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**1) WHAT RIGHTS DO WENDY AND SID HAVE IN THE CALIFORNIA CONDOMINIUM?**

**NON-PROBATE ASSETS/Gift**

A Joint Tenancy with Right of Survivorship is a non-probate asset which can be used to make a gift to an heir. A gift requires (1) donative intent; (2) property; and (3) receipt of the gift.

Here, Hank intended for the condominium to be a gift to Sid. Sid received the gift when he held title as a joint tenant with Hank.

**EFFECT OF DEATH OF JOINT TENANT**

At issue is the effect of Hank's death on the Joint Tenancy.

The death of a joint tenant ends the joint tenancy. The surviving tenant will keep title to the land. Here, Wendy will argue that she also has an interest in the land because Hank conveyed whatever he might own at death to her (see discussion of Hank's will below). Wendy's interest will be as in a **tenancy in common**. However, Sid will be able to show that Wendy has no interest in the land.

Therefore, Sid has rights to the California Condominium.

**2) WHAT RIGHTS DO WENDY AND BILL HAVE IN THE STATE X HOUSE?**

**WILL**

A valid will requires that the testator know (1) what his property is; (2) who his heirs are; and (3) that he is executing a will.

**Capacity**

A testator must be at least 18 years old and be free from mental disease.

Here, there are no specific facts to indicate Hank's age. However, it is indicated that Hank and Wendy were married in 2006. Hank had a son from a prior marriage. The will was drafted in 2008. These facts lead to the reasonable inference that Hank must be at least 18 years old. There is nothing to indicate Hank is suffering from any mental diseases.

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Therefore, Hank has capacity.

### **Knowledge**

A testator must know that he is executing a will.

Here, Hank executed a will therefore he understood that he was executing a will.

Therefore, this requirement is satisfied.

### **Heirs**

A testator must acknowledge his heirs.

Here, it is arguable as to whether Hank properly acknowledged his heirs in the will because it is later discovered that Sid is Hank's son from a prior marriage. Because Sid is omitted he could challenge the will as an omitted child. However, there is nothing to indicate that is at issue at this point. Therefore, only listed Wendy is in his will is likely to be acceptable.

Therefore, this requirement is satisfied.

### **Property**

A testator must understand what property he has to give.

Here, Hank leaves whatever he might own at death to Wendy. This is not a specific bequest or acknowledgement of his property. However, it is likely acts as a general catch-all to ensure that his wife Wendy inherits all of his property.

Therefore, this requirement is satisfied.

Therefore, Hank executed a valid will.

### **CODICIL**

A codicil acts as a revision or addition to a will.

### **Capacity**

The testator must have capacity when the codicil is executed.

Here, Hank lost all mental capacity as a result of a skiing injury and was under a conservatorship. Bill may argue that as Hank's son Sid was aware of his fathers wishes

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and knew that Hank wanted Bill to have a one-half interest in the State X house. However, Hank's estate should argue that because of the lack of capacity the codicil is invalid. They will also argue that there is nothing to indicate that Hank wanted this interest given to Bill because Hank does not have the capacity to make these decisions after his accident.

Therefore, Hank did not have capacity to execute the codicil.

Therefore, the codicil is invalid.

Therefore, Bill does not have any rights in the State X house. Wendy has rights under the will to the State X house.

Wendy will also have a right to the house under community property laws.

### **COMMUNITY PROPERTY**

California is a community property state. All property obtained during the course of marriage is community property. All property obtained before the marriage or by gift or bequest is considered separate property. All property obtained during the marriage outside of California is considered **Quasi-Community Property**. Inside California, Quasi-Community Property is treated as Community Property.

#### **State X House**

The State X House was purchased during Hank and Wendy's marriage with money from Hank's salary. Salary which is earned during the marriage is considered community property. Therefore, community assets were used to purchase the house regardless of title being in Hank's name alone. Because the house was purchased in a non-community property state it will be considered Quasi-Community Property.

Therefore, the State X house is quasi community property.

#### **Death of Spouse**

If one spouse dies during the course of the marriage the surviving spouse gets the dead spouses 1/2 of the community property.

Here, Hank predeceased Wendy. Hank and Wendy were still married at the time of Hank's death.

Therefore, she will obtain his 1/2 of the community property.

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Therefore, Wendy also has rights under community property law to the State X house.

**3) WILL HANK'S CREDITORS BE ABLE TO REACH THE ASSETS IN THE TRUST?**

**TRUST**

A trust is a document that holds property for the benefit of another. There must be (1) intent to create a trust; (2) a trust purpose; (3) trust property(res); and (4) beneficiaries.

**Intent**

Here, it is indicated that Hank placed \$100,000 into a valid revocable trust. Therefore, it can be inferred that this is an intent to create a trust.

Therefore, there is intent.

**Trust Purpose**

Here, the trust is to pay income to Hank for the rest of his life, then to Wendy for life, remainder to Sid. This will be considered a valid trust purpose because it is to care for the the trustee and his family.

Therefore, there is a trust purpose.

**Trust Property (Res)**

Here, the trust consists of \$100,000.

Therefore, there is trust property.

**Beneficiaries**

Here, Hank will be paid trust income as a trustee. Wendy will be a beneficiary of the trust once Hank dies.

Therefore, there are beneficiaries.

Therefore, Hank has a valid private trust.

**Creditors**

Creditors cannot reach trust assets.

Here, Hanks creditors will not be able to reach trust assets. They must obtain whatever

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payment they can from his non-trust assets which are the State X house and California condominium.

Question #1 Final Word Count = 1053

**END OF EXAM**