

### Question 8 – February 2014 – Selected Answer 1

1. Betsy, Alice, Sarah, and Claire are entitled to inherit from Thomas. Dudley might be able to inherit from Thomas. Under Texas's intestacy scheme, Texas follows per capita with representation. In other words, the first line of descendants take, then the second line of descendants take in equal portions the share that his/her/their parent was entitled to receive if the parent dies. Furthermore, adopted children are treated like natural children, and take the same shares as natural children. Here, Betsy and Alice take because they are direct, first-line descendants of Thomas. They are born of Thomas's blood, so they will take no doubt.

Claire and Sarah, on the other hand will take, in equal shares, the portion that Evan was entitled to receive. Although Evan was an adopted child, he is treated the same as Betsy and Alice. Therefore, Claire and Sarah will be able to take Evan's share, in equal portions. Laura will not take because Betsy is still alive. If Betsy predeceased Thomas, however, Laura would take the full portion that Betsy was entitled to received. Dudley will only be able to take if it can be proved, by clear and convincing evidence, that Thomas was his biological father. Here, it doesn't seem like that Dudley will take because Nancy was unable to procure genetic testing from Thomas before he died, and no presumption of paternity was established otherwise because he was never married to Nancy, nor was he adjudicated Dudley's father, nor did Thomas acknowledge paternity of Dudley. Therefore, Betsy, Alice, Sarah and Claire are entitled to inherit from Thomas. Dudley will most likely not be able to inherit from Thomas unless Nancy or someone else can obtain a sample of Thomas's DNA, and tests it, which would conclusively establish by 99% that Thomas is Dudley's biological father.

2. a. The Homestead is intestate property, and will be distributed according to Texas's intestacy scheme in the Texas Probate Code. Here, the Homestead will go to Betsy 1/3, Alice 1/3, Sarah 1/6 and Claire 1/6. Dudley must establish, by clear and convincing evidence that Thomas was his biological father in order to take. The fractional interest of each descendant would be split up differently, but Dudley would take as much as Betsy and Alice.

b. The Life Insurance Policy of \$500,000 is intestate property as well because although it would normally count as non-probate property, the default beneficiary is Thomas's estate, and, therefore, it will be distributed according to the intestacy scheme in the Texas Probate Code as stated above. Betsy 1/3, Alice 1/3 and Sarah 1/6 and Claire 1/6. Again, Dudley must establish the same burden the Thomas was his biological father for him to take the same as Betsy and Alice.

c. The savings account is non-probate property and shall pass according to the terms on the account. Therefore, Betsy shall receive all of the \$100,000. The property does not pass to Evan's heirs - Sarah and Claire because the account is a joint survivorship account, and the funds from such an account passes to the survivor of such an account.

d. The retirement account is intestate property because the language, "succession to the rights of the account holder is limited to the following named beneficiaries: The descendants of Thomas as equal beneficiaries, per stirpes." This language is basically the same as saying nothing because that is how the property would have passed if nothing was stated on the account. Therefore, because of the above-mentioned reasons stated in "a." and "b.", Betsy gets 1/3, Alice gets 1/3 and Claire and Sarah get 1/6 each. Dudley too if he can prove Thomas was his biological father.

e. The certificate of deposit shall also pass by intestacy because it was Thomas's sole property, having survived Julie. Therefore, because of the above-mentioned reasons in "a.", "b." and "d.", the certificate of deposit will pass to Betsy 1/3, Alice, 1/3, Sarah and Claire 1/6 each, and Dudley only if he can show by clear and convincing evidence that Thomas was his biological father, which is unlikely.

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### Question 8 – February 2014 – Selected Answer 2

1. Betsy, Alice, Sarah, and Claire are entitled to inherit from Thomas. Laura and Dudley are not. The issue is who is treated as an heir for the purposes of intestate succession. Where a person dies without a surviving spouse but with surviving natural-born children, all natural born children inherit. Here, Betsy and Alice are entitled to inherit as natural born children. Betsy's daughter Laura will not inherit from Thomas because Betsy is still alive.

Adopted children are treated like natural children for the purposes of intestate succession. Thus, Evan would also stand to inherit, were he alive. However, where a child of the decedent predeceases the decedent, the child's children can "stand in the shoes" of the predeceased child and equally take that predeceased child's share. As the children of the predeceased adopted child Evan, Sarah and Claire would therefore also stand to inherit from Thomas.

As for Dudley, he will have to show that Thomas was his father in order to inherit from Thomas. In Texas, a man is presumed to be the father of a child if: (1) the man was married to the child's mother and the child was born during or within 300 days of the marriage (or putative marriage); (2) the child's mother and the man were married after the child's birth and the man was voluntarily named on the child's birth certificate, the man acknowledge his paternity in the paternity registry, or the man promised to support the child in a record; or (3) the man lived with the child in the first 2 years of the child's life or held out to others that he was the child's father.

Here, none of the requirements for presumed fatherhood are met. Thomas and Nancy never married. Thomas also never lived with Dudley or held out to others that he was Dudley's father. In fact, Thomas specifically denied it. This is further corroborated by the fact that Nancy put a fictitious name on Dudley's birth certificate. Dudley may still seek to establish paternity through genetic testing, but with Thomas dead he would have to seek genetic material from someone related to Thomas. Without a genetic test, though, Dudley takes nothing through intestate succession. Thus, as explained above, only Betsy, Alice, Sarah, and Claire will inherit from Thomas.

2. Betsy and Alice will each get a  $\frac{1}{3}$  interest and Sarah and Claire will each get a  $\frac{1}{6}$  interest in: the homestead, the life insurance proceeds, the retirement account, and the certificate of deposit. The savings account will go to Betsy outright.

Homestead: The homestead is a probate asset subject to intestate distribution. Texas uses per capita with representation, which distributes probate assets equally at the first level of descendants, then distributes by representation at successive levels. As such, Betsy and Alice get a  $\frac{1}{3}$  interest, and then Sarah and Claire split the  $\frac{1}{3}$  that Evan would have gotten, which gives them  $\frac{1}{6}$  each.

As Betsy and Alice are adults now and are no longer minor children, they will not get the right to use Thomas' homestead as their own homestead. Additionally, since Sarah and Claire are not minor children of Thomas (but rather of Evan), they also do not get the right to use this homestead as their homestead.

Life Insurance Policy: Life insurance is a non-probate asset, where the named beneficiary controls. Here, the named beneficiary, Julie, has deceased. Thus the policy proceeds go to the default beneficiary. As the default beneficiary is simply Thomas' estate, the proceeds pass through the intestate scheme and will be divide just as the homestead was:  $\frac{1}{3}$  to Betsy,  $\frac{1}{3}$  to Alice,  $\frac{1}{6}$  to Sarah,  $\frac{1}{6}$  to Claire.

Savings Account: Assuming there was a properly executed right of survivorship, this account is a non-probate asset not subject to the intestate scheme. When Evan died, the property was vested equally in Betsy and Thomas. Now that Thomas has died, the right of survivorship vests the property 100% in Betsy. There Betsy takes this account outright under the right of survivorship.

Retirement Account: The retirement account is also a non-probate asset, where the named beneficiary controls. Here the named beneficiaries are the "descendants of Thomas". However, the per stirpes language suggests that the retirement account funds do not simply go to all of Thomas' existing descendants (which would include Betsy, Alice, Sarah, and Claire, but also Laura as well) but rather the funds are distributed per stirpes (or "by the stocks"). As such, it should be distributed equally among his three children, with Sarah and Claire standing in Evans' shoes. Thus the retirement account, although a non-probate asset, will be distributed as the homestead was: 1/3 to Betsy, 1/3 to Alice, 1/6 to Sarah, 1/6 to Claire.

Certificate of Deposit: Until Julie died this was also a non-probate asset. Once Julie died, however, the right of survivorship kicked in, putting ownership 100% in Thomas. Upon losing its character as a joint tenancy with a right of survivorship, it became an asset subject to intestate distribution. Thus, the certificate of deposit should be distributed 1/3 to Betsy, 1/3 to Alice, 1/6 to Sarah, and 1/6 to Claire.