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1. Billye, Christy, Xavier, Yadira, and Zeb are entitle to inherit from Esther and Millie is not. When a person dies intestate, Texas applies the system of distribution based on per capita with representation. Accordingly, the first line of descendants that have a person living (survives the descendant by 120 hours) will take per capita and if a person who should take per capita is deceased then their descendants take their share by representation. Here, Esther was married but her husband, Jack predeceased her so the first line of descendants to consider would be Esther's immediate children (direct descendants). Esther had 4 children before she died: Alfred, Billye, Christy (who was adopted) and Zeb (from another marriage). Since some of the children did survive Esther (and did so by 120 hours), her children will take and her intestate estate will be distribute per capita to them (with representation) giving each child a 1/4 share of Esther's estate.

Alfred predeceased Esther but left two surviving children: Xavier and Yadira. Xavier and Yadira will take by representation in place of Alfred and will each get 1/2 of Alfred's 1/4 share (1/8 each) according to the rules of distribution in Texas. There is no need to apply an anti-lapse statute to Alfred's share because his descendants are entitled to take in his place under the per capita with representation system already.

Billye survived Esther and will therefore take his 1/4 share of the estate.

Christy, an adopted child, will also take a 1/4 share of the estate. In Texas, an adopted child is treated the same as a natural born child for purposes of inheritance and has the same rights as the natural children. Therefore, Christy will take her 1/4 share, the same as if she were a natural child. Zeb will also take a 1/4 share if Zeb enforces his rights as a biological child of Esther in the probate court. Adopted children may inherit from their biological parents (as well as their adopted parents) unless the adoption decree which terminated the parent/child relationship specifically disinherits the biological child from the biological parent's estate. Here, the facts state that although Zeb was legally adopted, there were no formal proceedings to terminate the parent relationship and Zeb was actually in contact with Esther before she died. Accordingly, it does not appear that there was any action taken or intent to disinherit Zeb and he will take his 1/4 share as a surviving child of Esther. Millie, on the other hand, will take nothing. Millie was not a descendant of Esther and therefore has no right to any of her intestate estate under the Texas rules of distribution as her predeceased husband (Jack)'s sister.

2. The following assets should be distributed accordingly:

a. Retirement Account

Billye and Christy will each take 1/2 of the retirement account's assets because they were named equal beneficiaries. Since the retirement account specifically names the beneficiaries, it will not be subject to probate or a part of Esther's intestate estate to be distributed. Instead, the retirement account should be divided according to its express directions.

b. Life Insurance Policy

Billye and Christy will each take 1/2 of the life insurance policy because they were named equal beneficiaries under the policy. Similar to the retirement account, the life insurance policy will not be subject to probate or distribution as the rest of intestate assets because it was specifically devised to Billye and Christy as equal beneficiaries. A life insurance policy is considered more of a contract with the insurance company and therefore will be executed according to its terms.

However, if there had been no beneficiaries named in the life insurance policy it would have been distributed per capita to the surviving children.

c. Certificate of Deposit (CD)

The CD will be distributed intestate. Although Alfred is named as a joint tenant with survivorship on the account, he did not survive Esther in order to exercise his right to survivorship. Assuming that Esther as a joint tenant also had a right of survivorship, when Alfred predeceased Esther, Esther

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exercised her right of survivorship and became the sole owner of the entire amount of the CD (she acquired Alfred's equal share). Therefore, since Esther wholly owned the CD when she died (by right of survivorship) the CD is within her estate and will be distributed among her descendants per capita with representation.

d. Other Property

The other property remaining in Esther's estate (money, real property and personal property) will be distributed as stated above (per capita with representation): 1/4 to Zeb, 1/8 to Xavier, 1/8 to Yadira, 1/4 to Billye, and 1/4 to Christy. If Jack had survived Esther (surviving spouse) there might have been an exempt amount "taken off the top" for him to provide for homestead, exempt personal property, and family allowance. If the surviving children are minors and now have no parents to provide for them, similar considerations may be made for them as well.

**END OF EXAM**

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1. The claimants entitled to inherit from Esther are Billye, Christy, Xavier, Yadira, and Zeb. Millie is not entitled to inherit from Esther.

Under Texas law, when a person dies intestate and is not survived by her spouse, her probate assets go to her descendants per capita with representation. This includes adopted children. Additionally, children born out of wedlock will inherit from their mother. Finally, children of the decedent who are adopted by someone else do not lose their inheritance rights from their natural parents unless they are adopted as adults, or the rights are expressly terminated in the decree terminating the parent-child relationship.

Here, Esther died intestate, because she did not leave a will. Her husband, Jack, died many years ago. Therefore, her descendants (her children and their children) will take her probate assets per capita with representation. Because Jack's sister, Millie, is not a descendant of Esther, she will not get an intestate share of Esther's probate assets.

Alfred, Esther's son, predeceased Esther. Therefore, Alfred's share will go to his children, Xavier and Yadira. Billye, as a natural child of Esther, will take an intestate share. Likewise, as an adopted child, Christy will take an intestate share. Zeb, a child born out of wedlock, will get an intestate share from his mother Esther even though he has been adopted because he was adopted as an infant, not as an adult, and because his inheritance rights have not been expressly terminated in a decree terminating the parent-child relationship. Indeed, there has been no formal termination of that relationship.

2. Non-probate assets - such as trusts and assets governed by contract - will pass under the terms creating them and are not part of the probate estate. Therefore, these assets will not be distributed to Esther's heirs through intestacy. Probate assets will pass per capita with representation to Esther's descendants, for the reasons described above.

a) Retirement account. Retirement accounts with named beneficiaries are non-probate assets that pass based on the contractual terms governing the account. They are not distributed through intestacy. Therefore, the named beneficiaries, Billye and Christy, will each take half.

b) Life insurance policy. Life insurance policies are non-probate assets that pass based on the contractual terms governing the policy. They are not distributed through intestacy. Therefore, the named beneficiaries, Billye and Christy, will each take half.

c) Certificate of deposit account. Certificates of deposit are personal property and part of the probate assets to be distributed in intestacy. Here, however, the issue is who owns the CD, since Esther held it with Alfred as joint tenants with right of survivorship. Texas does not recognize common law joint tenancies. However, parties may agree to a right of survivorship by contract (i.e. the account agreement). It appears that they have done so here. Because there was a valid contractual right of survivorship on the account held by Esther and Alfred, when Alfred died, Esther took the entire account as the surviving party. Thus, the entire account passes through Esther's probate estate to her heirs. As discussed above, it will be distributed to her children per capita with representation. Because she had four children, each child will get 1/4. Because Alfred predeceased Esther, his descendants will take his share by representation, meaning that his children will split his share. Thus, Xavier and Yadira will each take 1/8 of the account, and Billye, Christy, and Zeb will each take 1/4 of the account.

d) Other property. All other property is probate assets with pass through intestacy. Esther's

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descendants will take per capita with representation. Thus, the other property will be distributed in the same manner just described for the CD account. Xavier and Yadira will each take  $\frac{1}{8}$  of the account, and Billye, Christy, and Zeb will each take  $\frac{1}{4}$  of the account.

**END OF EXAM**

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Billye, Christy, Xavier, Yadira and Zeb are all entitled to inherit from Esther. Millie is not entitled to inherit from Esther.

At issue is the distribution of property upon intestacy under the Texas Probate Code. Also at issue is to what extent adopted children are entitled to inherit under the Texas Probate Code. Under the Texas Probate Code, when an individual dies intestate without a living spouse but with living descendants, the descendants are entitled to inherit the whole intestate estate per capita with representation. Applied to the facts of this case, Zeb, Billye and Christy are entitled to inherit as Esther's children. Under Texas law, adopted children are treated the same as natural children. In addition, adopted children are entitled to inherit from their natural parents unless either (a) they were adopted as adults or (b) their rights to inherit from their birth parents was specifically terminated pursuant to the terms of the adoption (i.e. the adoption decree specifically provided that the child would not be entitled to inherit). Applied to the facts of this case, Christy would clearly be entitled to inherit since she is treated exactly the same as a natural child of Esther under Texas law (i.e. she is in exactly the same position as Billye for these purposes). Additionally, Zeb will also be entitled to inherit as her son unless his inheritance rights were specifically terminated upon his adoption because he was adopted as an infant and there is nothing in the facts that indicate that his rights were terminated. The fact that Esther had virtually no contact with Zeb is irrelevant for these purposes.

In addition, Xavier and Yadira will be entitled to inherit through representation due to their father (Alfred) predeceasing his mother. As described in more detail below, the share that Alfred would have taken had he not predeceased Esther will be split equally between Xavier and Yadira.

Millie will not be entitled to inherit. As described above, under Texas law, when an individual dies intestate with no surviving spouse and with surviving descendants, the descendants take the estate per capita with representation. Moreover, as Jack's sister (not Esther's) Millie would never be entitled to inherit under the Texas intestacy laws (even if Esther died with no children), because Millie is neither an ascendant or descendant of Millie.

2.

The assets should be distributed as follows:

Retirement Account and Life Insurance Policy: 1/2 to Billye and 1/2 to Christy. The retirement account and life insurance policy designated Billye and Christy as equal beneficiaries. This is a valid non-probate transfer of assets and is not subject to intestate distribution. The other children (and grandchildren) are not entitled to a share of these assets.

Certificate of Deposit: 1/4 to each of Billye, Christy and Zeb and 1/8 each to Xavier and Yadira. Because the Certificate of Deposit listed Alfred and Esther as joint tenants with right of survivorship, Alfred's death gave Esther a right of survivorship (a valid non probate transfer). Thus, this account is now part of the intestate estate. Because Texas follows per capita with representation as its method for distributing intestate shares, each of Christy's four children will take a 1/4 share, with Alfred's 1/4 share being allocated equally to Xavier and Yadira.

Other Property: 1/4 to each of Billye, Christy and Zeb and 1/8 each to Xavier and Yadira. This is all distributed pursuant to the intestacy statute on a per capita with representation basis, and will be distributed in accordance with the description above.

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**END OF EXAM**