

Question 2 – July 2019 – Selected Answer 1

1000 shares of ABC Corp stock - BILL TAKES ALL - Andy devised "my 500 shares" of ABC Corp stock to his brother Bill. When he executed the will, these were the only shares that he owned. When a specific devise of stock shares are made under a will, the devisee also is entitled to any growth traceable to those shares in the form of stock splits, stock dividends etc. other than a options contract. Here, all 1000 share of ABC Corp stock in Andy's probate estate are from a 2/1 stock split which occurred after will execution. Thus, Bill takes all shares.

Home in Austin, Tx - ADEEMED - This gift was a specific devise to Andy's daughter Carol. However, it has been adeemed by extinction and is not part of Andy's probate estate. When a testator disposes of property during his lifetime which is devised under his will, the gift is "adeemed" which means the specific property is no longer in the probate estate and any specific devise fails. The beneficiary of the specific devise also has no claim to the proceeds of the property. Here, Carol has no claim to the Dallas home purchased from the proceeds.

Automobile - DAVID TAKES THE CHEVY (subject to exempt property, see below)- A gift of "my automobile" was a specific devise to Andy's nephew David. This devise will be readily identifiable at Andy's death. While at the time of execution of the will, Andy owned a Ford, he later traded it in for a Chevy. At Andy's death, the Chevy was "my automobile" and the specific devise does NOT fail by adeemption by extinction. Thus, David takes the Chevy.

\$10k cash - LAPSED INTO RESIDUE -NOT SAVED BY TX ANTI LAPSE (subject to family allowance, see below)- Under Texas Estate Law, a beneficiary must survive the testator by 120 hours (unless a survivorship requirement is stated) to take a devise under a will UNLESS he falls within the specified degree of relationship to the testator - a descendant of the testator's parents (includes children, grandchildren, aunts, uncles, nieces and nephews) AND the beneficiary has a descendant who survives the testator by 120 hours. Here, the friend Ethan who was named as devisee of the cash did not survive Andy and was not within the statute's protection. Thus, the devise fails and Ethan's daughter Grace does NOT take, thus it drops into the residue.

Residue - TO FRANK - the residue is devised to Andy's friend Frank. Frank has survived and will take any of the specific devises and any other probate property. This includes: \$10k cash. This MAY include \$20k Account and the Dallas home.

CAROL - IF SHE IS A MINOR = Andy is survived by his daughter Carol. IF Carol is a minor child at Andy's death, she will have a homestead claim to reside in the Dallas home until she turns 18. She could take a 1 year's family allowance for support and maintenance off the top of the estates. She could also possibly claim up to \$30k in lieu of OR \$100K (for a family) for exempt personal property (home furnishings, heirlooms, etc.) - this exempt property would include the CHEVY IF Carol is 16 years old but under 18.

Question 2 – July 2019 – Selected Answer 2

ISSUE- HOW WILL ANDY ESTATE BE DISTRIBUTED?

RULE- under the probate code when a will is validly executed we execute the will according to the terms of the will.

thus first we must look at the will.

here we have a will that gives my 500 shares of abc stock to andy's brother. thus andy's brother will get this abc stock. however issue arises when a stock split resulted here that not make sit where andy has 100 shares instead of 500 shares. under the code it states that stock splits if all separate property at death of the owner this remains separate property, further it states that any change to stock because of a merger or corporate action is not going to change the disposition that a person may get under the will.

thus because this was a stock split that was all presumably separate property since andy has no surviving spouse and this was because of a corporate action to choose make 100 shares out of the original 500 shares then brother bill will still get this under the will.

next we have the home that's given to daughter carol. the issue with this is that he no longer owns the home that's in Austin Texas that he gave to daughter rinw ill now it's a Dallas home. under the code lifetime acts are given lifetime purpose. thus this act to sell house and buy a different one is given effect. further, under ademption the code states that we look only at objection and not subjective intent of the testator. further ademption means that a person specific bequest property in his will that he didn't own at death. thus this is ademption and we will use the objective test and see what andy actually owned at death which was not an Austin home but a Dallas home, therefore under ademption daughter doesn't get the home under the will. lastly even though the home proceeds from the sale of Austin home were then used to buy Dallas

home this fact is not relevant under the code and daughter still doesn't get the Austin home.

However, Texas does permit that a minor child of the testator if surviving when the testator died does get occupancy rights of the homestead for as long as she remains a minor and gets to live in home at exclusion of all other people even if the will didn't give her this right. Thus, if daughter of Andy is a minor she gets this occupancy right of the Dallas home. Further for this Dallas home to qualify as a homestead it must be either rural or urban. It's urban if it's within platted subdivision, within city limits or subject to the extrajurisdiction of the city, and gets fire and police service and gets 3/5 services of: water, sewer, storm sewer, electricity and natural gas. If the Dallas home meets all this then homestead can be used here for daughter behalf so long as she uses it as her homestead which requires her intent to use it as a home and actual use. In addition to above if this is an urban homestead then can get up to 10 acres if contiguous tracts if not urban but rural can get up to 100 acres for single person use or 200 acres for family if they show they need the additional land for support and no need contiguous tracts. Further benefit of the homestead under Texas constitution is that get free and clear from certain creditors when testator died and during life with some exceptions like the purchase money mortgage, refinancing mortgage, the materialman lien, tax liens, home equity loans, jointly owed in partition, etc.

Next the automobile given to David may be given to David because this is not ademption since Andy only said "automobile" since Andy owns a Chevy this Chevy goes to David.

Next we have 10,000 given to friend Ethan. Since this is a general legacy from general assets if Andy owns 10,000 at death then Ethan can get this money. However since Ethan is now dead then he cannot take. Under the anti-lapse statute when gift lapses to beneficiary under the will who is decedent of testator's parent then it can then go to the person's decedent if they live by 120 hours. Since Ethan is a friend then this rule doesn't apply and it lapses and the 10,000 goes back to the residuary estate. Therefore then daughter Grace doesn't take at all under anti-lapse statute.

Further we now have the bank accounts that have 20,000 in it. As mentioned above since Ethan is dead he cannot take the 10,000 from this bank account. Thus since this not given to anyone under the will this will go to residuary estate. Since Frank in the will was to get the residue of the estate and since Frank is alive when Andy died then Frank gets the leftover.

next we have the home in Dallas once again as mentioned above if daughter Carol is a minor she gets occupancy of the home exclusively and this above and beyond what she may get in the will even if the will doesn't give the home to her.

here now we have daughter Carol versus Frank who is the friend to get the residue. the question is who gets the home? well under the will Frank is to get the home and thus he will get this only if Carol is not a minor when testator Andy died. or if she is a minor then Frank only gets this when she becomes a majority at age 18 and then after that he gets the home. further if this is the case technically he owns the home when testator died and minor Carol only has "occupancy rights" thus he will own the home but not be able to live in it. further if minor does get occupancy she has some duties such as paying taxes, mortgage interest on the entire home if any but no insurance. issue here if Carol is a minor and she has to pay for the home taxes and such how is he to pay for this? answer is any money that she has from the will she can use towards this if any or her guardian who have to pay for it on her behalf otherwise she can't stay in the home. further, as noted facts don't mention any surviving spouse but if there was one they too would get exclusively occupancy of the home and they would also get family allowance up to 1 year during administration of the estate. further they could get exempt property up to 100k for family and up to 50k for individual which includes cars, clothes, furniture and the like.

in addition the 20,000 bank accounts will go to Frank since this is part of residuary estate and the will did not dispose of this at all.

lastly, the daughter of Andy could possibly bring a pretermitted child action here if the will was created after her birth. since the will was executed in 2010 and now Andy died and it was 2018 this could be the case., this doesn't apply if any non probate assets going to daughter at Andy's death since this is not the case then this may apply.

under code it states that when this applies we look to see if children provided for in will. if not then we take surviving spouse portion off the table and we calculate the estate as if testator died intestate with no children and unmarried. since here Andy doesn't have surviving spouse then Carol would get all the estate of Andy since she is the only child. thus if this applies then this would be bad for Frank cause he would get nothing and Carol would get it all. however since Carol was accounted for in the will we clearly know she was in existence at the time will was made and thus pretermitted statutes doesn't apply here for her. Texas law doesn't care whether child takes just whether she was forgotten in the will.

further, since this is a small estate the beneficiaries can choose to consent to having an independent executor administer this estate., this is preferred in Texas. since the will doesn't

mention the indep executor then the parties would all have to agree and court would consent only if best interests of the administration.

further if court permitted independent administration that they could probate the will and administer this estate with maintenance of title so long no other debt on the property. need minor effects here. this acts as way for parties to clear title and avoid going to court for administration.

Question 2 – July 2019 – Selected Answer 3

A testamentary gift adeems when the object of the gift is alienated from the decedent's estate before the time of his death. When an object has left the estate, whether it causes the gift to adeem will depend on the language of the testamentary disposition. For instance, a gift of "my X" where x is given away before death, will cause the gift to adeem. The devisee gets nothing. However, a gift of "X" where X is given away does not cause the gift to fail. The estate will have to give the gift (the estate could use estate funds to buy the asset) or in a particular case, the value of the gift, x.

(1) 1000 shares of ABC stock: Brother Bill will actually receive all 1000 shares of stock. Andy attempted to give by Bill "my [his] 500 shares" in his will. Since then the shares have grown to 1000 due to a stock split. Essentially, the 500 shares Andy tried to give away grew. The issue is whether this growth prohibits Bill from getting them. Generally, Bill would just get 500 shares, for instance, if Andy bought a few thousand more shares. BUT here, where the original 500 multiplied due to a stock split, there has not been an addition but an organic growth of the original 500 shares. In essence the 500 shares didn't really change; the accounting changed.

(2) The Dallas Home: The gift of the Austin home adeemed, fails because the home has been alienated before death. If he had just said, my home Carol may have gotten it, but because he said "my home in Austin, TX" she does not. Yet, under the homestead exemption she will have rights. When a testator dies with a surviving wife or descendant, the wife or descendant will have the right to live rent free in the homestead. Where, as is the case here, only a child survives, the child has a right to live in the home rent free until she turns 18. An homestead can be either rural or urban, but not both. It must used as residence or for the support of the family. Rural homestead for a single person are limited to 100 acres and urban homestead are limited to 10 acres. To be a homestead there must be title of some sort and possession as a residence. Here, the Dallas estate appears to be Andy's principal home. Thus, the daughter can live on the homestead of the appropriate acreage limits rent free until she is 18. At 18, the home will pass to Frank who holds the residuary estate.

(3) My Automobile: Because of the broad language of this devise "my automobile" it does not fail in light of Andy's prior sale of his old car for his current car, a Chevy Automobile. David will get the the Chevy because it is Andy's automobile at the time of his death.

(4) Bank Account of 20K: The account appears to be in Andy's name only so daughter has no interest in it. Andy's disposition of 10,000 dollars to Ethan lapses. The 20,000 dollars goes to the residuary estate holder, Frank, so long as it is left over in the estate after the estate has paid funeral expenses, any outstanding taxes, or creditor's liens. The estate may also have to first provide an amount for the maintenance of the daughter if she is under 18 to take care of her reasonable and necessary expenses.

A note about Ethan. The gift to Ethan lapses because he predeceased the testator. He also does not qualify to be saved by the Texas anti-lapse statute. The Texas anti lapse statute saves gifts made to the descendants of the testator's parents. Thus, if Ethan was more than a friend, say a nephew or a brother, the gift would have been saved for his heirs.