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1. Is Hank's will valid?

Valid Will

A will is valid if it the person drafting the will is over 18, has capacity, identifiable beneficiaries and aware of his property, assets and the like and signed by the testator and in CA by two witnesses.

Here, in 2016 Hank was single and living in State X. Because his age is not included in the facts, because he married a year later, it can be presumed that Hank was over 18 and had capacity. Hank signed his will in the presence of two disinterested witnesses. However, State X requires three witnesses. Further, he stated "Because I have not children, I leave all my property to Sis." Thus, he had an identifiable beneficiary.

Therefore, Hank's will meets all, but one requirement in State X of having three witnesses.

Holographic Will

A holographic will is valid as long as it is in the testator's handwriting and signed by the testator. This also includes form wills that can be filled in by the testator.

Here, Hank has executed a holographic will.

California

As stated above a valid will in State X requires three witnesses, in California a will requires two disinterested witnesses.

Here, Hank and Wendy moved to CA in 2021 and Hank also got a job in CA. At the time of his death he was domiciled in CA.

Therefore, Hank's will be probated in CA, his holographic will is valid in CA.

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

Sis

At the time of Hank's will drafted in State X, he did not have any children or a wife so he left all his property to Sis.

As will be discussed below, Wendy is pretermitted spouse and their daughter and son are



omitted children which will be recognized in CA and will take an testate share of Hank's property.

Therefore, Sis will get 1/4 of Hank's estate from the bank account. Potentially, Sis could make a claim for the separate property if that was the only property he owned at the time of State X will because it is considered separate property. If the court determines differently SIs may have claim to 1/4 share in the property or 1/4 share in the proceeds from the sale,

Wendy



California is a community property state. Property acquired during marriage is community property, property before marriage through, gift, bequest of devise is considered separate property.

Separate Property

As defined above, SP is property that is acquired before marriage or during marriage through inheritance.

Hank had kept land he had inherited from his mother titled in his name alone. From the facts there is no indication that Hank changed the title of the property to include Wendy and if the property gained any profit for rent or the like, not indicated here, he did not commingle those funds with Wendy.

If the only property that Hank owns is this the one from his mother and is considered separate property, Sis cannot make a claim to it the property may be divided up in terms of ownership or Wendy would be entitled to half of the separate property and the remaining beneficiaries would split the other half and the same would be should the property be sold.

Thus, while the property is separate property according to California CP law, depending on what the court decided Wendy may be entitled to a share of the property or sale proceeds.

Pretermitted Spouse

Pretermitted spouse is a spouse that was not included in a will either because they were provided for outside of the will, or the will was created before the marriage.

Here, Wendy and Hank married in 2017 while still living in State X. Because Hank did not draft another will, Wendy will be able to claim her share of Hank's CP even though she was not included in his will according CA CP law.

Therefore, Wendy will have claim to half of Hank's estate as a pretermitted spouse.

Bank Account

Hank kept all his wages he received from his job in a bank account that he opened in his own name, while Hank and Wendy were married.H

Here, Hank was placing the funds from his job in the bank account while he and Wendy were married. Just because he held the account in his name does not affect whether or not it is CP>

Therefore, Wendy is entiteled to half.

Daughter

Daughter was born to Hank and Wendy while they lived in State X.



Daughter will be provided for th

Son

Omitted Child

In the event that a child is born before the creation of the will or was born after the creation of a will and the will was never updated, the child may be included. Unless the child was omitted on purpose, which would be clearly defined in the will.

Here, Hank had a son he did not know about prior to his death. The Son is a ten-year old child who has proved by DNA testing that he is Hank's son. Because the State X will was the only will Hank wrote and before he knew of Son's existence, it is possible for Son to be awarded a proportionate share of the \$100k because the will does not say otherwise.

Therefore, Son will get a share of Hank's estate.

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END OF EXAM