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1. What rights do Wendy and Sid have in the Condo?

CA is a community property state and all property acquired during the course of marriage from the earnings of either spouse is community property. Separate property is property acquired before marriage, by gift or bequeath to an individual spouse. The characterization of an asset is dependent upon the source of the earnings, and any actions the spouses may take in relation to the property. Taking title in one spouses name alone will not make it separate property. Quasi-Community Property is property acquired in a non- community property state that would be community property in a community property state and is treated as community property.

Here, H and W bought the condo while living in state X, a non-community property state. H bought the condo using his income, which in State X would be separate property. However, H died in CA while living in CA with W. in CA, where property is acquired in a non-CP state, QCP rules apply. The court will look to see if the proerty would have been CP in a CP state and if so, treat the property as CP. Here, although H's earnings were SP in State X, his death in CA and the condo being located in CA will apply CP law to the condo. IN CA, earnings during the course of marriage are CP, and any property acquired using CP is CP even in the other spouse took tile in their name alone. Here, the Condo is CP of H and W.

Joint Tenancy

A joint tenancy with the right of survivor ship is created where one or more parties receive title to a property with the untity of time, title, possession and equal interest. The joint tenancy leaves a right of survivorship which gives title to the other joint tenants upon the death of one joint tenant.

Here, Sid would have survived H as H died before S, leaving Sid title to the entirety of the condo.

Gifting Community Property

A spouse cannot transfer title in a substantial community property asset to another without the approval of the other spouse. Here, while in CA, H conveyed the condo to himself and Sid without the approval of W. He intended this transfer to be a gift and did

not receive compensation for the transfer. By doing so, W can seek to invalidate the transfer as it was a CP asset which she did not consent to gifting to S.

In conclusion, W will seek to have Sid's title set aside and have the condo characterized as CP upon H's death. W is entitled to one half of the condo and upon H's death she would receive the remaining half as H willed his residuary estate to W.

2. What rights do Wendy and Bill have in the State X house

Community Property

See Rules Above

As QCP, W would be entitled to her one half share of the State X house as the house would have been treated as CP in Ca as it was bought using H's earnings.

Will

A duly probated will in another jurisdiction will have the same effect in CA, despite the will not meeting the requirements for a will in CA. Under CA law, a duly probated will must be in writing, signed by the testator in front of two disinterested witnesses who must sign the document themselves during testator's lifetime.

Despite the 2008 will only being signed in front of 1 witness and not meeting CA's requirements, the will will be valid as CA recognizes valid wills from other states.

Codicil

A codicil is a subsequent document which amends the testator's prior will and may be used to revoke a prior will so long as it meets all requirements required for a valid will.

Here, H may use a codicil to amend his previous will so long as it was executed under the requirements of CA law.

Capacity

A testator must have mental capacity to execute a will or codicil and may direct another to execute a codicil at his direction if he lacks physical capacity.

Here, H lost all mental capacity and would not have been able to know the nature of the codicil when it was executed. His lack of capacity was a complete lack of mental capacity and thus the codicil will be invalid. Although he had prior intent to execute such

a codicil, his lack of capacity at the execution of the codicil cannot be overcome by this intent.

As such, the codicil is invalid and the 2008 will is still valid and W would receive the entirety of the State X house under the will.

3. Will the creditor's be able to reach the trust?

Creditor's can reach a settlor's trust assets to pay debts of the settlor.

Here the creditor's will be able to reach the trust to satisfy their debts.

Question #1 Final Word Count = 823

END OF EXAM