

Question 2 – July 2015 – Selected Answer 1

1. Jason will have the right to occupy the Homestead until his death, but Jason actually owns only half of the estate as his community property and Alice owns the other half that was Betsy's community property. The certificate of deposit vests with Alice by right of survivorship, Jason and Alice will split the joint checking account with \$5,000 to each, Jason will own a 1/3 life estate in the Lake House and Alice will own the other 2/3rds outright and the remainder from the 1/3 life estate, and the personal property will go 1/3rd to Jason and 2/3 to Alice. The issue is the distribution of assets in Texas when a person dies intestate, meaning without a will.

Texas is a community property state. All items on hand when the community estate is dissolved by either divorce or death are presumptively community property. Such a presumption must be overcome by clear and convincing evidence.

Jason has the right to uninterrupted possession of the their Homestead under Texas law as the surviving spouse. It is assumed that the property is a valid Homestead. Under the inception of title rule, the homestead is community property because it was purchased during marriage. Therefore, Jason actually owns half of the \$250,000, or \$125,000 of the value as his own community property. The other half will go all to Alice under the intestate succession rules because she is Betsy's child from another marriage. Alice, as an adult child, has no right to occupy, sell, or use the homestead as collateral for a loan while Jason is still alive. Because of this, Jason and Alice are no tenants in common. A minor child of Jason would also have the right to occupy the homestead. Toby does not own any portion of the homestead, assuming that he was not legally adopted by Betsy. Stepchildren may be provided for of course but intestate succession deals with blood relatives. Betsy and Toby were not related by blood and there is no indication that she adopted him.

The certificate of deposit has a valid right of survivorship because it specifically provides that the parties are "joint tenants with right of survivorship." This means it will not be transferred through the estate but will vest as Alice's separate property immediately upon the death of Betsy. Jason may have a claim against Betsy's estate if community funds were used to purchase the certificate of deposit but there are no facts here to indicate that.

The checking account will be split between Jason and Alice, with \$5000 to each. The checking account is presumptively community property and there is nothing here to rebut that. The provision for "joint tenants" just means the bank will not get sued if they pay it out to Jason, it does not mean that Jason actually takes the whole \$10,000 through right of survivorship. Texas courts and the statute have determined that "joint tenants" is insufficient to create a right of survivorship. Therefore, Jason will take \$5000 as his share of the community property (not as a result of any intestate statute, but just because he actually owns it). Alice will take the other \$5000 because community property goes half to the surviving spouse and half to the deceased spouse's descendants where the descendant is not also a descendant of the surviving spouse.

Because Betsy owned this house prior to her marriage to Jason, it is presumptively separate property under the inception of title rule. There is no evidence here to rebut that. When a person dies intestate, their separate real property is divided as follows: Jason will have a 1/3rd life estate in the Lake House, and Alice, as the only descendant of Betsy, will own the other 2/3 outright and the 1/3 remainder in Jason's life estate.

Because Betsy inherited the \$5000 in personal property from her mother, it is presumptively her separate property. There is nothing here to rebut that. When a person dies intestate, their separate personal property is divided as follows: Jason will take 1/3 of it, or \$1,667, and Alice, as the only descendant of Betsy, will take the other \$3,333. A dispute as to who takes what to reach this value would likely have to be decided by a probate court.

2. The best solution for Betsy's estate would be the Statutory Heirship proceeding. The issue is how to transfer ownership of real property in Texas without a will.

Texas law favors independent administration of the estate, rather than through the courts. Jason, as surviving spouse, would be first in line to administer the estate. No facts here indicate that he would be disqualified. It is best to have the estate independently administered because it is much cheaper and you do not have to go to court to get permission for everything you do in regard to distributing the estate. The estate should only use a probate court as a last resort.

Because Betsy died intestate, there is no will to probate as a muniment of title. This is a problem because Betsy's estate has real property so there must be some document in the chain of title to transfer ownership. The certificate of deposit will pass outside of the estate as a non-probate asset but everything else must go through the estate. A small estate administration is available to some individuals who die intestate, but not to Betsy because her estate exceeded \$50,000 dollars. Therefore, the only option is a Statutory Heir ship Proceeding. This will allow the estate to obtain valid title to the real property, which is the main issue here because there must be a document in the chain of title. A probate court will rule on the ownership of real property and the court order will be valid to file with relevant title office in the county where the property is located to transfer ownership of the property. Non-real property may be administered by the surviving spouse, Jason. This is because such property has no written title. The parties will only need the input of a probate court for the non-real property if there is a disagreement.

Question 2 – July 2015 – Selected Answer 2

1. At issue is how both personal and real, separate and community, property passes under the intestacy statutes of Texas. In Texas, if a person dies without a will while married but while having children outside of the marriage, the intestate procession occurs as follows. Community property will be divided between the surviving spouse and the children, the children taking the decedent's entire 1/2 interest in the community property. The surviving spouse takes his 1/2 interest in the community property. Separate property will pass as follows. For real property, the surviving spouse will take a 1/3 life estate interest in it, with the children taking the 2/3 remainder interest. Personal property will provide a 1/3 interest to the surviving spouse, and a 2/3 interest to the children.

Here, the homestead (a) worth 250,000 is community property. All assets acquired during marriage are presumed to be community property. Here, the house was acquired during Jason and Betsy marriage, and is community. It will therefore go 1/2 to Jason and 1/2 to Alice, Betsy's daughter from outside of the current marriage. Toby, her adult stepson, will not have any interest, as stepchildren are not afforded any interest under the intestacy statute of Texas. There is also no indication that Toby was adopted by Betsy. If he were, he would have the full rights of a biological child. However, Jason will be able to continue living in the house, as it is a homestead and the Statute allows for a spouse to remain in the homestead for life.

The Certificate of Deposit (b) held with Alice will pass outside of the statute as it is not part of the intestacy estate because it is a joint tenancy with right of survivorship. Therefore, Alice, as the survivor, takes all of this 25,000 asset. The checking account (c) held with Jason jointly is not a joint tenancy with right of survivorship. Because it lacks the right of survivorship, Betsy's 1/2 shared interest in it will pass under intestacy. This account is presumed to be community property, and as such Jason will take his 1/2 interest in it while Alice will take Betsy's 1/2 interest (5,000). The lake house (d) is Betsy's separate property, as it was acquired before marriage. In Texas, separate property is any property acquired by gift, devise, or decent during marriage, or any property acquired separately before marriage. Because the lake house was acquired before marriage, it is Betsy's separate property. As separate property real estate, Jason will take a 1/3 life estate in it while Alice will take the 2/3 remainder interest. Betsy's other personal property (e) will pass with a 1/3 interest to Jason and a 2/3 interest to Alice. This is because the personal property was acquired by inheritance from her mother, and as such is not community property. However, Jason may be able to claim a personal property set aside for personal items of up to 50,000 in value that will not pass through the intestacy estate.

2. At issue are the methods of intestacy administration in Texas. Intestacy estates may be settle by petitioning the court for an heir ship proceeding. Here, the parties must submit affidavits showing heir ship. Another method is for the court to appoint an administrator of the estate and issue them letters of administration. Here, the best method would be a less formal heir ship proceeding. So long as there is not a dispute among parties, an heir ship proceeding will allow the court to apportion everyone's interests in the estate. It lacks the formalities of a formal administration of the estate, which requires the court to have much oversight over the administration and can end up being costly. There may be a valid argument for administering the estate according to a more formal administration due to the large size of the estate. But because there does not appear to be any controversy among the parties, this seems unnecessary. As such, Betsy's heirs (Jason and Alice) should petition the court for the less expensive heir ship proceeding.