

5)

1. Is Hank's will valid?

In California (CA), a will that was executed in a different state will be valid if it follows the formalities as required by CA. CA deems a will valid if it is (1) written, (2) signed by the testator, and (3) witnessed by two competent, disinterested adult witnesses. While living in State X, Hank (H) filled out and signed a will that he downloaded (writing and signature). Although H did not follow State X's rule requiring three witnesses, H did follow CA's rule by having two disinterested witnesses. As a result, H's will is valid in CA.

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

Wendy

California is a community property (CP) state which means that property acquired during marriage is CP and property acquired before marriage, after marriage, or by gift or inheritance is separate property (SP). Property acquired before the spouses became domiciled in CA is quasi-community property (QCP), which will be treated as CP upon divorce or the death of a spouse. In 2017, H married Wendy (W) before they became domiciled in CA in 2021. Therefore, any property acquired before H and W moved to CA will be considered QCP.

With this basic presumption in mind, I will address W's interest in H's estate.

- **Bank Account**

The character of the bank account as CP or SP depends upon whether: (1) the property was acquired with **separate funds**; (2) a **presumption** applies; or (3) the **parties have taken any actions that have changed the character of the property**.

- **Source**

After H and W married, H deposited all of his wages in the account. Since wages are considered community funds, the account is QCP.

- **Presumption**

The law presumes that a spouse's wages are CP. Here, H deposited all of his wages into the account. Therefore, the law presumes that the account is CP.

- **Actions**

Here, H opened the account in his own name. However, opening an account in one's own name does not necessarily mean that it is SP unless the parties have signed a valid **transmutation agreement**. A valid transmutation agreement must be **written** and **signed by both spouses**, and must contain a clear **statement of the transfer**. The facts do not illustrate in this case whether H and W agreed to change this account from CP to H's SP. It is inferred that W was perhaps even unaware of the existence of this account. As a result, the account is CP since neither H nor W took any actions which changed the character of the account from CP to H's SP.

- **Disposition**

The court will reward the account as CP.

- **Land**
- **Source**

Here, H inherited the land. Since an inheritance is considered a separate source, the land is H's SP.

- **Presumption**

The law presumes that property acquired by inheritance is SP. Since H received the land by inheritance, the law presumes that the land is H's SP.

- **Actions**

There is no evidence that the spouses took any actions which changed the character of the land from H's SP to CP.

- **Disposition**

The court will award the land as H's SP.

- **Overall Conclusion**

The court will award the bank account as CP and the land as H's SP.

Sis

Presuming that H's will is valid, Sis (S) is entitled to receive all of H's property subject to

W's interest in their CP (*as discussed right above*).

- **Bank Account**

Since S's interest is subject to W's interest in CP, the court will not award S the account.

- **Land**

Since the land is H's SP, S will inherit the land under H's will of 2016.

- **Conclusion**

The court will award S the land, but not the account.

Daughter

An omitted child is a child who was born after the testator executed a will and therefore, was not named as a beneficiary in the testator's will. An omitted child is entitled to their intestate share unless it can be shown that the testator intended to omit the child or has otherwise provided for the child separate of the will.

Here, Daughter (D) was born after H executed his will in 2016 and therefore was not named a beneficiary in H's will. As omitted child, D is entitled to receive her intestate share. Here, H only named S as a beneficiary because he had no children. This displays no intention on H's part to omit any of his children from receiving their intestate share. However, since D's mother, W, is entitled to receive the CP, it is arguable that D falls under the exception where the testator has already provided for the child outside of the will.

As a result, D will likely not be entitled to receive her intestate share in H's estate since her mother has already received a substantial part of H's estate.

Son

Same rule as applied to D.

Here, Son (S) is H's son. However, H was unaware of S's existence. Thus, it is unlikely that H intended to omit S since he did not even know of S's existence. As a result, S is entitled to receive his intestate share, if any, of H's estate.

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END OF EXAM
