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Hal's, Carl's, Sis's, and Museum's rights to the XYZ stock and proceeds from the sale of the condominium

Since Hal and Wilma lived in a non-community property state, all property acquired by them while residing in that state would be separate property (SP). However, property that would have been community property had they been living in a community property (CP) state, would be considered CP.

The XYZ Stock

Hal's Rights

Wilma's condominium inheritance in New York was by inheritance and she held title to the property alone. Thus, even while living in California, such an inheritance and subsequent purchase would be considered as separate property (SP). Therefore, by moving to California, the condominium is still Wilma's SP.

Wilma's investment of part of her wages in XYZ stock were done during her marriage to Hal. Thus, if domiciled in California, the XYZ stock would be considered CP since anything purchased with community funds (which includes wages earned during marriage) is considered CP. Therefore, Hal has a CP interest in the XYZ stock.

2002 Will- Carl's rights to the XYZ stock

When Wilma executed a will leaving the XYZ stock to her cousin, Carl, Wilma attempted to leave all of the stock to Carl, when she was only entitled to leave her CP share of the stock. Thus, in 2002, Carl had an interest in inheritance of Wilma's CP share of the XYZ stock, but not in Hal's CP interest in the stock.

2003 Transfer of XYZ stock by Wilma to herself and Carl

Wilma's transfer of XYZ stock to herself and Carl as joint tenants will fail because Wilma does not own the entire interest in the XYZ stock -- Hal owns his CP interest. Therefore, Wilma's transfer of XYZ stock may be taken by Wilma and Carl with each of them owning a 1/4 ownership in the stock as joint tenants, and Hal will continue own his CP half of the XYZ stock.

Sis's rights

Sis was never given any interest in the XYZ stock, so she will not be able to claim any interest in the stock upon Wilma's death.

Museum's rights

Wilma's 2004 "Change to my Will" -- Codicil

Wilma's codicil to her will must be analyzed to determine if it was valid. The codicil, which is a change or addendum to a will, was executed in Wilma's own handwriting, dated, and signed by Wilma. Although the document was not signed by any witness, the court will look to the will and compare the signature and handwriting to Wilma's and will more than likely enforce it as a valid codicil evidencing Wilma's intent to make a change to her 2002 will. Additionally, any documents referenced in the codicil, such as the "XYZ stock" certificates can be incorporated by reference as documents that were in existence at the time the codicil was effectuated. Thus, Wilma's 2004 codicil will "republish" her original 2002 will, but with the changes stated in the 2004 codicil.

In her 2004 codicil, Wilma gave her XYZ stock to Museum. Since she owned her half of the XYZ stock in joint tenancy with the right of survivorship with Carl, at Wilma's death, her portion went to Carl as survivor. Therefore, Carl owned half

of the XYZ stock, and Hal continued to own his CP half of the XYZ stock. Sue and the Museum owned no portion of the XYZ stock.

The Condominium

As stated initially, Wilma's condominium inheritance in New York was by inheritance and she held title to the property alone. Thus, even while living in California, such an inheritance and subsequent purchase would be considered as separate property (SP). Therefore, by moving to California, the condominium is still Wilma's SP.

2002 devise to Sis

The 2002 devise of Wilma's SP condominium was valid since it is her SP and she may do whatever she wishes with it upon her death.

2003 sale of condominium

Wilma's 2003 sale of her SP condominium and her placement of the proceeds in a bank account in her name alone allows the change in form of the SP assets to remain as the SP assets of Wilma.

Sis's rights to condominium

Specific devise/Ademption

When Wilma, in her 2002 will, left Sue her condominium, it appears that she intended to make a specific devise of the condo to Sue. Since Wilma then sold the condo in 2003, the property no longer existed. Sue will argue that Wilma instead intended her to have the proceeds to the condominium as evidenced by Wilma's placement of the proceeds in a bank account in her name alone, and no

facts indicate that Wilma touched the account after she placed the condo proceeds in the account. The court will look to the intent of the testator, Wilma, to decide whether Sue should receive the money, or whether the gift will have adeemed. If the gift is held to have adeemed, the proceeds will go to the residue of Wilma's estate and therefore to Museum under Wilma's 2002 will and Sue will take nothing as to the condominium. Another aspect the court will consider is that, if the condo gift is considered adeemed and Sue takes nothing, this may go against Wilma's intent, since it appears Wilma wanted Sue to receive something of an inheritance upon her death.

In sum, if the court holds that the condominium was a specific devise, the gift to Sue will be deemed to have adeemed and she will take nothing as to the condo. The Condo will go to Museum as the residuary legatee of Wilma's 2002 will. Alternatively, the court may hold that Wilma intended Sue to have the proceeds of the condo sale and will award her the amount in the bank account. Since Hal never had any CP interest in the condominium -- it retained Wilma's SP interest throughout all transactions -- Hal will be awarded no interest in the condo. Finally, Carl was not devised any interest in the condo and will therefore be awarded no interest in the condo or its proceeds.

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