

Question MEE 6 – February 2024 – Selected Answer 1

A properly executed valid will be distributed in accordance with the will and the Testator's intent. At issue is the distribution of the Testator's estate following his death and leaving behind four relatives. In accordance with the testator's intent, the distribution will be as follows.

1. 300 Shares of ABC Corp. Common Stock

The 300 shares of ABC corporation common stock will be distributed to Testator's cousin, Donna.

At issue is whether Donna is entitled to all 300 of the ABC stock when the Testator's will only devised 200 shares to Donna and in 2012, 100 shares were distributed as a stock dividend. Under common law, any stock increase due to dividends was not entitled to distribution to the beneficiary. However, the UPC allows the beneficiaries to receive the increased in stock as a result of dividends payouts.

Thus, Donna is entitled to all remaining 300 shares of ABC Corp common stock which consisted of the 100 shares received as a stock dividend).

2. Testator's Home

The home will be devised to the brother, Edward, not subject to the mortgage.

At issue is whether the brother is required to pay the additional mortgage on the home when testator borrowed the \$125,000 to make home renovations. Under the UPC, the beneficiaries are bound to any mortgage on the payments of property and impliedly assume the mortgages by accepting the devise. Here, the home is a general devise. A general devise is one that is payable out of the assets of the will and not distinguishable against the other assets.

Thus, Edward will be distributed the home as a general devise from the testator and subject to the mortgage, absent a valid disclaimer.

3. Piano

The damaged piano and the \$10,000 casualty-loss claim will be distributed to the residuary of the estate because the Faye has passed leaving Edward as her sole heir.

At issue is whether the specific devise of the piano and the proceeds will be deemed abated and pass to Edward or the residuary.

A specific devise is a devise of a gift that is able to be uniquely separated from among the Testator's assets. Here, the grand piano is likely deemed a specific devise because the grand piano was one the testator owned that was substantially damaged and an insurance claim was filed on.

Abatement will occur when the item is no longer an asset of the estate. Under the UPC, where an item has been deemed the beneficiary may receive any insurance funds that the testator received from a casualty-loss claim. Here, Faye has since passed and leaves behind only her brother, Edward. While Faye was entitled to funds it is likely the funds will pass to the residuary to be distributed because Edward, as her brother, will likely not be protected under an anti-lapse statute.

Thus, the residuary of the Testator's estate will receive the casualty-loss claim because Edward was not protected under the anti-lapse statute to receive the specific devise that was to be Faye's.

4. \$200,000 Cash

The \$200,00 cash will pass to the both Harriet and Isaac.

At issue is whether an anti-lapse statute will protect Isaac and Harriet from receiving the distribution from the funds. Here, an anti-lapse statute will allow protect the parties from not receiving distribution where they are familial. Here, George predeceased testator. While Testator claims the \$30,000 given was an advancement this is not true. An advancement requires the testator inform the receiver it is meant to satisfy the will's distributions and the beneficiary must acknowledge it. Here, the Testator told George in a later letter that the \$30,000 she had given him in 2020 was intended as an investment. However, the advancement intent was not concurrent with the distribution so George was still entitled to his claim. However, under the UPC, the Per generation capta at each generational level shows that one will take where a beneficiary predeceased at the first generational level a child is living, their distribution will pass. As such, Harriet was entitled to \$100,000 and Isaac, George's son, will receive George's share of \$100,000 in accordance with the will.

Thus, \$100,000 will pass to Isaac and \$100,000 will pass to Harriet.

5. \$10,000 to the Insurer

For the reasons specified above, the deemed gift of the specific devise of the grand piano, the insurance proceeds will pass to the testator's residuary estate because a specific gift was abated and although the proceeds likely would have gone to Faye as a result, Edward was not protected by the Anti-Lapse Statute.

Thus, the \$10,000 owed to insurer will be paid out of the testator's remaining assets where his debts are greater than its current assets.

Question MEE 6 – February 2024 – Selected Answer 2

I. 300 shares of ABC Corp. common stock

At issue is whether Donna takes all 300 of the shares of ABC stock even though the will only provides for the distribution of 200 shares to Donna. The general rule is that when a specific gift cannot be identified due to commingling, the entire gift would fail and pass by intestacy. However, an exception to this rule is that when a bequest is of shares of a corporation and those shares give rise to more shares (e.g., like here, where the additional 100 shares of common stock were the result of a stock dividend on the original 200 shares), all of the shares are considered to be part of the bequest. In particular, because Testator bequeathed all the shares of common stock she had at that time, there is evidence of intent that Testator wanted Donna to have all the shares she had of ABC Corp. common stock. Thus, all 300 shares would pass to Donna under the will.

II. Home and Mortgage Loan

Testator's home will go to Testator's brother, Edward, pursuant to the will. At issue is whether he will take the property subject to or free of the mortgage. At common law, property was exonerated by the estate prior to passing to the devisee. Under the UPC, property passes subject to any liens existing on the property at Testator's death. This jurisdiction follows the UPC, meaning in the absence of evidence of alternative testamentary intent, the property would not be exonerated.

Having said that, the Testator specifically stated in the will that she wished for all of her debts to be paid before her property is distributed. Since one of the debts Testator currently owes is the mortgage on the house, this provision in the will is evidence that Testator wished for the house to be exonerated before passing to Edward.

At issue is what property will be used to pay the mortgage. Exoneration occurs using property in the following order: residuary/unaccounted for property, general

bequests, general devises, specific bequests, specific devises. Testator does not have a residuary clause, so any property not mentioned explicitly in the will passes by intestacy. Given that the \$200,000 cash is unaccounted for property subject to intestacy, \$125,000 from that amount will be the first property used to pay the debt, which will extinguish the debt and leave \$75,000 to pass by intestacy.

III. Piano

At issue is where the grand piano goes since Faye predeceased Testator. Under the UPC, when a will beneficiary predeceases Testator and the will does not provide for alternate disposition in that event, anti-lapse statutes will go into effect. Under anti-lapse statutes, if the predeceasing person is a family member of the Testator, that person's issues (descendants) can take the place of that person and take under the will. Anti-lapse most often applies to bequests and devises to predeceasing children of the Testator, but it would most likely apply to Faye since she is a family member. However, Faye does not have any descendants. Thus, anti-lapse does not save the gift and the bequest of the piano to Faye fails.

The piano will pass by intestacy. Under the laws of intestacy, as discussed more in Section IV, Harriet and Isaac will receive an undivided 1/2 interest in the piano.

IV. \$200,000 in cash

As explained in Section II, \$125,000 of the \$200,000 in the estate will be used to pay the mortgage on the house, pursuant to provision 4 in the will. The remaining \$75,000 will pass by intestacy. Under the UPC, property will pass to Testator's descendants.

Jurisdictions vary on whether property is divided between descendants per stirpes, per capita with representation, or per capita at each generation. The UPC applies per capita at each generation, which requires the estate to be divided at each generation by the number of members of that generation. Surviving members of each generation will inherit their share. Here, Testator has two living descendants: her daughter, Harriet, and her grandson, Isaac.

The \$75,000 will be split at the first generation with surviving members--i.e., at the level of Testator's children. Since Testator had two children, each child would be entitled to \$37,500. Since only Harriet is alive in that generation, she would take her \$37,500 and the remaining would be divided between the grandchildren. Since Isaac is the only grandchild, Isaac will inherit all \$37,500.

At issue is whether the gift to George counts as an advancement which prevents Isaac from inheriting \$30,000. Under the UPC, for an advancement to be valid, it must be evidenced by written intent at the time the gift was made. Here, Testator decided after the gift was made that it was intended to be an advancement. Thus, there is no limitation on Isaac's ability to inherit from Testator.

V. \$10,000 owed by insurer

The insurance proceeds on piano pass by intestacy. Insurance proceeds are not included as part of a specific gift unless the will specifically states that. A specific gift is construed narrowly. Here, since there was no statement that the gift of the piano was to include any insurance proceeds therefrom and no residuary clause exists, the insurance passes by intestacy. Based on the same analysis in Section IV of dividing the property per capita at each generation, \$5,000 of the insurance proceeds will go to Harriet and the other \$5,000 will go to Isaac.

Question MEE 6 – February 2024 – Selected Answer 3

The issue is whether the testator's estate should be distributed under intestacy or under the provisions of his will; which is determined by determining if the will disposes of all of the assets of the estate, and if not applying partial intestacy to the remaining property.

Under the UPC, all property owned at the time of the death of the testator is property of the estate, unless it has been transferred by non-probate means. Under the UPC, a partial intestacy involves the distribution of some property according to the valid will, and the remaining goes through testate probate.

Here, Testator estate at death consists of (1) 300 shares of ABC stock, (2) her home, (3) her piano, (4) \$200,000 in cash, and the \$10,000 credit owed by the insurer. The stock, the home, and the piano will be distributed according to the valid will because they are specifically mentioned in the will and are definite. Next, the cash, and 1/2 of the piano/the insurance money owed will be distributed through intestacy. See below for further distributions.

Thus, Testator Estate will be distributed through partial will and partial intestacy.

A. Under the Will:

1. ABC Corp Stock.

Under the UPC, stock given by will is distributed in whole to the beneficiary, even if part of that stock is not mentioned, but is a distribution of stock the testator gained during life.

Here Donna will get all the stock because she was given 200 shares in the will, and the remaining 100 shares were distribution from that stock given. The newer 100 stocks still go to Donna because they are treated under the UPC as "income" from the stock asset that she is entitled to because they are only given to Testator under his right to a distribution.

Thus, Donna gets all 300 shares of stock from the estate.

2. House to Edward remains subject to the mortgage.

Under the UPC, a gift of property that is encumbered by a lien is given subject to that lien.

Here, Edward will take the home subject to the mortgage because he was given Testator home in the will. However, the terms of the will and the UPC both state that the gift is given subject to the mortgage being paid. The will was drafted in 2010 and the mortgage was secured in 2015. The fact that the mortgage came after the will does not defeat the Bank's claim to reimbursement. If Edward wants to keep the home then he will have to start making the mortgage payments, or he will need to sell it and he alone would be entitled to the proceeds from the sale.

Thus, Edward takes the house subject to the mortgage.

3. The piano as it remains is subject to the will provision given to Faye, however she will not receive the piano because she died before Testator.

Under the UPC any gift at death is subject to the fact that a donee must survive the deceased.

Here, the piano will not go to Faye's Estate because she cannot be Testator's heir since she predeceased Testator.

However, the doctrine of Ademption can be applied to allow the piano to pass to her heirs. Under Ademption a court can modify a gift so that it does go to the person the Testator intended it to go. Further this can be used to include proceeds from destroyed gifts.

Here, the piano will be deemed to include the insurance check for \$10,000, and will ultimately be split 1/2 to the general estate of Testator, and 1/2 to Edward. The testator intended it to go to Faye, and her heirs are Testator and Edward. Since Testator survived Faye, 1/2 of the piano will go to the general intestacy estate of Testator and the other half will go to Edward.

Thus, the piano can be deemed to go to Fayre, and 1/2 to the general estate of Testator, and 1/2 to Edward.

B. Intestacy:

1. Harriet and Isacc take under per capita with representation

Under the common law, if a person dies without a will their estate passes through intestacy under the statutory scheme. Most jurisdictions give the estate to the closest person in consanguinity to the deceased in order: spouse, children, parents, siblings, grandparents, aunts, cousins, and so on. Heirs are only determined upon the death of the testator, and never before. The majority rule follows intestacy distribution per capita with representation.

Here, at the testator's death she was survived by her daughter, Harriet, her grandson, Isaac, her brother, Edward, and her Cousin, Donna. Donna and Edward will get nothing because they are too far related and closer relatives exist. The intestate estate will be split 1/2 to George, and 1/2 to Harriet as the two children of Testator. However, George's share will not go to his estate but will pass through to his son, Issac.

Thus, Harriet and Isaac will split 1/2 of the \$200,000 and the piano along with the 1/2 interest in the \$10,000 insurance check.

2. Advancement to George fails.

Under UPC, A gift is a non-probatative means that is established when a person transfers property with intent to make the gift, and delivers possession of the property to the donee. A gift can become an advancement on the inheritance of an heir, only if the testator conditions the gift at the time of the gift that it is an advancement.

Here, Testator failed to condition the \$30,000 properly to make it an advancement to George and not a gift. The money was given in 2020 , yet years later she wrote a letter saying it was an advancement. This advancement condition was not made at the time of the gift, and fails to satisfy the requirements.

Thus, George takes under intestacy his normal share.

Thus, overall, Testator estate is distributed by the terms of the valid will, and the residuary is taken through intestacy given to Harriet and Isacc.