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1) Rights of Wendy and Sid in the California condominium

Community Property Presumption

California is a community property state. All property acquired during the marriage is presumed community property unless acquired by gift, inheritance, or devise in which case it is presumptively separate property. Separate property includes all property acquired before the marriage and after dissolution of the marriage.

Salary and wages acquired during the marriage are community property.

The characterization of an asset depends on the source of an asset, whether a presumption applies, or whether the parties did anything to change the character of the property.

Quasi Community Property

Property acquired while domiciled in a non-community property state will be treated as if it were acquired in a community property state and the community property laws applies.

Here, Hank and Wendy were married and living in State X, a non-community property state when when they purchased the California Condominium. Because the condominium is located in California and Hank and Wendy later retired and moved to California, the property is treated as quasi-community property and the community property rules apply. The condominium was purchased with money from Hank's salary and thus considered quasi-community property because it would have been community property had they acquired the property while living in California because it was purchased with Hank's salary which would be considered community property.

Therefore, the California condominium is presumptively quasi-community property and at death Wendy would be entitled to her one half community property share in the condominium Sid would take Hank's one half interest in the community property unless that presumption can be overcome.

Transmutation

The character of otherwise community property can be changed by transmutation where there is a writing signed by the party whose interest would be adversely affected

agreeing to the change in the character of the property from community property to separate property.

Here, at the time of purchase in 2006, Hank took title to the condominium in his name alone. Sid would likely argue that the condominium should not be considered community property and that he is entitled to the whole of the property because it was in Hank's name alone and purchased with money from his salary. However, the facts do not indicate that the Wendy signed a written transmutation where she gave up her interest in the property.

Therefore, there was not a proper transmutation of the property to overcome the community property presumption.

Conveyance of Property

Both spouses have the right to manage and control the whole of the property. Neither spouse may convey the interest in community property by lease, conveyance, or sale without the written and signed consent of the other spouse.

Here, in 2016 Hank conveyed the condominium to himself and to Sid, his son as joint tenants with right of survivorship. Sid would argue that the conveyance was a proper exercise of Hank's right to manage and control community property. However, Hank and Wendy were still married at the time of the conveyance and the facts do not indicate that Wendy ever consented to the conveyance of the condominium to be in Hank's name nor in Sid's as joint tenants with right of survivorship.

Therefore, the conveyance was not proper and does not overcome the community property presumption.

Characterization at Death

Upon death of either spouse, the surviving spouse is entitled to one half of the community property and the deceased spouse may properly convey their one half interest in the community by will or devise.

Here, Hank died without properly conveying his one half interest in the condominium to Sid.

Therefore, the condominium will be split according to community property principals.

Conclusion

In conclusion, Wendy is entitled to the entirety of the condominium because the community property presumption could not be overcome.

2) Rights of Wendy and Bill in the State X house

CP Presumption/ Quasi Community Property

See rules above.

Here, the State X house was purchased in a non-community property state. Under quasi-community property, had the State X house been purchased in a community property state, it would have been considered community property and thus is quasi-community property and the community property rules apply. Because Hank's salary was used to purchase the State X house and salary and wages acquired during the marriage are community property, the State X house is community property.

Therefore, the community property presumption must be overcome to change the character of the property.

Transmutation

See rule above.

Here, at the time of purchase in 2006, Hank took title to the State X house in his name alone. Bill would likely argue that the house should not be considered community property and that he is entitled to the whole of the property because it was in Hank's name alone and purchased with money from his salary. However, the facts do not indicate that the Wendy signed a written transmutation where she gave up her interest in the property.

Therefore, there was not a proper transmutation of the property to overcome the community property presumption.

Valid Will

A valid will requires capacity, intent, and requires that will formalities be met. Will formalities require that the testator have the capacity to enter into a will, the intent to create a will, that the testator sign the will in front of two witnesses or that the testator acknowledge his signature and state that it is his will in front of two witnesses, and that two witnesses sign the will and understand that what they are signing is the will of the testator. Capacity requires that the testator be 18 years of age or older and that the testator have the mental capacity to execute a will such that they understand they are

creating a will, the nature of their property, and their relation to their family and those who take under the will. A conservator may create a valid will for a testator that lacks mental capacity so long as they act in accordance with the testator's interest.

Here, the facts indicate that Sid prepared a codicil to Hank's will thus implying that a prior valid will exists.

Therefore, the prior will is valid.

Codicil

A codicil is a change, modification, or addition to a prior valid will and requires the same formalities of a will to be valid. See valid will formalities above.

Here, as a result of a skiing accident, Hank lost all his mental capacity and was on the verge of death. Sid was appointed as Hank's conservator in accordance with Hank's prior wishes. Sid prepares a codicil to Hank's will giving a 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. Because there is no indication of undue influence, and because Sid was acting in accordance with Hanks' prior wishes, and properly signed the codicil and had it witnessed, the codicil is valid.

Therefore, a valid codicil of Hank's will exists.

Devise at Death

At death, a deceased spouse may properly convey their one-half interest in their share of the community property by will or devise.

Here, Hank willed a one-half interest in the State X house to Bill. It is presumed that he was likely willing his one-half interest in the State X house.

Therefore, Bill may take Hank's one-half interest in the State X house at Hank's death.

Conclusion

In conclusion, Wendy and Bill each have a one-half interest in the State X house and are now tenants in common.

3) Whether Hank's creditors can reach the assets in the trust

Community Property Presumption

See rule above.

Here, Hank put \$100,000 he obtained from an inheritance into a valid revocable trust. Money from inheritance is presumptively separate property.

Therefore, the \$100,000 is Hank's separate property and may do with it as he pleases.

Valid Trust

A valid trust requires (1) capacity (2) intent (3) a trustee (4) trust property (5) delivery of trust property (6) beneficiaries and (7) a valid trust purpose.

Here, Hank put \$100,000 he obtained from an inheritance into a valid revocable trust.

Therefore, the trust is valid.

Revocable Trust

A revocable trust is a trust under which the settler reserves the right to revoke the trust and creditors may access the trust to pay debts.

Here, creditors may reach the assets of a revocable trust to satisfy a debt. The only assets in Hank's trust is the \$100,000. A creditor may reach those assets in the trust and because it is separate property, the community is unaffected.

Therefore, the creditors may reach the assets.

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END OF EXAM