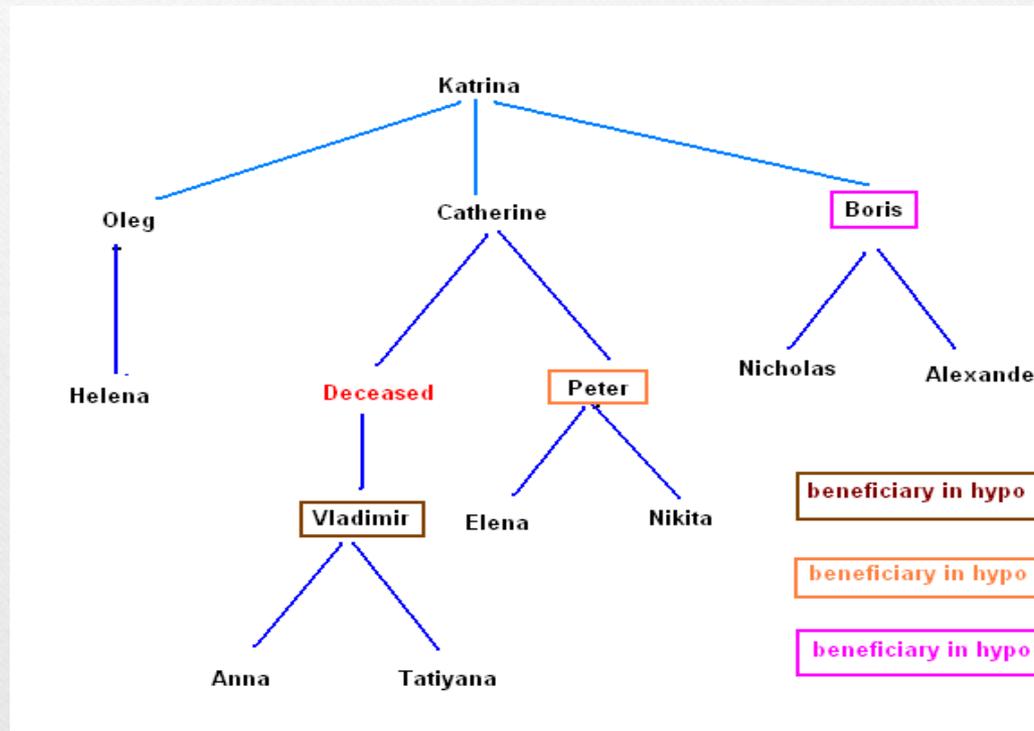# Wills, Trusts, and Estates

Class 10

Lapse

- General Rule:

- When a beneficiary predeceases a testator, that beneficiary's gift lapses

  - A "lapsed" gift goes into the **residuary estate**

  - If the residuary beneficiary dies before the testator, then that property will pass by **intestacy**

    - (that's why it's good to make a contingency residuary beneficiary)

  - If a gift lapses and there is no residuary beneficiary, the property **also passes via intestacy**

Anti-Lapse Statutes

- Purpose:
    - To keep gifts from lapsing and thus preventing money that the testator specifically intended to go to someone from passing via intestacy or to an unintended residuary beneficiary

- General principle:
    - If a beneficiary who is related to the testator dies, that **beneficiary's issue** can take her place as beneficiary

- How close a relative of the testator does the beneficiary have to be?

    - **Broadest view: Any blood relative**

    - **Medium view: Issue of parents (i.e. siblings, nieces, nephews)**

    - **Narrowest view: Only descendants of the testator**

Anti-Lapse Hypothetical

Revocation of a Will

- By Operation of Law
  - **Divorce** (most states) eliminates all provisions regarding the former spouse
  - **Marriage** (some states only) can impact the will by inherently adding provisions for the new spouse (some states let the elective share rules take care of that)

- By Subsequent Will of Codicil
  - Subsequent document inherently revokes earlier inconsistent provisions
  - Subsequent document can be a full revocation of earlier will if it says so

Revocation of a Will (cont.)

- By Physical Act

  - Must be done with the intent to revoke the will

  - Must either be a complete destruction of the document or by destroying the signature

- **Lost wills** are not inherently revoked and can still be admitted to probate if the proponent can prove that it was not revoked and what the provisions were (e.g. by producing a photocopy).

Quiz Time!