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1. Is hanks's will valid?

In order for a will to be valid, there are three requirements to be met, the testator has capacity (i.e he was off age above 18 and had the requisite mental capacity), there must be testamentary intent, and the formalities required to execute a valid will are met. Additionally, a will executed outside of California is deemed valid if it is properly executed subject to the laws of where the testator resided at the time of his death or where the will was made.

The facts indicate no issue with capacity or intent as such the validity of the will here will turn on the requirement for formalities to be met. Formalities for a valid will include that the will was written and signed by the testator on any part of the will, in the presence of of at least two disinterested witnesses in California (or how ever many witnesses as dictated by a state statute) and the witnesses, knowing they are witnessing a will, themselves sign the will.

In this scenario it is apparent that Hank has signed his will and done so in the presence if two disinterested witnesses, however he has not met the state X formality that it must be done in the presense of three rather than two disinterested witnesses. This will not stop the validity of the will however as hank died in california and therefor the will is valid based on the laws of california. As such the will is valid

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

Sis

Based on this initial will, sis may not recived all of Hank's property as the will was conditional on he not having children. Hank had 2 children who are entitled to his estate as omitted children, and an ommitted child, it is unlikely that Hanks gift will stand as assets in the estate will likely be extinguished after all other beneficiaries recive their share.

Wendy

The facts indicate that Wendy and Hank got married in state X but later relocated to California in 2021. As such although they are married in state X they are subject to the community property laws of California upon their relocation. Therefore based on both the California rules of community property and California rules on wills, a spouse is entitled to her share of the

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community and the other half held by the deceased, spouse/testator making the entire community property. Based on California rules of community property a spouse is entitled to the labor of their spouse which includes the proceeds of such labor from work. Where a spouse is omitted from a will they may still claim under a will based on the omitted spouse doctrine. Additionally, where the deceased spouse had more than 1 child the surviving spouse will be entitled to a 1/3 share of separate property.

In this scenario, Wendy will be entitled to all of the community property, which would include the proceeds of Hank's labor while working his construction job which he started after their marriage. There is a presumption that this is community property and absent a valid transmutation made in writing and signed by Wendy, his holding it in a separate bank account will have no bearing on the characterization of this income as CP.

Further the land inherited by Hank will be classified as separate property (SP) as SP includes gifts, inheritances and any property acquired prior to the marriage. As such Wendy is entitled to her half share of the community property in Hank's bank account and Hank has not provided for the remaining community property the other half of the community property, As such Wendy is entitled to the full amount in Hank's bank account will and a 1/3 interest in his separate property which is his house.

### Daughter

Based on California rules, a child may benefit either via the omitted child's rule in the scenario where a child born after the making of a valid will was left out of this will.

Based on this Daughter may claim as an omitted child as she was born after the creation of the initial will, Hank made no other provisions for her neither did he express that she was intentionally left out of the will and he has not given a substantial amount of the property to her mother with the inference that she will provide for daughter. As such daughter will because daughter is not an only child, she will inherit a half of the 2/3 remainder of the will (following Wendy's removed share) between her brother (Son). This means she will have a 1/2 interest of the remaining 2/3 interest in the house in which Hank had title to.

### Son

Based on the California rules, any child whether adopted or known or unknown is entitled to the estate of a parent either as an intestate heir or as an omitted child absent any proof that the Testator omitted the child intentionally, if the child was born after the execution of a valid will and

no other provisions were made by the testator for the omitted child.

In this case Hank has died without making provisions for Son because he was not aware of his existence. Irregardless of whether Hank was aware of Son's existence or not, Son is Hanks child evident by the DNA test. As such Son will therefore share in the 2/3rd remainder of Hanks remaining separate property. Therefore Son is entitled to the other 1/2 interest of the 2/3 interest in the house in which Hank inherited from his mother as an omitted child.

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**END OF EXAM**