

2)

QUESTION 5

CP/ QUASI-COMMUNITY PROPERTY

California is a community property (CP) state- any property acquired by either spouse during marriage will be considered CP. Separate property is any property acquired before marriage or after legal separation or dissolution of the marriage.

Quasi-community property (QCP) is property acquired outside of California ,by either spouse, but would have been considered CP if in California at the time the property was acquired.

FORMAL WILL

Valid Will

A valid will requires: testator's (T) intent, testamentary capacity and satisfaction of legal formalities.

Intent

Intent of the T is an unequivocal act to dispose of his property effective at the time of his death .

Here, a formal was signed by Hari (H) but no other acts mentioned in the facts as to whether H intended this formal will to be the disposition of his property.

Therefore, it is not explicitly stated whether H's signature would qualify an H's unequivocal act to create a will or disposition of his bounty. If the word "formal" contains facts making it implicit of H's intent, then the signature would qualify as satisfaction of intent element.

Testamentary Capacity

A be at least 18 yrs old and of sound mind, and knows and understands at the time of the execution of his will: 1)the nature of his

bounty, 2) the natural objects of his bounty or beneficiaries, 3) disposition of his bounty

Here, the facts state that H had full mental capacity throughout his life satisfying the mental capacity requirement. He mention his CP was to all go to Wanda (W), even though it did not mention his SP or QCP.

Therefore, T had the requisite testamentary capacity since he satisfied the requirements as stated above.

Legal Formalities

Written and Signed

A valid will must be written and signed by the T or someone under the T's direction and in T's presence or by a conservator by court order.

Witnessed

A valid will must be witnessed by signing by 2 witnesses, who signs the will any time during the T's lifetime, being present at the same time, observe the T sign his name on the will or acknowledge that the signature is his signature; the 2 witnesses must know and understand that the T is signing a will.

Here, the facts state that there are 2 witnesses who signed it: W1 on June 1, 2018 and W2 on June 3, 2018, and H died in 2020. Therefore, W1 and W2 signed during H's lifetime. The facts did not state whether they were both present simultaneously when observing T sign the formal will or acknowledged his signature.

Even though the facts state that W1 and W2 were disinterested, however, it does not state whether they were aware or understood that they were signing H's will. Therefore, the witness requirement of the will fails.

6110(c)2 Clear and Convincing Evidence

In California, if a will satisfies the written and signature requirement of a

valid will but fails the witness requirement, can still be admitted to probate if the proponent through clear and convincing evidence show that the T intended this to be his will.

Here, the written requirement was satisfied because it was a 'formal will' and it was signed, but it failed witness requirements because W1 and W2 were not present simultaneously when observing H, and no evidence they knew what they were signing. Therefore, 6110(c)2 of the probate code will apply to allow the formal will to be submitted to probate.

UNDATED PREPRINTED WILL

Holographic Will

A holographic will is an instrument that has the material provisions (beneficiaries and bequests) in the T's handwriting and signed by the T. There are no date or witnesses requirements to a holographic will.

Here, an undated pre-printed will form contained the writing in H's own handwriting "all of my separate property and 25% of my community property goes to my son, Samir. H signed the form but no witnesses or date. the wording declaring it was intended to be a will on the top of the preprinted will will not be considered valid since it is not in H's handwriting.

This would qualify as a holographic will because Samir and all of H's SP and 25% of his CP are in H's handwriting, even though there are no date or witnesses.

Therefore, the undated, pre-printed will will be a valid holographic will.

RIGHTS OF WANDA

C

At H's death all of the QCP, will be considered as CP.

Omitted Spouse

An omitted spouse is someone who was married after the execution of the will but is not included in the will. An omitted spouse will be entitled to her intestate share of the estate unless:

- a) the T intentionally and expressly omitted the spouse in the instrument and it appears on the will itself
- b) the T has provided outside of the will to be lieu of the gift in the will
- c) the omitted spouse waives the gift in the will

Here, T did not provide outside the will for W, not did W waive the gift in the will. However, if the formal will which includes W and it was written after their marriage but if the formal will fails in probate because of a lack of clear and convincing evidence as to T's intent that it constitutes his will, then W will take an intestate share. If the formal will is valid then W will receive all of H's CP (\$50,000) and the land (\$100,000). If the formal will is valid, then she gets all CP, But if the formal will fails then W gets 100% of CP and Her intestate share of the \$100,000 is as follows:

100% of SP to spouse, if no children

1/2 of SP to spouse if one child (who gets the other 1/2)

1/3 of SP to spouse, 2/3 to be divided to 2 (or more) children

If the formal will is valid then W will receive all of H's CP (\$50,000) and the land (\$100,000).

RIGHTS OF SAMIR

Because the pre-printed will form is a valid holographic will, Samir will be entitled to all of H's SP or \$100,000 minus the intestate share of Deepa's and Wanda if the formal will fails probate. 25% of the CP if formal will fails

RIGHTS OF DEEPA

Omitted Child

An omitted child was born before the execution of the will but is not included in the will. An omitted child will be entitled to her intestate share of the estate unless:

a) the T mistakenly believed that the omitted child was death or unaware of the child's birth . If not mistaken which it appears H was not, then D was intentionally left out of the will.

intestate Share

Distribution of the intestate share of a T's estate consist of : or division of the \$100,000 is as follows

100% of SP to spouse, if no children

!/2 of SP to spouse if one child (who gets the other 1/2)

1/3 of SP to spouse, 2/3 to be divided to 2 (or more) children

Here, H was aware of the of Deepa's existence because in 2017 H attempted to give Deepa his land that he acquired while living in State X. Because Deepa was not mentioned in either the formal will or the holographic will, she will be considered a pretermitted child and will take her intestate share of H's estate. H's gift of the land as joint tenancy is not valid because it was bought with his earnings while married to W in State X which will be considered QCP, now CP at his death.

Therefore, Deepa will be entitled to 1/3 of H's SP as her intestate share as an omitted child.

Question #2 Final Word Count = 1296

END OF EXAM