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Rights of Wanda,W , Samir,S and Deepa,D in Hari's,H estate.

Types of Property

Property acquired outside of CA, in a non community property state during marriage, will be treated as quasi community property, QCP on distribution in CA on death or dissolution.

Property acquired before marriage, after dissolution of marriage or by inheritance will be treated as Separate property, SP.

Here, H and W were married to each other for 20 years , domiciled in State X, a non CP, community property, state for the first 15 years. This means that the property acquired in State X while married is QCP. However, property acquired in the last 5 years while H and W were domiciled in CA will be treated as CP.

Since H died in 2020 anything after 2015 is CP and will be distributed along with QCP from state X according to CA laws.

Valid will

A valid will is one that consists of a testator's testamentary intent, while he has testamentary capacity, sound mind and over 18 years of age, and the will is properly executed.

Testamentary capacity

H had full mental capacity throughout his life. Therefore the element is satisfied.

Testamentary intent

H disposed of his property naming his beneficiaries as should take of his estate in his 2018 and updated pre-printed will form. Any remaining estate will be passed by intestate succession unless W set aside any gifts.

Formalities of will

Formal Will

A formal will has to be acknowledged by two witnesses in joint presence when the testator states that this is his will. The disinterested witnesses have to sign the will, and the testator has to sign the will.

Here, a formal will signed by H and Witness One on June 1, 2018 and signed by Witness Two on June 3, 2018 are sufficient signatures as both witnesses do not have to be in the presence of each other to sign so signing on the 1st and another signing on the 3rd of June is valid.

Both witnesses were disinterested is an essential element which is satisfied.

The facts however do not state that the witnesses acknowledged that the will was H's in joint presence. If this was not done this will will fail for lack of H's acknowledgment in both witness's presence that they were witnessing his will.

The will did not mention any separate property or quasi community property, but these will pass by intestacy if there is no valid will.

It appears that the 2018 will may be invalidated for insufficiency, unless there is extrinsic evidence to show H's testamentary intent.

Holographic will- Codicil

A subsequent will may be a holographic will if the material terms are in the testator's handwriting and signed by the testator. It does not need to be dated unless there are other competing wills at probate.

Here, an updated preprinted will form that had printing at the top, declaring that it was intended to be a will was submitted for probate in 2020 at H's death. Since it had no date it would be competing with the 2018 will, however the facts show that his updated will was subsequent to the 2018 will.

On the form H had written in his own handwriting, 'all of my separate property and 25% of my community property goes to my son, S.' Since the form was preprinted, it would have been filled out with the material terms as H did in his handwriting, which is sufficient. In addition H as required signed the will form but no witnesses signed it, and there was no date on the form. Since the absence of a date on a holographic will will not invalidate it, and it is stated that this is H's updated will, it is a valid holographic will.

Integration

There was no integration of a will. The 2018 will did not refer to the holographic will hence the 2018 will may be invalid except for extrinsic evidence to show that the witnesses acknowledged in joint presence H told them the 2018 will was his.

Incorporation by reference

There was no reference in the updated will to the 2018 will, hence the 2018 will may not be probated except for extrinsic evidence.

Distribution of Estate

-2018 Will

If it is shown by extrinsic evidence that H intended that the 2018 will be distributed, by the witnesses being in joint presence when H acknowledged to them it was his will, the 2018 will will be distributed, as stated, leaving all of his CP and QCP to W., and the Sp will be distributed intestate succession, 1/3 SP to W and the remaining 2/3 to D and S respectively.

-Updated pre-printed will form

Otherwise, if the 2018 will is not probated, and the court probate the updated will form, it will be distributed as stated with remaining estate distributed by intestate succession.

All of H's SP, \$100,000 and 25% of H's CP, \$50,000 will go to S. This means that only the other 75% of H's CP of \$50,000 and W's CP of \$50,000 will go to W.

The California land worth \$100,000 which H bought with his earnings while H and W lived in State X being their QCP to be distributed as CP in CA, will not go to H's daughter D. Instead only H's 1/2 of the \$100,000 land would go to D, the other 1/2 would go to W since it is QCP.

Furthermore under the principle of management and control, W will be able to set aside the CP gift to a third person within 3 years. Since in 2017, without W's written consent, H gave the land to himself and D as joint tenant on her birthday, this is invalid as it goes against the transmutation laws, see below.

Transmutation- Exchange Rule

The character of property does not change even if there is a change in form.

Here when H in joint tenancy gave the land he bought during marriage as QCP to himself and his daughter, W had to give a written consent for this transaction since she would be adversely affected. The facts do not show that W transmuted her share of QCP in writing. Therefore W will retain her 1/2 of the land's value as her CP. Since H by joint tenancy conveyed his half before he died to D, intervivos conveyance, D will be allowed to keep 1/2 of the land for \$50,000 value.

Rights

It is likely that S will get H's SP of \$100,000 and 25% of H's CP, D will get 1/2 of the land value, \$50,000, and W will get the other 1/2 of the land value \$50,000 in State X and 75% of H's CP and her other half of CP \$50,000 of the property B.

Question #2 Final Word Count = 1143

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