

SIMULTANEOUS DEATH

If the order of death between two people (such as husband and wife) cannot be determined by "clear and convincing" evidence, and title to the property depends on the correct order of death, the property of each person is administered (probated?) as though the other person died first. The general rule, then, is: "The other guy died first."

The Simultaneous Death Statutes (P.C. 220 - 234) do not apply in the case of a deed, insurance contract, trust, etc. where the document provides for simultaneous death situations. They DO apply to joint tenancies and life insurance (or accident insurance), and even community property, however.

If the property that is the subject of a Will is to be disposed of on the condition that the beneficiary survive the testator, and the order of death can't be determined by clear and convincing evidence, it will be assumed that the beneficiary died before the testator. In such a case, the court makes a ruling that the beneficiary's estate will not include this particular property from the testator's estate. The specific item, then, is distributed to the alternate beneficiaries. The beneficiary's estate may, however, receive other property from the testator under the rule "the other guy died first".

If the order of death must be determined, any interested person can file a petition to ascertain the order of death or survival. A petition can also be filed to determine survival of issue (heirs), payment of benefits, etc. The interested person can be the executor or any person whose inheritance depends on the order of death.