

Question 6 – July 2018 – Selected Answer 1

A) Mary does not have an interest in either the Ranch or the Portfolio

Under Texas law, when a will gifts property to a spouse, but testator later divorces the spouse, then the spouse is treated as if she predeceased the testator and the gift is void. The ex-spouse will receive nothing. The bequest is essential struck.

here, Mary does not have an interest in the Ranch or portfolio because she and Luke are divorced and she is treated as if she pre-deceased Luke and thus her bequest is void.

B) Peter does not have an interest in either the Ranch or the Portfolio

Under Texas law, when a beneficiary to a will kills the testator the courts impose a constructive trust where the killer's inheritance is placed then passed on to the killer's heirs. The killer never actually holds, uses, or has access to the inheritance. This is done for public policy reasons because the state of Texas does not want to encourage beneficiaries to kill so that they may receive an inheritance.

Here, because Peter killed Luke, and Peter was stated in the will to inherit, the court will impose a constructive trust on those assets. The assets would be passed on to Peter's heirs, in this case, that is only Beth.

C) Tom has a 1/3 life estate in the Ranch and 1/3 interest in the Portfolio

Under the Texas Probate Code, property will be distributed according to the language of the will if it is validly executed. Language will be interpreted to impose the will of the testator if it can be readily determined. The probate court will read the document as a whole and will use rules of construction to clear up any ambiguities.

Here, Luke's will was validly executed and stated that his "children" would be given a life estate in the Ranch and the grandchildren will get the remainder. In another part of the will, Luke listed out the names of the children (Peter, Rachel, and Tom) and this a court will likely read those names into the devise of the Ranch. Thus, Tom would have a 1/3 life estate in the Ranch. Further, the Portfolio was not divided explicitly in the will and the Probate code states that any remaining property not expressly devised will be counted in the residuary of the estate. Luke's will has a clause that divides the residuary amongst Peter, Rachel, and Tom. Thus, Tom would also receive 1/3 of the Portfolio (\$333,333.33).

D) Beth has a 1/3 life estate and 1/3 remainder in the Ranch and 1/3 interest in the Portfolio

Beth will take Peter's interest because of the constructive trust (as discussed above). Peter's interest would be divided the same as Toms (see discussion above). Thus, Peter would have

received 1/3 of the Portfolio (\$333,333.33). and 1/3 life estate in the Ranch. Additionally, because Beth is a granddaughter of Peter, she will also get a portion of the remainder in the ranch.

Luke's will stated that his children's descendants would share the remaining interest in the ranch. At Luke's death, his children's descendants were Beth, Steve, and Kelly (see discussion on Kelly below). and thus the remaining interest in the ranch would be divided three ways. Therefore, Beth would also receive a 1/3 remainder in the Ranch.

E) Steve has a 1/3 life estate and 1/3 remainder in the Ranch and 1/3 interest in the Portfolio

Under Texas Probate Code, when gifts in a will pass and the intended beneficiary has predeceased the testator, the general rule is that the gift would lapse into the residuary. However, Texas has an anti-lapse statute which prevents the gift from going to the residuary if the person who died is related to the testator's parents by blood. In that case, the gift would pass to the person's heirs rather than the residuary.

Here, Rachel was a beneficiary of Luke's will (she would have received a 1/3 life estate in the Ranch and 1/3 interest in the Portfolio) and because Steve is a descendent of Luke's parents Luke's gift to Rachel will not lapse into the residuary but will instead pass on to Steve. Therefore, Steve is entitled to receive a 1/3 life estate in the Ranch and 1/3 interest in the Portfolio. Further, because Steve is a descendent of Luke's children (see discussion per D), Steve will also receive a 1/3 remainder in the Ranch.

F) Kelly has a 1/3 remainder in the Ranch and no interest in the Portfolio

Under Texas law, adopted children are treated the same way as biological children. They may inherit from their adoptive parents but not from their biological parents.

Here, Tom has legally adopted Kelly and thus she will inherit as if she were his biological child. That fact that she was adopted as an adult doesn't matter here because that only limits Kelly's ability to inherit from her biological parents, not Tom. Because Kelly is then considered a descendent of Luke's children, she will be entitled to a 1/3 interest in the Portfolio just like Beth and Steve.

Question 6 – July 2018 – Selected Answer 2

(A) Mary will receive nothing.

In Texas, if two spouses divorce and the divorced spouse remains in the decedent's will, the provisions in favor of the divorced spouse and her family will be struck from the will. Here, as Luke and Mary divorced in 2010, the provision leaving Luke's entire estate to Mary will be taken out of the will. Therefore, Mary will receive nothing.

(B) Peter will receive a 1/3 life estate in the Ranch and 1/3 share of the Portfolio, but a constructive trust will be placed on his share.

Under the killer beneficiary rule, a wrongful recipient of the estate property that obtained his share by killing the grantor will still receive their share. However, a constructive trust will be placed on the assets so that the wrongful beneficiary cannot benefit from the assets. The constructive trust may treat the beneficiary as having predeceased the decedent, so that the beneficiary's children will take their share. Here, the court may decide to treat Peter as if he predeceased Luke. In that case, Peter's daughter Beth may step into Peter's shoes and take Peter's life estate and 1/3 share in his portfolio, as well as his 1/3 share in the residuary of the estate. The portfolio is considered part of the residuary of the estate (see below), so Beth has a 1/3 share in the portfolio.

(C) Tom will receive a 1/3 life estate in the Ranch and 1/3 share of the Portfolio.

Tom will take under the will and receive a 1/3 life estate in the Ranch, because there are three life tenants. He will also receive a 1/3 share in the portfolio. The portfolio will fall within the residuary of the estate, once all of the general and specific devises have been distributed. As Luke left the "rest, residue, and remainder" of his estate to his three children, each of the children will receive a 1/3 share in the residuary. Therefore, as there are three children, Peter, Rachel, and Tom will each receive a 1/3 share of the portfolio.

(D) Beth will receive Tom's 1/3 life estate, 1/3 vested remainder in the Ranch and his 1/3 share of the Portfolio.

As stated above, if the court decides to treat Peter as predeceasing Luke under the constructive trust, Beth will receive his 1/3 life estate and 1/3 share in the Portfolio. If the court does not so decide, then the assets remain in the constructive trust until Peter does die. Then, Beth will be able to access his 1/3 share in the portfolio and 1/3 share of the estate residuary.

Beth will be able to receive the 1/3 vested remainder subject to open once the last child of Luke dies. Luke left a life estate in his three children Peter, Rachel, and Tom. This created a shared life estate which will cease upon the death of the last living child. A Once the last life estate holder dies, the class of remainderman will open and close at the creation of the interest. A remainder exists when they receive the rest of the estate in fee simple. Here, the remainder is vested subject to open. It is vested because the remaindermen will receive a fee simple interest, but it is subject to open because the class is "to my children's descendants". "Descendants" is held to mean "children". The descendants will not be able to be determined until each of the children die. Therefore, more descendants may be born to Peter and Tom. The class will only be ascertained upon the death of Peter and Tom. Therefore, Beth will share in fee simple with the other descendants once the class opens and closes at the last living life tenant's death.

(E) Steve will receive Rachel's 1/3 life estate in the Ranch, 1/3 remainder in the Ranch and Rachel's 1/3 share in the Portfolio.

Under the common law, if a beneficiary predeceases the testator, the beneficiary's gift lapses and it passes into the residuary of the estate. However, Texas has enacted the Uniform Anti-Lapse statute rules. Under the Anti-Lapse statute, a gift to a deceased beneficiary does not fail. Instead, that beneficiary's descendants are able to step into the beneficiary's shoes and take that beneficiary's share under the will. Here, Rachel's son Steve will take Rachel's 1/3 share in the Ranch and her 1/3 share in the Portfolio. As Steve is a descendant of Rachel, he will also receive a remainder in the Ranch.

(F) Kelly will receive a 1/3 remainder in the Ranch.

Texas allows for adults to adopt other adults as long as there is consent given. An adopted adult is able to inherit from their new adopted parent, but they will not be able to inherit from their birth parents. Here, Tom validly adopted Kelly. The intent behind the adoption is not considered.

Kelly is able to take under the will. Texas considers adopted children the same as birth children under a will, unless the will specifies that the children must be of the testator's body. This archaic language is rarely used in wills. Here, Luke's will simply states that the remainder goes to "my children's descendant's per stirpes". The children's descendants include adopted descendants. "Per stirpes" is not a limitation on the children being blood relatives, but merely a method of distributing the estate. Therefore, Kelly will take the shared remainder in the Ranch under the will and Beth's declaratory judgment action will fail.

Question 6 – July 2018 – Selected Answer 3

1.A. Mary is not entitled to any portion of Luke's estate.

If an individual has executed a will prior to death, that will will control the distribution of his or her assets following his or her death. If there any provisions enacted in favor of a spouse, upon divorce, any such provisions will be rendered null and void absent an indication that the provisions remain in effect. In other words, the divorced spouse may be treated as having predeceased the testator and any provisions in his or her favor may be subject to alternative dispositions stated in the will.

As Luke's spouse, Mary would be entitled to a portion of his estate had the spouses remained married. Upon divorce, however, all provisions enacted in her favor were revoked and rendered void. Prior to divorce, Luke had included a provision in the will granting Mary, his then-wife, his entire estate. Because Luke and Mary divorced before his death and a final divorce decree was signed that ended their marriage, that provision was revoked. As such, Luke's estate should be distributed under the terms stated in the alternative dispositions and Mary is not entitled to any portion.

1.B. Peter is not entitled to any portion of Luke's estate.

The terms of a testator's will, if validly executed, will control the disposition of his or her estate following death. However, if any beneficiary kills the testator, pursuant to Texas' Slayer Rule, that beneficiary is treated as having predeceased the testator and is no longer entitled to receive

under the terms of the will. If he or she has any children, those children may be allowed to receive under the will. Texas is unique in that regard, as the children are not allowed to take in those circumstances in many other states.

Peter qualifies as a "slayer heir" and is not entitled to any portion of Luke's estate. Peter, a beneficiary under the will, killed the testator and not any other member of the family (as far as we know). As such, he is treated as having predeceased Luke and his children will step in as substitute beneficiaries to the will.

1.C. Tom is entitled to a life estate in one-third of the Burnet County Ranch and one-third in the Portfolio.

In order to take under a testator's will, the beneficiary must survive the testator by a period of 120-hours. Having done so, that beneficiary will be entitled to any portion of the will that has been devised to him.

As Tom had survived Luke by a period of 120-hours, Tom will be entitled to receive as a beneficiary of Luke's will. Luke's will granted him an interest in the Ranch and as he is a child, he is entitled to a life estate in a one-third of the Ranch (as shall be explained later), together with Beth and Steve. As a remainder beneficiary, Tom is also entitled to one-third of the \$1,000,000 portfolio.

1.D. Beth is entitled to a life estate in one-third of the Ranch, a remainder interest in one-third of the Ranch, and one-third of the Portfolio.

In order to take under a testator's will, the beneficiary must survive the testator by a period of 120-hours. Having done so, that beneficiary will be entitled to any portion of the will that has been devised to him.

Beth is entitled to a portion of Luke's estate as she had survived Luke for the requisite period following his death. Although she is not expressly named as a beneficiary to his will, she is nevertheless entitled to receive by virtue of her father, Peter.

Under Texas' anti-lapse statute, if a beneficiary has predeceased the testator, that gift will not fail, or lapse, if that beneficiary is related to the testator through another ancestor and leaves issue behind. In that instance, the deceased beneficiary's children will step into his or her shoes and take in his or her place.

Peter, as a slayer heir, is treated as having predeceased Luke when he killed him. However, his child, Beth, is still allowed to take under the terms of the will. Beth is alive and can step into Peter's shoes and take any portion of Luke's estate that Peter would have received had he not been deemed to predecease Luke. As Peter would have received a life estate in the Ranch, Beth will have a life estate in one-third of the Ranch. Moreover, as a descendant, she is entitled to a remainder interest, per stirpes. As such, Beth has a one-third remainder interest in the Ranch. Lastly, with regards to the Portfolio, the anti-lapse statute also controls the disposition absent an

indication otherwise. As such, because Peter cannot take his share of the portfolio, Beth will take his portion and share the \$1,000,000 with Steve and Tom.

1.E. Steve is entitled to a life estate in one-third of the Ranch, a remainder interest in one-third of the Ranch, and one-third of the Portfolio.

In order to receive as a beneficiary, the beneficiary must survive the testator by a period of 120-hours. As a beneficiary who survived Luke by that stated time, Steve is entitled to receive a portion of Luke's estate.

Texas' anti-lapse statute will prevent a lapsed gift from failing. A lapsed gift arises when the stated beneficiary of a bequest predeceases the testator and there is no alternative disposition stated in the will. If the beneficiary and the testator share common ancestors and the beneficiary has any issue that can step into his or her shoes, the gift will not fail.

Steve is a beneficiary under Texas anti-lapse statute. Steve is Rachel's son, who in turn was Luke's daughter. As such, because his mother predeceased Luke and he is related to Luke, he is entitled to be a substitute taker and receive his mother's portion, as well as his own of Luke's estate. As his mother would have received a life estate in the Ranch, Steve may take that portion in her stead. Moreover, as his mother cannot take her portion of the residuary, which includes the \$1,000,000 Portfolio, Steve will share that with Beth and Tom. Furthermore, as Steve is one of Luke's "children's descendants" as stated in Luke's will, Steve is entitled to a one-third remainder interest in the Ranch.

1.F. Kelly is entitled to a one-third remainder in the Ranch and has no interest in the Portfolio.

Adopted children may be entitled to receive through their adoptive parents, just as if they had been their natural born parents. If a child is adopted as an adult, that child will be entitled to receive from the adoptive parent, but can no longer receive from his or her natural parents. That adoptive child will be entitled to receive as if he had been a natural born child.

As Tom's adoptive daughter, Kelly is entitled to a remainder interest in one-third of the Ranch. Having been adopted by Tom, she qualifies as a descendant of Luke's children. Accordingly, she should receive a share of the Ranch. She is not entitled to a share in the Portfolio. As Tom is alive, she cannot "step into his shoes" under the anti-lapse statute; the gift has not yet lapsed as he is still alive and can take his third of the Portfolio, along with Beth and Steve. As such, Kelly only has an interest in the remainder of the Ranch.