2)

General Presumptions Under CA Law

California is a community property state (CP), in which all property is presumed to be community property if it was acquired during the marriage. In CA, all property is presumed to be separate property (SP) if it was acquired before marriage, after the end of marriage, or by gift, bequest or inheritance. In CA any Quasi community property is any property that is acquired outside of the state of California is presumed to be community property unless it can be proven otherwise through source/tracing.

2. What rights if any do Wilma and Sis have in the:

A. California House

CP Presumption

Ca is a community property state, in which all property is presumed to be community property if it was acquired during the marriage.

Here, the house in California is presumed to be community property because it was acquired during the marriage of Wilma and Harry. However the property was purchased with the proceeds of the sale of the state X house, which was purchased with the combined earnings of both Wilma and Harry, but was titled only under Wilma's name alone. Since there is an issue with the proceeds used to purchase the CA home, the court would likely have to use tracing to see whether the house belongs to the sister or Wilma, or both (discussed below)

Thus, the home purchase in CA is presumed automatically to be Community property because it was purchased during the marriage.

Source/Tracing

Courts often look at the source and trace where the money came from to purchase the property in order to establish whether the property was supposed to be CP or SP.

Here Wilma is going to argue that the home should be solely hers, since the house in State X was held under her name alone, and the proceeds that came from the sale should be considered SP, making the CA home her SP. However, the sister will point out that the home in state X was purchased by the combined earnings of both Wilma and Harry and such, the court should find the proceeds from the sale as Quasi CP, and should treat the CA home as community property.

The court would likely find that the home purchased in State X, and the proceeds used from this sale are CP because regardless if the home was only under Wilma's name, the home was purchased by the combined earnings of both of them, and as such, the court would find the

proceeds Quasi CP, in other words CP.

Transmutation

A transmutation is used when a spouse obtains written consent of the other spouse to obtain title or change title of a property. It has to be in writing and the spouse claiming a transmutation must show there was written consent to change the title of the property to their name alone.

Here Wilma might try to claim there was a transmutation by Harry when he let her obtain the house in Wilma's name alone when they lived in state X, and that as such, the CA home should be solely hers. However there is nothing in writing and a transmutation is valid only if it is in writing and signed by the other spouse. As such this argument would likely fail.

Thus, the court would find there was transmutation of property in the home of State X.

Validity of Will

CA honors wills and trusts made in other states as long as they are validly executed by the testator and there is no subsequent will or trust to contradict the original one.

Here, as pointed out by the sister, Harry 2 years before marrying Wilma decided to execute a valid will state X where he left everything to his sister. The pattern also tells us that there is no subsequent testamentary instrument. Therefore the CA court will honor the will and decide that the sister does get Harry's ownership rights and percentage in the CA house.

Thus, there is a valid will even though it was not written or executed in CA and the court will honor the intentions of the testator.

Distribution

Generally property purchased as community property gives 50% to one spouse and 50% to the other spouse. When one of the spouses passes away, normally the other spouse gets the other 50% making them the sole owner of the property unless there is a will or trust which states other wise.

Here, Wilma is going to argue that the CA home is hers because it is community property since it was purchased by the proceeds of the sale of state X, and that Harrys's 50% interest in the home valued at $600,000 should go to her. However the sister will argue that she deserves the 50% because there was a valid executed will that was made in state X that left everything to Harry's Sister.

Thus, the court would find the will valid and would distribute in accordance to Harry's wishes.

Conclusion

The court would find that the CA home is considered CP, but since Harry left a will devising his rights and leaving everything to his sister, the sister is entitled to 50% of the house. The wife wilma will get her $300,000 and the sister is entitled to Harry's other half $300,000. The wife Wilma will likely need to pay her out to obtain full ownership, or she will have to allow her to keep her 50% interest and give her the 50% once the house sales.

B. State Farm X

Quasi Community Property (Quasi CP)

Quasi community property is an property that is acquired outside of the state of California is presumed to be community property unless it can be proven otherwise through source/tracing.

Here, the farm was acquired in separate state, state X, the farm was acquired with the combined earnings of H and W, but was only titled under H's name. Since it was acquired in another state, it is presumed to be CP, unless it can be proven otherwise.

Thus, the farm acquired by Harry and Wilma is presumed to be Quasi CP, in other words CP.

Source/Tracing

Courts often look at the source, and trace where the money came from to purchase the property in order to establish whether the property was supposed to be CP or SP.

Here wilma will argue that the farm in State X should be considered CP because it was purchased by the combined earnings of her and Harry. However the sister will argue that the title of the farm is under Harry's name alone, and that as such it should be considered his SP. Similar to Wilma's argument in regards to the home being only hers mentioned above the court would likely find this argument not persuasive and would find that the title alone is not enough to constitute a change in property, and would find the source of to purchase the farm was CP, and as such the farm is CP.

Thus, the court would find the farm was purchased with H and W's combined income and as such should still be considered CP.

Transmutation

A transmutation is used when a spouse obtains written consent of the other spouse to obtain title or change title of a property. It has to be in writing and the spouse claiming a transmutation must show there was written consent to change the title of the property to their name alone.

Here, the sister might argue that there was a transmutation because if Harry intended for both of them to keep the farm he would have put it under both of their names like he did in the CA home. However this argument would likely fail, in order to have a transmutation it must be in writing and have the written consent of the other spouse, which is not the case here.

Thus, the court would find there is no transmutation.

Validity of Will

CA honors wills and trusts made in other states as long as they are validly executed by the testator and there is no subsequent will or trust to contradict the original one.

Here, the court would honor the will made by Harry in state X and the sister would be entitled to his percentage of ownership rights in the farm located in state X, the wife would only be entitled to more if she challenged the validity of the will and won.

Thus, the court would honor the will made by Harry in state X and would honor his intentions.

Distribution

Generally property purchased as community property gives 50% to one spouse and 50% to the other spouse. When one of the spouses passes away, normally the other spouse gets the other 50% making them the sole owner of the property unless there is a will or trust which states other wise.

In this case, the sister would ask the court to consider this Harry's SP and give her title to the farm alone and the wife would ask for it to be considered CP, and for her to obtain the property all to herself. However the court would look at the will as discussed previously and would find that distribution should be in accordance with the will.

Conclusion

The court would likely find that the farm is considered quasi community property and therefore community property. After Tracing the source of funds to purchase the farm, the court would find that it is still CP and as such the sister and the wife are entitled to half and half. The sister would get $200,000, or Harrys interest, and the wife would be able to obtain $200,000 from the farm.

C. $10,000 savings account

Separate Property (SP)

A property is presumed to be separate property if it was acquired before marriage, after the end of marriage, or by gift, bequest or inheritance.

Here, Harry received the $10,000 from his aunt during his marriage to Wilma, and he deposited this money into his own savings account in his own name. Since the money was acquired during marriage it is presumed to be CP, but since it was acquired by inheritance CA law would consider this money to be Harry's own separate property.

Thus, the $10,000 obtained by Harry through inheritance is presumed to be SP.

Validity of Will

CA honors wills and trusts made in other states as long as they are validly executed by the testator and there is no subsequent will or trust to contradict the original one.

Here similar to the two other arguments, the court would find Harry's will validly executed and

would find that the $10,000 were meant to be his SP. Since it is Harry's SP, and it was put into account that he had in his own name, the court would find this to go solely to his sister.

Thus, there is a valid will.

Distribution

Generally property purchased as community property gives 50% to one spouse and 50% to the other spouse. When one of the spouses passes away, normally the other spouse gets the other 50% making them the sole owner of the property unless there is a will or trust which states other wise. When the property is considered separate property it automatically goes to the heirs of the spouse, or those named in his/her will or trust.

Here, there is separate property presumption, and the sister would argue that the will leaves her all of Harry's assets and ownership rights, as such the CA court should honor his intentions and provide her the $10,000. The wife might argue that the money inherited was meant to be Harry and not his sister regardless of the will. This argument would likely fail and the court would find the will to be valid.

Thus, the court would distribute this in accordance with the will.

Conclusion

The court would find that the $10,000 should go to Harry's sister in accordance with his valid will, the wife will not be able to obtain any money since it was his SP.

END OF EXAM