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Governing law

Community Property law

California is a community property estate. All property acquired during marriage is presumed community property. All property acquired before or after marriage, or property acquired by one spouse by gift, will, devise, bequest and descent is presumed the separate property of that spouse. If the couple marry in a non-community property estate and acquire property during marriage and then move to California, the property acquired during marriage is presumed quasi-community property, the separate property (as defined above) in the non-community state is considered to be quasi-separate property.

Here, in 2006, the couple, Hank and Wendy were married and lived in State X a non-community property state. They moved when Hank retired to California, in 2016. The couple, while living in State X purchased a house in State X and a condominium in California. Title was in Hank's name alone, but upon moving to California the house would be considered quasi-community property (QCP) belonging to both Hank and Wendy and the condo would be community property (CP) according to CA law. The title in CA law does not control ownership or change the property from community property to separate property form because it was acquired during marriage and all purchases during marriage even if the property is outside CA will be CP.

Therefore, even though the QCP was acquired outside of CA upon the move to CA it will be CP. So, both the house and the condo will be CP of the couple.

Probate Code

On death, in CA, the probate code governs the assets of the decedent in determining distribution of the estate of the decedent according to the will or intestacy. The will must meet with the formation requirements which include the intent of the testator, capacity and writing requirements of either a typed will or holographic will. CA probate code does recognize wills prepared out of state as long as the will meets the State X formation statutory requirements.

Here, Hank executed a will leaving whatever he might own at death to Wendy. Usually a will requires that the testator name the property, but a blanket will leaving all property to a wife if that is the intent of the testator will be deemed as valid as long as the will is

signed, has a testator declaration to gift the property, and properly witnessed. Hank's will was prepared in STATE X and the facts state that he gives all property he owns to Wendy and according to State X it is allowed that only ONE witness sign. In CA, the probate code states two witnesses must sign but an out of state will prepared in that state that allows only one witness will be found valid in CA.

Therefore, Hank's will prepared in State X in 2008, on Hank's death will be valid in CA because it meets the formalities of State X law.

Codicil

A codicil in CA must meet the same formalities of a will (defined supra). Hank must have the intent, the capacity, make a declaration with property to be gifted and name the beneficiary. When a person no longer has capacity, the courts may appoint a conservator in CA.

Here, the facts state that in 2017, because of a skiing injury Hank lost his mental capacity and was on the verge of death. In accordance with Hank's prior wishes, Sid was appointed as Hank's conservator and SID prepared a codicil to Hank's will - changing the inheritance giving one-half interest in the State X house to Hank's best friend, Bill. Sid signed the codicil as conservator, and had it properly witnessed.

Normally, when a will is executed it is done so by the testator, if testator is not able to do so, then in the presence of the testator at the testator's request a party may sign for the testator. Here, Hank has no memory but the facts state that Sid was acting according to Hank's wishes, so the court which appointed Sid as conservator will allow this codicil to change the will from 2008.

Therefore, if found valid by the court because the intent of Hank is met, the court should allow the codicil as a change to the will but only as an addition not a revocation, because the codicil does not have any declaration in voiding previous wills CA requires.

1. What rights, if any, do Wendy and Sid have in the CA condo?

Wendy's rights

Community Property

CP defined above. The condo is community property upon the purchase in 2006 to belong to both Hank and Wendy. The court will look at source, tracing and actions of the parties. As stated above, in CA, title is presumed to control but it can be rebutted by the facts that it was acquired during marriage and even though Hank has titled the property to

himself, the community has ownership, unless a writing signed by the rights of Wendy are found.

Transmutation

A party that owns property can change the form of that property from CP to SP or SP to CP. In 2016, Hank conveyed the condo to himself and to Sid as joint tenants. Joint tenants at common law required the 4 unities, Title, Interest, Time and possession. Meaning that Hank and Sid to be JT's would have to purchase the condo at the same time, be on the title, have the same interest (50/50 split) and possessory rights. However, modernly, JT can be declared in a conveyance, but in CA, the code requires the title of CP property must have the party who is losing the rights sign a waiver allowing such change in form. Here, since Hank had title to the property, he went ahead and conveyed as a gift half interest to his son Sid, but no writing by Wendy will allow this.

A transmutation to change property form required to be in writing in the late 1980's under the anti-Lucas statutes, gifts of personal value and not of substantial value to the community are an exception.

Wendy did not sign a writing so her right to the Condo remain in tact. However, Hank's conveyance will be allowed because on death, Hank may will away his CP to anyone he likes.

Therefore, Wendy has a CP right to the Condo.

Sid

Tracing

The intervivos transfer of property titled in Hank's name alone, will not be found as his separate property because of tracing. The court will look at the time the property was acquired and determine it was originally CP and not SP. When Hank made the conveyance to himself and Sid as joint tenants, he will be said to only conveying to Sid his half (Hank's half of CP) to Sid.

Therefore, Sid may have half of the Condo on Hank's death because the action of Hank will be deemed as giving Sid his half of the CP in the Condo.

Conclusion

Sid and Wendy own the condo but not as joint tenants, but as tenants in common on the

death of Hank.

2. What rights, if any, do Wendy and Bill have in the State X house?

Will valid

According to CA law, the Will made in State X is valid (see above). Wendy is stated to receive whatever property Hank owned at death.

Therefore, the State X house, even though it was titled in Hank's name will be deemed QCP (defined above) because it was acquired during marriage.

Codicil valid

As stated above, if the court finds the codicil a valid testamentary document changing the 2008 will, then Bill will receive only Hank's 1/2 interest, because CA allows a spouse to will away their half of their community property in a testamentary document.

Contesting the codicil. Wendy may contest the gift because it varies considerably in what Hank intended in his will. But the facts state that Hank's prior wishes were to give Bill the 1/2 interest so any extrinsic evidence will favor the intent of the testator.

Therefore, Bill and Wendy will have equal shares of the house in State X.

3. Will Hank's creditors be able to reach the assets of the trust?

Separate property

In 2016, Hank received inheritance of \$100,000. SP is defined above, the gift of descent, bequest are SP is a spouse acquired during marriage. Hank has put the \$100,000 in trust and will be deemed his SP.

The facts state that Hank owed various creditors more than the value of the State X house and the CA condo and that Hank under inheritance put \$100,000 in trust.

Debts during marriage are considered community liabilities, even SP debts. However, when a spouse brings a debt to the marriage, SP can be used to pay those debts first rather than the CP. Here, the debts were earned during marriage, therefore, the SP does not have to be first to payment of the debts because both spouses are required to be responsible for the debts during marriage of each spouse.

Revocable trust

A person may make a gift of his separate property into a revocable trust, with instructions naming the beneficiaries of the trust. In Ca, the trust does not need to name the trustee of the trust to be valid. The document stating that the trust is revocable means that the testator prior to death may remove the assets out of the trust. Here, however, Hank named that he was to receive the income for life to be paid to him and on death, to Wendy for life, then to Sid. The trust is valid and on his death it becomes irrevocable.

Here, the facts state the trust was set up with the property removed from the SP and the CP assets of Hank and Wendy. Upon Hank's death the trust became irrevocable and creditors cannot reach the trust reas because it is outside their reach.

Creditors however, can claim liens on the house and the condo as the community property that was willed away can be reached AND the CP that Wendy receives on Hank's death based on the liabilities of a spouse during marriage will survive the death.

Therefore, the trust is not reachable by the creditors because the money set aside to pay Wendy for life, remainder to Sid will be irrevocable trust assets outside of the creditors reach.

Question #1 Final Word Count = 1721

END OF EXAM