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Property Rights in Hari's (H) Estate

Property belonging to a decedent will pass through a valid will, or through intestacy. A valid will requires that testator had capacity, testamentary intent, and that it be signed and witnessed by two witnesses if typed or if holographic that it be signed. Testator must understand the nature and quality and quantity of his bounty, not be subject to mental defects that would prevent that, and must be age 18 or older.

Age and Capacity

H was married for 20 years and died in 2020. The earliest will document was made in 2018 only two years before death so H was over the age of 18 when he made that will. Age is met. The facts state H had full mental capacity his whole life so capacity is met and H understands the nature of his bounty.

Validity of formal Will 1

Because age and capacity are met we will consider the validity of will 1 dated 6/3/18.

Intent

Will 1 left all of H's community property (CP) to Wanda wife (W) and did not mention separate or quasi separate property. If there is quasi or separate property it would pass through intestacy rules in the state of CA because that is where H is domiciled at time of death. H demonstrates intent by leaving all his CP to W.

Date and Signature

Wills must be signed by testator, here H. They must also be dated. Will 1 was dated June 3, 2018 and signed by H. This element is met.

2 Witnesses

CA law requires that a will be signed by two witnesses (W). Ideally these are disinterested witnesses but if they are not disinterested because they could inherit under the will, the will is not automatically invalidated. Instead the court will strike the devise to the interested witness and presume the W had undue influence on testator. This is a

rebuttable presumption that the W may provide evidence testator would have given that devise anyway even if they were not a witness.

Witnesses may not sign at the same time. W do not need to see testator sign the will. Testator must only clearly indicate to W "this is my will" and the W may sign.

Here Will 1 has Witness One signing on June 1, when H signed, and later on June 3 by Witness 2. Will 1 has two valid witnesses because witnesses do not need to sign at the same time.

Terms of Will 1

Will terms must be specific. Here H specifically leaves CP to W, but does not mention separate or quasi CP in the will.

Will 1 Validity

Will 1 is valid because it meets all required elements under CA probate code.

Validity of Will pre-printed form 2

See rules above about requirements for valid will (capacity, intent, witnesses). Will 2 demonstrates intent and H has capacity. Will 2 has no witnesses but it will be a holographic will and they are not required to have witnesses. See below.

Preprinted Wills

When a testator uses a preprinted will form, it is treated as a holographic will by the probate court and the portions written in H's handwriting are the will. Holographic wills do not require witnesses, as long as the hand written portions demonstrate intent and capacity.

Here, H wrote in Will 2 that "all of my separate property and 25% of my community property goes to my son, Samir." H signed the will form.

Missing Date

Will 2 is undated. If the court hears extrinsic evidence about when H made will 2, the court could possibly find it valid despite the missing date. Generally courts want to give power to testator intent. The facts do not indicate whether other evidence exists that indicate

when H made will 2. This is not able to be determined at this time.

Codicil or New Will

A will made after another will revokes the first will. Here if Will 2 was made after Will 1 it revokes it. However if Will 2 was made before Will 1 that Will 2 is revoked. There are no facts to indicate when either will was made.

A codicil cures all errors on a valid will. A codicil functions like an amendment to the will to further devise or change a devise in the underlying will, but a codicil does not revoke the underlying will. Codicils must comply with all the formalities of wills (either typed and witnessed by 2 or holographic).

Here, if evidence is found that will 2 was signed after will 1, the court may find that will 2 is actually a holographic codicil. If will 2 is really a codicil and H intended it to fill the gaps left by will 1 where he failed to mention separate property and now he is giving 25% of CP to son Samir (S), then the court may find both documents are valid because together they present a clear picture of testator intent.

Community property in CA - Wanda's rights

CA allows a holder of community property to devise or transfer his 1/2 interest in CP. Here, assuming doc 1 is a valid will and doc 2 is a valid codicil, H devised 25% of his CP to his son S in the codicil document 2. This would mean that of H's one half interest in the CP, 25% goes to S and 75% goes to W. H has CP worth \$100,000.

W would still also own her one half interest in the \$50,000 CP which is \$25,000 in addition to 75% of H's CP interest (approximately \$16,000) for a total of \$41,000 in CP.

CP Characterization

In California, property acquired during marriage is presumed CP. However, H and W lived outside of CA for the first 15 of their 20 year marriage. We don't know where or when their CP was acquired. We will assume all CP is CP no matter where acquired.

W has not rights to H's SP if the second document is a valid codicil.

Quasi-CP

If property acquired in a non-CP state would have been CP if acquired in CA, then upon death or

divorce CA will treat that property as CP. Here, under quasi CP CA law, even all CP was acquired in a non-cp state, CA will treat it all as CP now that H has died.

Wanda gets 50% of CP plus 75% of H's CP, from H's estate under valid will 1 and codicil 2 (approximately \$41,000). If however in the unlikely event that the court finds that codicil is invalid, W would get 100% of H's CP or \$25,000 plus her half of \$25,000 for a total of \$50,000.

Samir's Rights

Generally an omitted child is treated as under CA intestacy law. However, we don't know when S was born, and where that falls in the timeline of will 1 and codicil 2. The court may find that leaving S out of will 1 was an oversight cured by codicil 2. However, it is also possible that S was not born yet when Will 1 was made and that is also cured by codicil 2. Assuming Codicil 2 is valid and cures will 1, S gets 25% of H's CP and all or 100% of H's separate property. If the codicil is not valid S takes under intestacy.

If both documents are valid S gets \$12,500 of H's CP and all \$100,000 of H's SP.

Intestacy CA Law

If a decedent had one spouse and one child the spouse takes 50% of estate in intestacy and the child take takes the other 50%. Because separate property (SP) is not mentioned in will 1, it is possible that without a valid codicil W gets all of H's CP (\$50K) and S gets only half of H's SP or \$12,500. Under intestacy and an invalid codicil, S takes 1/2 of H's SP.

Deepa's (D) Rights to CA land worth \$100K

Under CA CP law, property purchased with a spouses earnings are presumed CP if purchased during marriage. The CA property was purchased during marriage in 2017 with H's earnings so it is CP. Additionally the property is located in CA so it is subject to CA law.

Spouse Fiduciary Duties

Spouses owe fiduciary duties to be honest with each other regarding assets and debts. H hid the property without W's written consent and titled it to H and H's daughter D. This violates CA CP law and H's fiduciary duties to his spouse. However title alone does not determine characterization of CP.

Title not Dispositive

Though the CA land is titled in H and D's names it is presumed to be CP. As CP, W would inherit all of H's share. If the court finds that D has a valid property interest because H has a right to devise away his 1/2 interest in the property (\$50K), then D gets her one half of H's share or \$25K and W holds the other \$75K as her one half (\$50k) and her half of H's CP interest (\$25K).

It is more likely that D will have no interest in the CA property because it is all CP and was purchased without W's knowledge and therefore goes to W as CP.

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END OF EXAM