5)

1. Is Hank's will valid?

Valid will

A valid will requires testamentary capacity, present testamentary intent, will is in writing, signed by the testator (or signed at his discretion and in his presence), there are two witnesses who witness the signature, and the two witnesses sign before the testator's death with knowledge that what they are signing is a will.

Halographic wills are permitted in CA.

A downloaded form will would validly meet the requirements and components of a will if it is one that is recognized and accepted in the state. Additionally, it should be filled out by the testator, and signed and dated by the testator.

Here, Hank has the testamentary capacity to form the will because he was able to locate and download the form himself. The intent is met because he stated in the form will that because he did not have any children, his intent is to leave all his property to a known beneficiary.

Three witness requirement in State X

The facts state that the will is in writing because Hank filled it out himself, and it was signed by Hank in the presence of two disinterested witnesses. Although State X has a requirement that there be three witnesses to the signing of the testator, not meeting this requirement would not likely be detrimental. Many jurisdiction has recognized the two witnesses to the signature requirement, including CA. Since the will was probated in CA at the time of Hank's death, the court in CA will apply the two witness requirement and rule that that requirement is validly met. (There might be some issues with property that is presumed to be located in State X, which is at issue in probate, but that will be discussed further below.)

Not signed by two witnesses before Hank's death

A missing component from the facts is that the form will was not signed by two witnesses before Hank's death. This is a requirement in CA, however, without this component met, the court may still find that the will is valid if the intent of the testator is clear. Additionally, since Hank signed in the presence of two witnesses, the requirement that the witness knew the item signed is a will is presumed.

Provocation of a will

A will may be revoked by physical act, or by execution of subsequent valid will that either expressly revokes or is inconsistent with terms of the previous will. Here, Hank did not take any measures to revoke the 2016 will by physical acts or by subsequently drafting a new will to replace the 2016 one.

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

Sis

Sis will assert that the 2016 form will is a valid will which leaves "all of [Hank's] property to Sis." If the court finds that the will is valid, Sis will assert that he has rights to all of Hank's property in State X and CA (if any). At the time of Hank's death, the facts state that Hank still owned land inherited from his mother in State X. Sis will argue that he has exclusive rights to the property in state X, since Hank's intent in his will was to leave his property to Sis.

However, the language in the will stating "because I do not have any children" is problematic to Sis' claim. At the time of the will, Hank did in fact not have any children, and his intent deriving from that fact was to leave all his property to Sis. However, at the time of his death, he has a known daughter and a son who he does not know about. The intent of the testator is presumed to be changed at the time of his death since he does have living children then. Sis may not be entitled to the property at all. He may be entitled to the property by asserting that since it is Hank's separate property, distribution of a separate property may allow Sis some rights in the property. However, this argument will likely fail because spouses and issues have a stake in separate property as well, and Sis may end up with no rights in the property at all.

Wendy

CA is a community property state. All property acquired during the course of a marriage is presumed to be community property. All property acquired before marriage or after permanent separation is presumed to be SP. In addition, any property acquired by gift, devise or bequest is presumed to be separate property.

The facts state that State X is not a community property state. However, when Hank and Wendy moved to CA, the property may be characterized differently since CA is a community property state. Property and assets in State X would be construed under Quasi-community property and share similar characteristics as CA's community property.

Omitted Spouse

Even if the 2016 will was valid and left out Wendy, courts have recognized that spouses are meant to be included in a will unless there was clear intent to leave the spouse out of the will. At

the time that Hank drafted the will in 2016, he was not married to Wendy. His marriage to Wendy creates the presumption that he intends to care for Wendy and intends to include her in his will. The facts do not suggest that Wendy and Hank had a prenuptial agreement which explicitly leaves Wendy with no or limited rights to Hank's assets. As such, Wendy may assert rights to Hank's assets as a spouse.

$100,000 from wages

In a community property state, such as CA, wages earned during marriage is presumed to be community property, in that it is used to benefit the marriage and intended to care for the spouses and their life. In order to rebut this presumption, there must be a writing that indicates the spouses do not intend for the wages to be part of the community property. Another way to show intent to leave a spouse out of the will is by other acts that are construed as the testator's intent to care for the spouse a different way. Here, the facts do not show that Hank did anything, such as gift giving or purchasing additional property for Wendy, to show that he is allocating funds and assets for her future care.

The wages were deposited into Hank's bank account that was in his name alone, which gives rise to the idea that Hank intended the wages to be separate property. However, wages deposited in a spouse's name alone is not sufficient to declare the wages as separate property. As such, Wendy is entitled to 1/2 of the money in the bank as her half of the community property, and upon death, Hank's 1/2 of the money in the bank goes to Wendy. Thus, Wendy has rights to the entire $100K upon Hank's death.

Land inherited from Hank's mother

Gift and inheritance is presumed to be separate property unless there was clear intent, typically in writing, to state otherwise. Here, the land was inherited by Hank and was titled to Hank alone. Since inheriting the land, Hank did not change title or characterization of the title to state otherwise. This validly shows that Hank intended to keep the land as his separate property. Upon death, separate property is distributed to a living spouse and to any issue. Here, Wendy is entitled to 1/2 of the separate property and the other 1/2 will go to Hank's ascertained issue, his daughter. However, Wendy's share in this separate property could differ if the probate court recognizes that Hank died leaving behind two issues, his Daughter and Son. If this is the case, then Wendy will be entitled to 1/3 of the separate property and Daughter is entitled to 1/3, and Son is entitled to 1/3.

An issue that may come up with the land in State X is Sis' rights in the land. Sis may argue that since the property is located in State X, the laws of CA should not apply. However, Hank moved to CA, with the intent to stay there and work there, and ultimately died in CA. As such, the CA

courts will treat property in State X as quasi-community property, with the same characteristics as the ones CA applies to the community property.

Daughter

Daughter is a known living issue at Hank's death. Hank had Daughter while married to Wendy, and presumed to be Daughter's caretaker. Had Hank drafted a new will when he moved to CA, there is a strong presumption that he would not purposely leave Daughter out of inheritance. If Hank purposely made purchases of gifts or property for Wendy to show that the intent is to care for Daughter in the future, then Daughter will not have additional rights to Hank's estate at the time of death. As discussed above under Wendy, none of these steps were taken. As such, Daughter will assert rights as an issue at Hank's death, and take as either 1/2 Hank's separate property or 1/3 of Hank's separate property (if the court recognizes Son as an omitted child; see discussion below).

Son

CA recognizes rights for omitted children from a will. The rationale is that a parent would have cared for a child or have the intent to include a child in a will if they knew about the existence of the child. The DNA test clearly proves that Son is Hank's child, and he will not be omitted from inheriting his share in Hank's estate. Hank not knowing about Son's existence does not automatically omit Son's rights from the estate. Son will assert rights for his 1/3 of Hank's separate property in the land.

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