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1. Andrew, David, and Edward each take 1/6 of John's 1/2 community interest in the home, subject to Sally's use of the home as a homestead, and Sally takes 1/2 community interest in the home. Andrew, David, and Edward each take 1/6 of John's 1/2 community interest in the joint savings account and Sally keeps her 1/2 interest in savings account. Andrew, David, and Edward each take 2/9 interest in the Picasso painting and Sally takes 1/3 interest in the Picasso painting.

At issue is the distribution of a probate estate when the decedent did not have a will and left a spouse and descendants, not all belonging to the surviving spouse. The Texas Estates code governs the distribution of a decedent's estate when the decedent dies without a will. It is important to characterize property as separate or community because different rules are used to distribute separate versus community property. In Texas, property acquired by either spouse prior to the marriage or during the marriage by gift, devise, or descent is separate property. All property acquired by either spouse during the marriage is community property. The burden to prove that property is separate property and overcome the community property presumption is clear and convincing evidence. When a spouse dies without a will, leaving a surviving spouse and descendants that do not also belong to the surviving spouse, the descendants will inherit 2/3 of the decedent's separate property estate and 1/2 of the community property estate. The surviving spouse will inherit a 1/3 share of the decedent's separate property estate and take 1/2 of the community estate. Children from a surviving spouse's prior marriage will not inherit from the intestate decedent.

Here, John died without a will leaving Sally, Andrew, David, and Edward as descendants. Sally has a child who does not belong to John. John's probate estate consists of a home valued at \$300,000, a joint savings account in the names of John and Sally with a balance of \$30,000, and Picasso painting, valued at \$9000. The home is community property. It was purchased during the marriage with earnings during John and Sally's marriage. As such, John's descendants will take his 1/2 share of the community estate and Sally will retain her 1/2 share of the community estate. However, Andrew, David and Edward's interest in the house is subject to Sally's use of the house as her homestead for as long as she intends to live on the property. If Sally moves or abandons the homestead, then Andrew, David, and Edward will take 1/6 each and Sally will retain her 1/2 interest in the

community property house.

Andrew, David, and Edward will also share $\frac{1}{6}$ each in John's $\frac{1}{2}$ community property interest in the joint savings account. Here, the joint savings account is community property. While Texas recognizes joint savings accounts between spouses with rights of survivorship, the account must clearly express such rights of survivorship. Without such expression, the presumption of community property will hold that the account is community property. As such, John's descendants will inherit John's $\frac{1}{2}$ community interest in the account and Sally will take her $\frac{1}{2}$ of the community interest in the account. Andrew, David, and Edward will each take \$5,000 and Sally will take \$15,000.

Andrew, David, and Edward will each take a $\frac{2}{9}$ interest in the painting as John's separate property and Sally will take a $\frac{1}{3}$ interest in the separate property painting. The painting is separate property because while it was acquired as property during the marriage, it was acquired by John through inheritance from his uncle. As such, the painting is separate property. Because the painting is separate property, John's descendants will inherit $\frac{2}{3}$ of the interest and Sally will take $\frac{1}{3}$ of the interest. The descendants will split that interest equally, so Andrew, David, and Edward will each take \$2000 and Sally will take \$3000. It should be noted that if the painting was part of furnishings or goods in the homestead, it may be subject to the exempt property set aside while Sally continues to use the homestead and thus would not be subject to probate until Sally ceases to use the home as homestead or until Sally dies.

2. Sally should take the entire life insurance policy.

At issue is the distribution of a non-probate asset such as a life insurance policy with a named beneficiary when the decedent dies intestate. In Texas, non-probate assets that are payable at the time of death are distributed according to who is named as beneficiary. While divorce may negate the ability of the beneficiary to take under the life insurance policy, a will may not be used to change the named beneficiary in the life insurance policy. A community estate is terminated upon death or divorce.

Here, John purchased a life insurance policy naming Sally as beneficiary. On John's death, the life insurance company is contractually obligated to pay the beneficiary for the policy. The income from that policy will be Sally's separate property since death or divorce will destroy the community estate. Therefore, because Sally is the named beneficiary and

there is no longer a "marriage" to govern income from separate or community property, Sally is entitled to all of the proceeds from the life insurance policy.

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(1) Under Texas intestacy rules, heirs take per capita with representation. Separate property is property acquired through will, gift, or inheritance. Community property is all other property and includes property acquired during the marriage, such as homes and wages. There is a community property presumption, and clear and convincing evidence is needed to rebut the presumption that property is separate property.

1(a) John and Sally's home is community property. Sally keeps her 1/2 community property interest, and the remainder passes to John's children (Andrew, David, and Edward) per capita with representation. Thus, Andrew, David, and Edward each take a 1/6th interest in the home. (John's 1/2 community property share divided by three). Ben and Chris do not inherit any intestate shares because the facts do not indicate that John adopted them. The facts indicate that this may be John and Sally's homestead. In addition to Sally's 1/2 community property interest, she is entitled to remain in the home as a life tenant for as long as she uses the home as her homestead. Andrew, David, and Edward's interest will not limit Sally's homestead right of occupancy.

1(b) The joint savings account is community property. To create a right of survivorship, there must be specific language stating "with right of survivorship." Because that language is lacking here, the savings account is treated community property. Thus, Sally is entitled to her 1/2 interest in the joint savings account. Again, John's children -- Andrew, David, and Edward take John's 1/2 CP share per capita with representation. Thus, each child of John gets a 1/6th interest in the joint savings account.

1(c) The limited edition Picasso lithograph is John's separate property because John acquired it through inheritance. Under Texas intestacy laws, 1/3 of the separate property interest is given to the surviving spouse, here Sally. The remaining 2/3 are divided between John's heirs (his three children - Andrew, David, and Edward). Again, because the facts do not indicate that John adopted Ben and Chris, they do not take from John's intestacy.

(2) The non-probate assets are treated like contracts, and are to be paid to the named beneficiary in the contract. Here, John's life insurance contract named Sally as the beneficiary. Thus, Sally is entitled to take the \$200,000 life insurance proceeds.

8)

(1) In Texas, if a person dies intestate, then their property passes under the Texas intestate statute. John was survived by a spouse and children both from and outside of the marriage. John's wife will inherit her 1/2 interest of John's community property, and 1/3 of the separate property. She would inherit a 1/3 life estate interest in any separate real property. She is also entitled as the spouse to claim exemptions for the homestead, personal property exemption in the amount of \$60,000, and family allowance if it is shown that it is needed. John's children will inherit the remaining 2/3 of his separate property pro rata with representation and will inherit John's 1/2 community property pro rata with representation. .

The home and the painting are both probate assets and should be distributed accordingly: Sally gets 1/2 and Andrew David and Edward get a 1/6th interest each. Sally gets to stay in the home rent free for life. Painting 1/3rd to Sally and 2/9ths each to Andrew, David, and Edward, but the painting can be claimed as a personal proerpty exemption.

The home is community property. The home was purchased with community property (income during the marriage) and it was acquired during the marriage, so the presumption for community property controls. Thus, Sally is entitled to inherit her 1/2 interest in the entire house. The remaining 1/2 community property interest in the house should pass equally to Andrew, David, and Edward, meaning they each have a 1/6th interest. Ben and Chris are not children of John, and unless he adopted them, they do not inherit from John's estate.

The children's inheritance will be subject to Sally's ability to claim a homestead exemption on the house (so long as it is under 10 acres if urban and 200 acres if rural), thus Sally would be able to live in the home rent free for life and not subject to any non-constitutionally listed creditors.

The painting was inherited by John, and was thus separate property. For separate property, Sally is entitled to a 1/3 interest in the 9,000 value of the painting and Andrew, David, and Edward are each entitled to a 1/3 of the 2/3rd interest in the 9000 value of the painting (2/9ths I believe). However, Sally can attempt to use the personal property exemption to exempt the painting as furnishings for the house, and since the painting is

worth less than \$65,000 she should be able to keep the painting.

While checking accounts with beneficiaries designated can be non-probate assets, if there is no beneficiary named and no rights of survivorship, the account passes as the rest of the estate does via intestate succession. The issue is whether the savings account had joint rights of survivorship or named a beneficiary. Here, the language of the account does not list John and Sally as having "rights of survivorship" the magic language used to set up an automatic survivorship transfer. The account could be community property, and is assumed to be, if it was used to commingle community funds and separate property can not be traced. If the account has a named beneficiary, then the beneficiary would get the proceeds. However, since there is no beneficiary named in the facts, the account will pass as follows: 1/2 of any community property in the account to Sally, and the remaining 1/2 community property to the three sons of John (1/6th each). Again, Sally can claim an exemption under the family allowance exemption and try to have some of the cash from the account offset if she can show she can't cover her reasonable necessary needs with what she has already inherited.

(2) The non-probate assets in John's estate is the life insurance policies. As outlined above, because there was no named beneficiary and no right of survivorship, the checking account passes intestate. The contracts of the non-probate assets will control the distribution of the proceeds.

Here, the life insurance policy names Sally as the sole beneficiary. As sole beneficiary of a non-probate asset she is entitled to inherit the entire \$200,000 of the policy. The children were not mentioned in the contract and do not take any portion. Further, the asset was likely community property, and Sally would've had a large interest in the policy anyway.
