

ANSWER TO QUESTION 8

Because the facts indicate that Dennis died without a testamentary document, Dennis's estate will be distributed according to the laws governing intestate succession, MCL 700.2101 et seq.

(1) Timmy Taylor: Where a decedent dies without a surviving spouse, as is the case here, the decedent's estate passes first to the decedent's descendants by representation. MCL 700.2103(a). Thus, if Timmy is Dennis's descendant, he will take the entire estate. However, the statutory definition of descendant contemplates "the relationship of parent and child," MCL 700.1103(k), and the statutory definition of "child" specifically excludes "a foster child." MCL 700.1103(f). Under the statutory scheme, Timmy cannot take Dennis's estate.

Michigan recognizes the doctrine of adoption by estoppel. See *Perry v Boyce*, 323 Mich 95 (1948). Under this equitable doctrine, a child is entitled to inherit as if he were adopted where a parent promises to adopt the child but does not. Because the facts do not indicate that Dennis ever promised to adopt Timmy, adoption by estoppel cannot be used as a basis to award Dennis's estate to Timmy.

(2) Ed Ermine: If the decedent has no surviving descendants, his estate next goes to "the decedent's parents equally if both survive or to the surviving parent." MCL 700.2103(b). As Dennis's mother did not survive him, Ed would take Dennis's entire estate if Ed were determined to be Dennis's parent.

Under Michigan law, where a child is born out of wedlock, a man may be considered a child's natural father for the purposes of intestate succession under one of the several circumstances listed in MCL 700.2114(1)(b)(i)-(v). Under subsection (v), a probate judge may determine that a man is a child's father "regardless of the child's age or whether or not the alleged father has died," using the standards contained in the Paternity Act, MCL 722.711 et seq, including DNA testing. MCL 722.716. Because the DNA results were conclusive, Ed Ermine is Dennis's "natural father" under the law.

This does not mean, however, that Ed is entitled to inherit from Dennis. MCL 700.2114(4) states that a natural parent is "precluded" from inheriting from a child "unless that natural

parent has openly treated the child as his or hers, and has not refused to support the child." Both prongs of the statute must be satisfied in order for Ed to take as Dennis's heir. *In re Turpening Estate*, 258 Mich App 464 (2003). If Scott's and Paul's testimony is credited, and the judge finds as fact that Ed neither visited nor supported Dennis during his childhood, there would be a sufficient basis to preclude Ed from inheriting Dennis's estate.

3. **Paul and Scott:** If the decedent has no surviving descendant or parent, then the decedent's estate passes to "the descendants of the decedent's parents or of either of them by representation." MCL 700.2103(c). Because Timmy does not qualify as a descendant, and Ed is precluded from taking as a natural parent, Paul and Scott would each take 50% of Dennis's \$1,000,000 estate.

While Scott claims that Paul should take a smaller share of the estate because Paul and Dennis have only one parent in common, Michigan law specifically provides that "relative of the half blood inherits the same share he or she would inherit if he or she were of the whole blood." MCL 700.2107. Thus, Scott's claim would fail, and the brothers would share equally in Dennis's estate.