

1.

Frances, Andrew, and Thomas can inherit from Roland's estate.

In Texas, death ends the marriage, and the surviving spouse takes their $\frac{1}{2}$ share of the community property. It is a rebuttable presumption that all property earned during the marriage is community property. Any property, acquired before marriage or through inheritance during the marriage, is considered separate property. Further, when a person dies intestate – without a will – the heirs inherit per capita with representation. When a married person dies, the heirs who are children of the decedent – whether by blood or adoption, along with the decedent's spouse, may inherit.

Here, Roland died intestate (without a will). He was survived by his wife Frances, and their son Thomas, as well as by another son – Andrew – from a previous marriage. Though the facts do not speak of the divorce, it can be presumed that Roland's marriage to Frances was valid and, as such, Roland's previous wife cannot inherit.

Therefore, Roland's wife (Frances) and his two sons, Andrew and Thomas, may inherit from his estate.

2.

The following assets will be distributed accordingly:

- a. The retirement account will be taken by Frances.

As previously mentioned, community property in Texas is divided between the spouses and then the surviving spouse takes their $\frac{1}{2}$ share of the surviving spouse's estate. That only applies to probate assets though. A retirement account with a listed beneficiary is considered a non-probate asset.

Here, the retirement account designated Frances as a beneficiary. As such, only Frances takes the retirement account.

- b. Frances will take the Certificate of deposit

As mentioned above, community property in Texas is divided between the spouses and then the surviving spouse takes their $\frac{1}{2}$ share of the surviving spouse's estate. When an account includes joint tenants with right of survivorship, the designated party takes the entire account.

Here, the certificate of deposit was held with Frances as a joint tenant with right of survivorship. As such, only Frances takes the certificate of deposit.

- c. Frances, Andrew, and Thomas will each take from the homestead.

In Texas, when a decedent with a spouse and children dies intestate, the surviving spouse is entitled to her $\frac{1}{2}$ community property share, and then $\frac{1}{3}$ of the decedent's community property. The decedent's children then take $\frac{2}{3}$ of the remaining share.

Here, Frances would take her $\frac{1}{2}$ of the community estate. Then, she takes $\frac{1}{3}$ of Roland's community property share. Andrew and Thomas would each take $\frac{1}{6}$ of Roland's CP homestead.

Commented [DS1]: This needs to be clearer. The rule is actually:

- If at least ONE of the descendants is not the surviving spouse's descendant, the decedent's $\frac{1}{2}$ community interest passes to his descendants, who take per capita with representation.

Commented [DS2]: No. this is entirely wrong.

In Texas, when at least one of the decedent's descendants is not one of the surviving spouse's descendants, then the surviving spouse takes $\frac{1}{2}$ CP and the decedent's $\frac{1}{2}$ CP passes to their descendants.

Commented [DS3]: Know the Rule – COLD. Otherwise, you'll fuck up your math and bad math just makes you look stupid.

Here, each son should have taken $\frac{1}{4}$ and the wife should have taken her $\frac{1}{2}$ CP

It would be the responsibility of Frances to continue paying the mortgage on the homestead.

Commented [DS4]: Each of them takes their share of the homestead subject to the mortgage lien. Also, the surviving spouse maintains exclusive occupancy rights

d. **DON'T FORGET A PIECE OF THE EXAM.** This section should have addressed the checking account and whether the joint tenancy with right of survivorship was sufficient to create a survivorship estate.

Forgetting to include this pieces COSTS points.

Tick off each section on your hardcopy to MAKE SURE you address EACH and every POINT the Examiner wants you to ANSWER.

→ Don't Leave points on the table.

e. Frances, Andrew, and Thomas will each take from the personal property.

In Texas, when a decedent with a spouse and children dies intestate, the surviving spouse is entitled to 1/3 of the decedent's separate property. The decedent's children then take 2/3 of the remaining share.

Here, Frances would take 1/3 of the \$5,000. Andrew and Thomas would each take 1/3 of the \$5,000 as well.

Commented [DS5]: No. In Texas, when the decedent is survived by a descendant who is not the descendant of the surviving spouse, the decedent's 1/3 CP passes to their descendants by intestacy.

f. Only Andrew and Thomas will take the lake lot.

In Texas, any separate property not explicitly designated to an heir will pass to the descendants per capita, with representation.

Here, Thomas and Andrew were the biological sons of Roland. Roland's wife, Frances, is not entitled to take any portion of the lake lot because it was Roland's separate property. Roland inherited the property during his marriage to Frances and, as explained above, inheriting property – even during the marriage – is still separate property.

As such, only Thomas and Andrew can take a share of the lake lot. They each take 1/2 of the property.

Commented [DS6]: DEFINE Separate Property! Don't leave points on the TABLE. You need to include a rule on WHY the wife and sons are able to take Roland's SP in 1/3 shares. Separate property is defined as property owned or acquired before the marriage, or property acquired during the marriage by gift, will, or inheritance, or a spouse's tort recovery for personal injury claims. The SP passes to the decedent's children (and descendants of decedent's deceased children), subject to a 1/3 life estate in favor of the spouse.

Commented [DS7]: Frances takes 1/3. Andrew and Thomas each take 1/3.

3. The options to transfer probate and non-probate assets to transfer the assets of Roland's estate are as follows:

All non-probate assets mentioned, which have a right of survivorship or a listed beneficiary, transfer immediately to the joint tenant or beneficiary. In this case, the listed party for those assets is Frances. No action from the probate court is necessary, which is an advantage of listing a beneficiary. As such, no gift tax or estate tax will be added to these kinds of non-probate assets.

Commented [DS8]: Since the facts don't explicitly state the proper right of survivorship documents were included, it's important to address that issue here. If the documents stating the joint tenancy and right of survivorship clauses were proper, then the CD, retirement account, and checking account would be non-probate assets and their distribution is governed by the agreements signed by both spouses.

Transferring the lake lot, as it is a probate asset, will be subject to estate tax. The disadvantage of not transferring it before death is that Roland's sons will have to pay an estate tax, which they may or may not be able to afford. Not paying the tax could result in forfeiture or sale of the property.

Commented [DS9]: Don't forget to mention the small estate administration by affidavit. Only the homestead title can be cleared under the SEA, so a statutory heirship proceeding would be necessary for the lake lot property. I think this would be extra kudos points though.