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1. Is Hank's will valid

Attested will

A valid will requires a signed writing signed by testator with present intent and capacity in the joint presence of two disinterested witnesses who sign during the testator's lifetime.

Signed

Here, Hank downloaded a form will and signed his will in the presence of two disinterested witnesses.

Therefore, this element is met.

Intent

The Testator must have present intent and must show his actions, assets, and nature of bounties (relationships).

Here, Hank had the present intent because he filled out the form stating,

"Because I have no children, I leave all my property to Sis." This intent was during the time he was alive. Also, his actions show he intended the property to be given to Sis. Moreover, the assets were his property that he was giving to Sis. Lastly, because he had no children and was close to his sis. He wanted her to have his property.

Therefore, this element is met,

Capacity

A testator must be over the age of 18 at the time of will execution and must have sound capacity.

Here, there is no issue of undue influence and the facts do not indicate that the testator was dealing with any mental issues, so he had sound capacity. Here, the facts do not indicate whether Hank was over the age of eighteen because he was single and he had no children, but presumably because he still signed his will in front of two disinterested witnesses does make the indication that he must have been over the age of 18 to know this.

Therefore, this element is met

Disinterested witnesses

The two disinterested witnesses must be in the presence of the testator when he signs or when the testator acknowledges his signature to them. The witnesses must understand they are signing a will, but do not need to know its content. Additionally, the witnesses must sign during the testator's lifetime, but both do not need to sign in his presence or each other.

Here, the facts indicate that the signed the witnesses in the presence of two disinterested witness. However, the facts do not indicate whether the witnesses knew they were signing the will. Also, the disinterested witnesses signed during the time he was alive in 2016, so they did sign during his lifetime. Although, the facts do not indicate whether the witnesses sign at his presence or each other. The witnesses requirement does seem to be established. The facts indicate that State X requires three witnesses, so this element is not met.

Thus, witnesses requirement is not satisfied

Harmless error

Under California law, if the witness requirement is not the will may still be admitted to probate if there is clear and convincing evidence that the testator intended it to be.

Here, the witness requirement is not met as State X requires three.

However, because Hank died in 2021 and he had never written any will after State C will. A Court would find this evidence as clear and convincing that the testator intended for his Sis to get the property.

Thus, this element is met.

Holographic will

A holographic will requires signature and material provisions by the testator's own handwriting. There does not need to be a witness requirement, but a date is required.

Here, Hank dated and signed his will in 2017 and he illustrated his material provisions of stating he has no children and he wanted his Sis to have the property. Also, because he downloaded a form will and the facts state that he did not type, but "filled out" the form. This indicates that he filled out the form with his own handwriting. Also, there is no witness requirement.

All in all, if Hank failed to create a attested will he had a valid will under holographic will

No issue of interogation/act of legal independent significance/ or incorporation by reference

Conclusion

Hank did have a valid will

2. What rights, if any, do Sis, Wendy, Daughter and Son have in Hank's estate?

California is a community property state. Property acquired during marriage is Community Property (CP). Property acquired before or after marriage via bequest, gift, devise would be considered Separate Property. Property can be classified by source, characterization of property, or special presumptions.

Legal marriage in California

The spouses must have a legal marriage in California.

Here, the spouses moved to California in 2021, but California would still recognize their marriage as valid even if they married in 2017 in State X.

Marital economic

The separation, dissolution, and ending of the marriage from start to end date.

Here, Hank and Wendy had a legal valid marriage from 2017-2021.

Thus, this element is met.

Bank account

Source

Property acquired prior to marriage would be considered separate property.

Here, the wages Hank received from his job in the bank account would be considered separate property because he had title under his own name alone and the facts do not indicate that this could be rebutted as State X is not a community property state.

Characterization of property

Quasi-marriage property

A property acquired from another state would still be considered community property in California.

Here, Hank married Wendy in 2017, so the bank account was in State X and would be considered Quasi-property, but California still deems it as community property. However, because it was under his name alone it would still be considered Separate property because he was working a construction job, and kept all of the wages in his bank account alone.

Transmutation

Transmutation is an agreement between two parties to change the characterization of the property. After 1985, it must be in signed writing by the adversely affected spouse unless it is for an insubstantial value.

Here, the facts do not indicate that the parties tried to change the characterization of the property.

Therefore, the bank account is separate property and no special presumptions apply.

Land inherited from his mother

Source

Rule Supra

Here, because Hank inherited the property under his mom's name alone it would be deemed separate property, so this met.

Transmutation- characterization of property

Here, there is no transmutation issue just like the bank account and so special presumptions apply.

In conclusion, the property will be deemed separate property.

Decedent spouse

If the decedent has more than one child, the spouse would receive all of community property and would receive 1/3 of separate property.

Wendy-Son- Daughter

Here, it should be noted that because Hank and Wendy had a daughter in 2019 and through DNA testing Hank had a ten year son. The decedent's children would receive 2/3 of 100k and the land and his wife Wendy would receive all his CP.

Personal injury in 2021

If personal injury has occurred, the injured party is able to recover from CP unless interests of justice says otherwise.

Here, because Hank was not a tortfeasor himself and suffered a fatal injury on his new job in California in 2021. He would be able to recover from his CP assets that he had with Wendy.

Therefore, this is established.

Omitted Child

An omitted child can receive an intestate share if born/adopted after the will unless intentionally omitted, provided for outside the will, or other parent receives substantial estate of the property.

Son

Here, although Hank never knew of his Son's existence it is irrelevant because his son would still be considered his child under California law like an adopted child being born to a natural parent. The facts do not indicate exactly when his son was born but presumably it was after his will that was created in 2017. Moreover, the facts make no mention that he was intentionally omitted, provided for outside the will, or his other parent received substantial estate of the property.

As mentioned before, the Son would be able to retrieve 2/3 of separate property from his bank account/land he still inherited from his mother.

Daughter

The daughter was born after the will in 2017 so she would be deemed an omitted child. However, because her parent Wendy would be receiving a substantial part of the estate. The daughter would not be able to retrieve the intestate share as she would not be considered an omitted child.

Therefore, the daughter would not be considered an omitted child.

Omitted Spouse

An omitted spouse can receive an intestate share if married after the will unless intentionally omitted, provided for outside the will, or waiver.

Here, there was no issue of prenuptial agreement, the facts do not indicate that Wendy was provided for outside the will, nor was she intentionally omitted. She would be able to receive an intestate share because the will was done by Hank in 2016 and both parties married in 2017.

Thereby, Wendy would be able to receive intestate share (illustrated above).

Sis

Specific gift is a gift that can be reasonably accurate from the testator's estate.

Here, because the testator mentioned that the property should be given to his Sis would be considered specific gift because a property is specific and can be distinguished from other property.

Therefore, Sis would be able to retrieve the property.

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END OF EXAM