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1. Is Hank's will valid?

Rule: Valid Will: a valid will **in CA** requires a settlor (in this case, Hank) to have (1) mental capacity; (2) be of age 18+; (3) sign a written document (the will) in the presence of two disinterested witnesses 18+ and of capacity; and (4) have the two disinterested witnesses also sign the will. CA will honor a will that is validly created in another state pursuant to that state's valid will requirements.

Sub-Rule: Mental Capacity: Mental capacity for the purposes of a settlor is defined as: (1) having intent to sign; (2) understanding of and knowledge of the property being willed; and (3) knowledge of the parties and relationship with the parties who are interested parties to the will.

Here, Hank did **not** have a valid will created in State X. Pursuant to State X, a valid will required **three** witnesses, and Hank only had two disinterested witnesses. Without knowing more about the laws of State X, it is hard to know whether State X would have honored Hank's will as valid, even in the absence of the third witness, given (i) the clear intent expressed in the will, (ii) the written material terms, and (iii) Hank's signature on the will document--all factors that a **CA court** would weigh in a similar situation.

If Hank did not have a valid will created in State X, then he did not have a valid will when he left State X for CA. In the absence of a valid will from another state, there is no valid will for CA to honor. Hank would have died intestate (no will).

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

Rights Under Intestacy: If Hank's 2016 will is **not** honored in CA, then he will be considered to have died intestate (without a will).

a. Wendy's Rights

Spousal Rights in CA Under Intestacy: Under intestacy in CA, a community property state, the spouse is entitled to **all** of the **community property** (both the living spouse's half of the community property interest and the deceased spouse's half of the community property interest) as well as a percentage of the deceased spouse's **separate**

property. This percentage depends on whether the deceased party has a living spouse, living siblings/parents, and/or issue (children or grandchildren).

Here, Wendy would get all community property, including any quasi-community property, and a 1/3 percentage of Hank's separate property.

Rule: Community property: Community property is all property obtained during the course of a marriage in CA, except property by gift or inheritance.

Here, Wendy would take all of the community property, including her 1/2 share and Hank's 1/2 share. Because Hank died on the first day of his new job in CA, there's probably not much community property for her to take. Still, Wendy would be entitled to any wages earned from Hank's one day of work. If there was other property owned by Hank and Wendy in CA, such as a deed to a house or leasehold interest (which is not mentioned), then Wendy would also take full ownership of such property.

Rule: Quasi-community property: Property that is obtain in the course of a marriage while living in another state (not CA). The property is treated as separate property, even upon moving to CA. But, upon the death of the spouse, the property is reallocated as community property.

Here, Hank earned \$100K in wages--presumably these earnings were exclusively during the course of his marriage to Wendy--that were in his bank account. These wages would have been classified as separate property earned in State X, but became quasi-community property upon moving to CA. The property remained separate property upon Hank and Wendy's move to CA, but upon Hank's death in CA, the \$100K in wages became community property. Wendy will be entitled to all \$100K as re-designated community property.

Rule: Separate Property: A spouse of an intestate party is entitled to all of the deceased spouse's separate property if there are no other blood relations (including adopted children), 1/2 of the deceased spouse's separate property if there are either parents/siblings or issue; or 1/3 of the deceased spouse's separate property if their are parents/siblings and issue.

Here, Wendy is the spouse, Sis is (presumably) Hank's sibling, and Hank has two issue, Daughter and Son. As such, Wendy is entitled to 1/3 of Hank's separate property. Hank's separate property includes his title interest in the property he was

devised by his mother. Wendy will be entitled to a 1/3 interest in this property.

b. Sis's Rights

Sibling Rights in CA Under Intestacy: Under intestacy in CA, a sibling of the same generation as the deceased intestate party is entitled to a certain percentage (usually 1/2 or 1/3) of the deceased party's **separate property**. This percentage depends on whether the deceased party has a living spouse and/or issue (children or grandchildren).

Rule: Community Property: Under intestacy in CA, a sibling has no rights to community property.

Here, Sis will be unable to recover any rights to Hank's wages, either from State X or from his one day of work in CA.

Rule: Separate Property: Assuming there is a living spouse, as there is in this case, a sibling of an intestate party is entitled split pro rata 1/2 of the deceased spouse's **separate property** with parents or other siblings if there is a living spouse and no issue; or to split pro rata 1/3 of the deceased spouse's **separate property** with parents and/or other siblings if there is a living spouse and issue.

Here, Wendy is still alive, Sis is presumably Hank's sister--so, his sibling, and there is no mention of any living parents of Hank and Sis. As his only known sibling and with no mention of any living parents, Sis is entitled to 1/3 of Hank's separate property because Wendy, his living spouse, will receive 1/3 and 1/3 will also be allocated to Hank's issue. Hank's separate property includes his title interest in the property he was devised by his mother. Sis will be entitled to a 1/3 interest in this property.

c. Son's & Daughter's Rights

Issue Rights in CA Under Intestacy: Under intestacy in CA, an issue (child or grandchild) is entitled to a certain percentage (usually 1/2 or 1/3) of the deceased party's **separate property**. This percentage depends on whether the deceased party has a living spouse and/or living siblings/parents.

Rule: Community Property: Under intestacy in CA, an issue has no rights to community property.

Here, neither Daughter nor Son will be able to recover any rights to Hank's wages,

either from State X or from his one day of work in CA.

Rule: Separate Property: Assuming there is a living spouse and sibling of the deceased, as there is in this case, an issue (child or grandchild) of an intestate party is entitled split pro rata 1/3 of the deceased parent's **separate property** with other issue.

Here, Hank has two children: Daughter, who he knew of, and Son, who he did not know of, but is confirmed to be his child by a DNA test.

Rule: Omitted Child: Under CA law, a child who is omitted from a will unintentionally, either because the child was believe to be dead or was never known of during the deceased party's life, will be treated to an intestate share of the deceased party's property alongside another other issue. In general, the "omitted child" rule applies to valid will's, which Hank's is not.

Here, Son was not known to Hank during his lifetime, but he is deemed to be a blood-issue of Hank's and will receive the same intestate share as any other issue of Hank's. In this case, Hank's issue are entitled to split a pro rata interest in the house Hank was devised by his mother. This means that Son will actually have a 1/6 interest in Hank's house from his mother. Son is not entitled to any other property.

d. Daughter's Rights

See rule above for intestacy issue rights for both community property & separate property (the only intestacy property with issue rights).

Here, Daughter will split pro rata a 1/3 interest in Hank's separate property, which includes his title to the house he was devised by his mother. That means that Daughter will actually have a 1/6 interest in Hank's house from his mother. Daughter is not entitled to any other property.

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