Joe Earl and is therefore not a member of the class entitled to inherit from him.

2. a. Blanche and Curtis each take \$50,000 (50% each) under the retirement account. Although there are other intestate heirs, a retirement account with designated beneficiaries is a non-probate asset, and thus passes to the designated beneficiaries.

b. Blanche and Curtis each take \$250,000 (50% each) under the life insurance policy for the same reason discussed in "a."

c. Blanche takes the full \$25,000 of the C.D. because she has a right of survivorship. Although Texas does not recognize joint tenancies, a right of survivorship can be created by agreement (as here in a bank account agreement). Where the right of survivorship was validly created, it entitles the holder of the right to take the property free and clear on the co-tenant's death. Importantly, a right of survivorship account is only valid if both parties sign on the account. Thus, if Blanche was not a signor on the account, the C.D. would be subject to intestate distribution (discussed below in "e.").

d. Robbie takes the entire fleet of automobiles as the holder of the right of survivorship. While Robbie is not an heir, that is irrelevant since he holds an expressly created and validly registered right of survivorship.

e. The remaining \$1 million is subject to the intestate distribution. Because Texas law provides for distribution per stirpes (or per capita with representation), Blanche and Curtis are entitled to 1/3 each, while Xavier, Yanni, and Zoe split the remaining 1/3 (at 1/9 each). In the event that Blanche did not hold a validly created right of survivorship in the C.D., it would be subject to the same distribution.

END OF EXAM