

Question 10 – February 2020 – Selected Answer 1

A)

William, Bob, Cindy, Sara and Tom will inherit from Emily and Jana will not because of the intestacy statute.

Under Texas Probate Law, when a person dies without a will, they are said to die intestate, which means that their estate passes to their heirs by Texas Intestacy Statute. When a mother passes intestate and her husband has predeceased her, her estate passes to her children equally.

Under Texas Probate Law, adopted children are treated the same as natural born children.

Under Texas Probate Law, a child that was given up for adoption may still inherit through his/her biological parent unless the adoption paperwork cuts that right off.

Texas has an anti-lapse statute which states that if recipient of inheritance is deceased and is the descendant of the decedant's parent or grandparent then the gift/inheritance will not lapse, but the deceased recipient's heirs will stand in his/her place.

Here, Bob is Emily's living biological child and Cindy is Emily's living adopted child and heirs to Emily and therefore they are entitled to take from Emily's estate. Since Abby, Emily's other daughter is deceased and she is the descendant of Emily's parents, her inheritance will not lapse and her two children will take her place in regard to taking from Emily's estate. William is also Emily's child that she gave up for adoption. Nothing in the facts state that the adoption paperwork severed his right to inherit, so it's presumed that it wasn't and therefore he is entitled to take from Emily's estate.

Jana, Frank's sister and Emily's sister-in-law is not entitled to take from Emily's estate as she is not related to Emily by blood or in the line of succession on intestacy statute.

Therefore, William, Bob and Cindy will take 1/4 each of Emily's estate and Sara and Tom will split 1/4 of Emily's estate.

B)

Under Texas Probate Law, a non-probate asset is an asset that distributed outside of probate and generally follows contract law. Examples are Bank Accounts or Real

Property with Rights of Survivorship or Life Insurance Policies with designated beneficiaries. However, if the designated beneficiaries predecease the testator and no other beneficiaries are listed, then a non-probate asset can become a probate asset.

Certificate of Deposit (CD) - This is typically a non-probate asset because it was held joint with Abby with right of survivorship. However, Abby predeceased Emily and therefore the entire CD automatically went to Emily and since Emily didn't have a will, this asset will become a probate asset and be divided as described above between William, Bob, Cindy, Sara and Tom.

Life Insurance - This is a non-probate asset with defined beneficiaries of Bob and Cindy and therefore Bob and Cindy will split the proceeds per the policy equally.

Real Property in Texas - This is a probate asset and thus will be sold and the proceeds divided as described above between William, Bob, Cindy, Sara and Tom.

Tangible Personal Property - This is a probate asset and thus will be sold and the proceeds divided as described above between William, Bob, Cindy, Sara and Tom.

The Life Insurance will be split between Bob and Cindy equally and the remaining assets will be split between William, Bob, Cindy Sara and Tom.

Question 10 – February 2020 – Selected Answer 2

A. William, Cindy, Sara, Tom, and Bob are entitled to inherit from Emily. Jana is not entitled to inherit from Emily.

Under Texas Law, a child that was put up for adoption may still inherit from birth parents so long as the adoption decree did not state otherwise. Here, there is no fact as to the adoption decree deeming William to inherit. A child that is adopted is to be treated as a natural child and will inherit as a natural child will. Cindy is adopted and will inherit the same as a natural child. Natural born children will inherit. Abby and Bob will inherit. If a child predeceased the parent, their inheritance will be distributed to their descendant per capita per representation. Sara and Tom are descendants of Abby who is deceased and will receive Abby's share per capita with representation. Jana is not entitled to inherit because she is not a descendant to Emily. She was the sister of Emily's husband Frank and under intestacy laws is not entitled to inherit.

B. Assets will be distributed in accordance to intestacy law, per capita with representation. Non probate assets will be distributed in accordance to their terms. If a beneficiary predeceased the intestate, their portion will go through intestacy laws and be distributed accordingly.

1. Certificate of Deposit - Abby held the certificate of deposit as joint tenant with right of survivorship, however because she predeceased Emily, the deposit will pass

through intestacy law and will be distributed by per capita with representation. William, Bob and Cindy will each receive 1/4 interest and Sara and Tom will each receive 1/8 interest (each gets half of Abby's 1/4 interest)

2. Proceeds of Life Insurance - The life insurance is a non probate asset and will be distributed in accordance to its terms. Bob and Cindy will each receive one half of the proceeds.

3. Real Property - will be distributed in accordance to intestacy law, per capita with representation. William, Bob and Cindy will each receive 1/4 interest and Sara and Tom will each receive 1/8 interest (each gets half of Abby's 1/4 interest)

4. Tangible personal property - will be distributed in accordance to intestacy law, per capita with representation. William, Bob and Cindy will each receive 1/4 interest and Sara and Tom will each receive 1/8 interest (each gets half of Abby's 1/4 interest)

Question 10 – February 2020 – Selected Answer 3

(A) Bob, Cindy, Sara, Tom, and William are entitled to inherit from Emily. Jana is not entitled to inherit from Emily.

Because Emily died intestate, the Texas rules for intestacy must be applied. The life insurance policy will pass via the terms of the individual contract controlling that agreement, but the real property and personal property will pass to Emily decedents. Also, the Certificate of Deposit will pass via intestacy.

Bob is the biological child of both Emily and Frank. His right to inherit from Emily is the most clear.

Sara and Tom are the children of Emily's deceased biological child, Abby. The Texas anti-lapse statute would apply in this situation and the inheritance Abby would have received will be passed to Sara and Tom. They will split whatever Abby would have received equally and will ultimately end up with 1/8 of the estate that passes via intestacy.

Cindy is the adopted child of Emily. Though adopted children were not historically entitled to receive inheritance from an adoptive parent that passed intestate, the Texas statute has changed the common law. Children adopted by the decedent are entitled to inherit from the decedent if the decedent dies intestate. Therefore, Cindy is entitled to the same share of the intestate estate that Bob and William receive.

William's situation is the most unique. William was the child of Emily before her marriage to Frank. William was adopted by another family and had almost no contact with Emily before her death. In Texas, a child who is adopted may still receive inheritance through the biological mother unless the terms of the adoption state otherwise. There is nothing in the fact pattern to indicate Emily prohibited William's inheritance. Therefore, William will take the same share of the estate passing through intestacy as Bob and Cindy.

It does not matter that William is not the son of Frank and is only the half brother of Bob. The rule regarding half bloods is not applicable here because Frank was deceased at the time Emily passed away.

Jana is not a decedent of Emily. Her connection to Emily came through Frank who passed away in 2007. There is no scenario where Jana would inherit from Emily via intestate succession.

(B)

(1) The Certificate of Deposit was held by Abby and Emily as joint tenants with right of survivorship. This means that whoever predeceases the other loses their share of the property, and the surviving holder takes the property in fee simple. Abby dies in November of 2019. By the terms of the Certificate of Deposit, Emily became the sole owner of the certificate of deposit upon Abby's death.

Because the certificate of deposit will pass via intestacy, Bob, Cindy, and William will each take $1/4$. Sara and Tom will split the $1/4$ that Abby would have received so they will each take $1/8$ interest in the certificate of deposit.

(2) The proceeds of the life insurance will be split evenly between Bob and Cindy. As mentioned, the proceeds from the life insurance do not pass via intestacy. The terms of the agreement control this distribution. Because Emily named Cindy and Bob as the beneficiaries, only they will be entitled to these proceeds.

(3) The real property will pass in the same manner as the certificate of deposit. Bob, Cindy, and William will each take a $1/4$ interest in any real property owned by Emily at the time of her death. Sara and Tom will split the share Abby would have taken, and each will be entitled to a $1/8$ interest in any real property owned by Emily at her death.

(4) The personal property will also pass in the same manner as the real property and the certificate of deposit discussed above. Bob, Cindy, and William will each take a

1/4 interest in any personal property owned by Emily at the time of her death. Sara and Tom will split the share Abby would have taken, and each will be entitled to a 1/8 interest in any personal property owned by Emily at her death.