

1)

Wendy's estate should be distributed equally, four ways, among her three children born of her marriage to Hank and Brad.

Under the Texas Probate Code, adopted children typically have inheritance rights that are the same as natural children. It is public policy in Texas to treat adopted children in the same manner as biological children. Adopted children may inherit *both* from their natural parents *and* their adoptive parents. Adopted adults may *only* inherit from their adoptive parents. However, a testator may make a provision in her will that evidences an intent to exclude adoptive children from inheriting from and through them. These provisions will be upheld.

Here, Agnes and Brad were both adopted so they would generally have the same inheritance rights as Wendy's natural children. Brad will be allowed to inherit from *both* Wendy *and* his natural parents. Agnes, however, was adopted as an adult so she may only inherit through her adoptive parents. However, Wendy made a provision in her will, indicating that she did not wish for her property to go to children not born of her body. This evidences her intent to exclude adoptive children from inheriting from her.

However, pretermitted children have rights beyond the general rules stated above. A pretermitted child is a child born *after* a will was executed who was not provided for in the will or through any non-probate property after the death of the parent.

Brad is a pretermitted child of Wendy. He was born in 2008, two years after her will was executed in 2006. He was not provided for in the will, because, although Wendy's will left her estate to her children, she specifically excluded children not born of her body. Further, the facts do not indicate that Brad was provided for through any non-probate property, such as life insurance proceeds. Therefore Brad, will be entitled to the rights of a pretermitted child in this situation.

Wendy, however, is *not* a pretermitted child because she was born *before* the will was executed. Thus, she will not be entitled to any of the rights of a pretermitted child.

When a previous will did provide for the testator's other children, the pretermitted child will share in that award. The total bequest made to the children in the will should be divided equally among those children and all pretermitted children. This will, in effect, revoke a portion of the gift made to the children

provided for in the will in order to provide for the pretermitted child.

Here, Wendy's will provided for her three children born during the marriage. As established, Brad is a pretermitted child so he will share in that award. Wendy, as previously discussed is not pretermitted, so she will not share. Wendy left *all* of her property, real and personal, to her three children of her marriage with Hank. Therefore, her entire estate will, instead, be divided among those three children and Brad, as he is the only pretermitted child.

**END OF EXAM**

1)

Wendy's estate should be distributed as follows: 1/4 share to each of her three natural children, and a 1/4 share to Brad.

The issue is whether an adopted adult child receives inheritance where the testator indicates her property should be devised to children "born of my body;" and whether a child adopted after the will is executed may take under the will.

Texas law gives full effect to disinheriting language in a will. While adopted children have may inherit from their adopted parents, the Texas Probate Code provides that where the testator specifies that her property should be devised to children "born of my body," adopted children are effectively disinherited and do not take under the testator's will. The same rule applies to adopted adult children. Adopted adult children have the same inheritance rights and limitations as adopted children, with the exception that they cannot inherit from their biological parents as adopted children can.

Here, Wendy and Hank adopted an adult, Agnes, during their marriage. Because Hank predeceased Wendy, none of the surviving spouse rules from the Probate Code apply, and all of Wendy's estate will be devised per her will and the relevant provisions of the Probate Code to her descendants. As an adopted adult, Agnes may inherit from her adoptive parents, Hank and Wendy. However, because Wendy specified in the language of her will after adopting Agnes that all of her property is bequeathed "to the children born of my body," this language has the effect of preventing Agnes from taking under the will. The Probate Code does not protect Agnes because it gives full effect to disinheriting language so long as the disinherited children were in existence or adopted prior to the execution of the testator's will, such that the testator was aware of their existence and status. Agnes was adopted before Wendy executed her will. Agnes, therefore, takes nothing.

The Texas Probate Code does, however, protect children who are born or adopted after the Testator's will was executed. Where a child is born or adopted after the testator's will is executed, the Pretermitted Child Statute applies. The Pretermitted Child Statute provides that children born or adopted after the testator's will is executed take as follows:

- where the testator has no other children when the will is executed, the pretermitted child takes the share he or she would take as if the testator died intestate, unmarried, and in ownership of only that

property not devised to the child's other parent.

- where the testator has other children who are provided for when the will is executed, the pretermitted child takes the same proportion that the other children would take.
- where the testator has other children who are not provided for when the will is executed, the pretermitted child takes the share he or she would take as if the testator died intestate, unmarried, and in ownership of only that property not devised to the child's other parent.
- note: these distributions are mandated by the Pretermitted Child Statute only if the testator has not provided for the pretermitted child through some nontestamentary instrument such as naming them as the beneficiary of trust or life insurance policy.

Here, Brad was adopted after the execution of Wendy's will. There is no evidence that Wendy has provided for Brad through a nontestamentary instrument such as a life insurance policy or trust. Therefore, the Pretermitted State applies. Because Wendy has other children who were provided for in her will, Brad takes in equal proportion to the three of them. Because Wendy devised all her personal and real property to the three of them in equal parts, they must share equally with Brad. Therefore, each of Hank and Wendy's natural children take a 1/4 share of the property and Brad takes a 1/4 share of the property.

In conclusion, Agnes takes nothing under the will, and Brad and each of Hank and Wendy's natural children take a 1/4 share of all of Wendy's real and personal property.

**END OF EXAM**

1)

Sue, as independent executor, should distribute nothing to Agnes and distribute Brad's share of the estate equal to the distribution to the other children. Because there is no residuary estate after the devise by Wendy, the natural children's shares must be diminished to provide for Brad, as a pretermitted child. Brad is entitled to one-fourth of Wendy's estate, his proportionate share of the devise to the natural children.

At issue is whether Agnes, as an adult adoptee, will be entitled to inherit from Sue, her adopted mother, despite no devise or other non-probate provision for her. Under the family code, an adult-adoptee may inherit from his adoptive parents, just as any natural born child. However, Wendy executed a valid will, which trumps the law of intestacy. When a will or other non-probate disposition is executed or made after the adoption of a child, the court will presume that the testator did not intend to devise or provide for the after-adopted child when the child is not included. Here, Wendy executed a valid, attested, self-proved will 3 years after the adoption of Agnes. The will provides that all of Sue's property is to be devised to her natural children - "children born of [her] body." While adopted children are considered "natural" children for purposes of intestate succession, the language of the testator's will is interpreted to further her intent. The language "born of my body" indicates that Wendy did not intend to include Agnes. Because this devise to only her natural children was executed after the adoption of Agnes, the court will not provide any devise for Agnes. The pretermitted protection of after-born children does not provide Agnes with a right to the estate of her adoptive mother. Therefore, Agnes is not entitled to any distribution.

Agnes also brings suit against the executor of Wendy's estate for the benefit of Brad. Brad, as an adopted child, is considered to be a "natural" child of Wendy for purpose of the law. Therefore, Brad is entitled to inherit from Wendy. When a will is executed prior to the adoption or birth of another child, the court will protect the after-born child under pretermition. Only if the testator executed a will after the birth of the child, expressly leaving that child out, or made another non-probate provision for that child will the child be unable to inherit under a valid will. The court will presume that the testator did not "intend" to leave out the after-born child. When other children are provided for in the will, the pretermitted child is entitled to inherit from the parent in proportion to his share of the devise to the other children. Here, Brad was adopted after the execution of Wendy's will, two years before Wendy's death. Wendy did not execute a codicil or revise her will. She also did not made any non-probate transfer to provide for Brad. However, her natural children were provided for in her will. Thus, the court will

provide for a devise of the after-adopted child in proportion to his share of the distributions to the children who are provided for. In her will, Wendy's estate is devised equally among Wendy's children. Therefore, Brad is entitled to one-fourth of the estate - the estate shared equally among the three natural children and Brad.

While Agnes has no devise under Wendy's will, Brad is entitled to one-fourth of the estate of Wendy, representing his equal proportionate share of the devise to the other provided-for children.

**END OF EXAM**