

EXAMINERS' ANALYSIS OF QUESTION NO. 11

Grace receives Greencastle as well as \$3.4 million dollars in insurance proceeds; Jeanne receives nothing; Sisters of Divinity receives \$1.1 million dollars.

1. **Grace** -- In Michigan, the general rule is that if a beneficiary predeceases the testator, the gift lapses and becomes part of the residue of the estate. This is because a will cannot distribute property to a dead person. See MCL 700.2604(1). However, the anti-lapse statute serves as an exception to this rule. MCL 700.2603(1) provides that if a devisee fails to survive the testator, and is a grandparent, a grandparent's descendant, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, then the gift will pass to the descendants of the beneficiary, provided that the descendants are alive 120 hours (5 days) after the testator's death. MCL 700.2702. "The surviving descendants take by representation the property to which the devisee *would have taken* had the devisee survived the testator." MCL 700.2603(1)(a) (emphasis added).

Here, because Otis predeceased Dwayne, the gift of Greencastle would normally lapse and become part of the residue of Dwayne's estate. However, because Otis is a descendant of Dwayne's grandparents, the anti-lapse statute operates to save the gift that would have otherwise become part of the residue and would have been distributed to Sisters of Divinity. Because Otis left a surviving descendant, the statute creates a substitute gift in that descendant. Therefore, this gift will pass to Grace under the statute.

MCL 700.2606(1) provides that a devisee has a right to the specifically devised property in the testator's estate at the time of death. Thus Grace, via the anti-lapse statute, is entitled to Greencastle. In addition to the specifically devised property, the statute further provides that the devisee is ALSO entitled to any proceeds unpaid at death (including insurance proceeds) for injury to the property. See MCL 700.2606(1)(c). Therefore, Grace is entitled to the \$3.4 million dollars in insurance proceeds as well.

2. **Jeanne** -- Greencastle does NOT pass to Jeanne pursuant to the terms of Otis's will. The anti-lapse statute provides that "a substitute gift is created in the [predeceased] devisee's surviving descendants" MCL 700.2603(1)(a). Jeanne is the beneficiary of Otis's estate, but is not Otis's descendant. Thus, Otis's estate acquired no interest in Dwayne's estate that could be distributed under Otis's will to Jeanne.

3. **Sisters of Divinity** -- As explained above, the charity is not entitled to either Greencastle or the \$3.4 in insurance proceeds. Under the terms of the will, the charity is entitled to the residuary estate of \$1.1 million dollars.