Saint Mary's University of San Antonio

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Mather_TheMagicCircleInclusionofAdoptedChildreninTes

Victoria Mather, *Saint Mary's University of San Antonio*

The Magic Circle: Inclusion of Adopted Children in Testamentary Class Gifts

Victoria Mather

31 S. TEX. L.J. 223 (1990).

In two recent Texas appellate court decisions, the courts were faced with the problem of deciding whether a testator meant to include, or at least did not intend to exclude, adopted children in a testamentary class gift. Courts across the United States have struggled with this issue in recent years, and an increasing number are holding that gifts to children, issue, or lineal descendants do not necessarily exclude adopted children. However, in both Texas cases, the courts held that the adopted children could not take as members of the class. This result is contrary to both the modem trend of court decisions nationwide and the prevailing public policy regarding adoption, particularly as exemplified by state adoption statutes.

Like many states, Texas has enacted statutory provisions, in both the Family Code and Probate Code, indicating that adopted children should be treated as natural-born children. Although testators may make any conveyances they wish, and exclude any person they wish, it appears to be the public policy of this state to start with a presumption in favor of inclusion of adopted children in testamentary class gifts.