

Answer B to Question 4

Wynn

The first issue with Wynn is to determine the nature of the Beta Corp's stock.

California is a community property state; thus it is necessary to decide the nature of the assets of the parties. Community property (CP) is any property obtained by either of the spouses during marriage by their labor. Separate property (SP) is any property owned by a spouse before marriage, acquired after permanent separation or by gift, devise, or bequest.

The nature or characterization of the property depends on the source of the property, acts by the parties that would change its characterization and any statutory presumptions.

Here, the Beta stock was acquired by Tom using his earnings while married to Wynn. Since, earnings gained during the marriage come from the spouse labor and earnings during marriage are presumptively CP. Since, the earnings are CP anything purchased using these funds would also be CP; hence, the stocks purchased by Tom are CP. Since the stocks are CP, and there was no action by either party showing that they were not supposed to stay that way, the stocks would be $\frac{1}{2}$ Tom's and $\frac{1}{2}$ Wynn's.

Thus, Wynn would be entitled to $\frac{1}{2}$ of the Beta Corp stock, which is 50 shares.

Residuary

The residuary is the remainder of the property of a testator that has not otherwise been disposed of in the will. Under Tom's will Wynn is entitled to the residuary, which, if all the gifts in Tom's will are valid, would be \$410,000 of his separate property cash.

Cole

Cole was left nothing under the will and will have to claim as a pretermitted child.

Pretermitted Child

A pretermitted child is one who is born or adopted after all testamentary documents have been executed. If a child is pretermitted they may collect a share equal to that they would have received had there been no will, i.e. intestacy. However, a pretermitted child may be prevented from claiming a share if they were intentionally left out of the will as demonstrated on the face of the document, they were provided for outside of the testamentary documents, or the bulk of the testator's estate was left to the other parent of the pretermitted child.

Here, Cole would be considered pretermitted as Tom executed his will in 2001, and Cole

was not born until 2003. Since there is no mention of other documents it is presumed that the will was the last testamentary document. Thus, Cole is pretermitted because it was executed before he was born, meaning Cole could be entitled to an intestate share of Tom's SP.

However, it is necessary to look at whether the exceptions apply. There is no evidence that Tom intended to intentionally leave out or disinherit any future born children. Thus, Cole is not blocked under this exception. Further, there is no proof or mention of a child being cared for in any way outside the testamentary instrument. However, since Tom's will leaves his residuary to Wynn, Cole's other parent, Cole may not collect under pretermitted child. This is because the residue of Tom's estate equals the bulk of his estate and he left it to Wynn. The presumption is that Wynn will use those assets to care for Cole; thus, he does not need an intestate share.

Thus, Cole has no rights in Tom's estate.

Norm - Lynn - Kim

Tom's will left a gift of \$80,000 to the issue of his sister Sue. The issue here is how those issue will take under the will. Where a testamentary document is silent on the issue of distribution among issue, than [sic] in California the distribution is made per capita.

Per Capita Distribution

Per capita means that assets are divided at the first generation where there is a living beneficiary and then split. The assets are split evenly between the number of living descendants at that level, and the number of deceased descendants who have issue.

Here, since the will merely stated to Sue's issue, it would go per capita. Thus, it would split at the first generation with a live beneficiary, which is Norm. Since Norm is alive it will split evenly between him and Matt, his deceased brother, who left 2 children. This means that Norm will get $\frac{1}{2}$ of the \$80,000 gift, equal to \$40,000 and the other half will go to Matt's issue.

Kim and Lynn will take per capita representation, meaning they will take their father's share in his place and split it equally among those at that level of descent. Since there is only Lynn and Kim each will receive $\frac{1}{2}$ or \$20,000.

Frank

Frank is Tom's friend who is to take \$10,000 and Tom's shares in Beta Corp under Tom's will.

\$10,000

Under the original will Tom left Frank \$10,000; this amount was later crossed out and changed, raising the issue of cancellation.

Cancellation - Interlineation

Cancellation is where a provision of the will is crossed out of the will. Where there is writing above or between the lines and occurs with a cancellation, there is interlineation. Here, Tom has crossed out the \$10,000 amount and written above it \$12,000; thus there has been a cancellation of the \$10,000 gift and interlineation of \$12,000. Since there is a cancellation there is a question of whether the gift is still valid or not. To determine what if anything Frank gets there is a need to discover if the change is valid.

Holographic Codicil

A holographic change may be made if the material terms are in the writing of the testator and so is the beneficiary name. Here, Tom has crossed out the amount of \$10,000 and in his own handwriting changed the amount to \$12,000. However, Tom did not write out Frank's name in his own handwriting as well. Since Tom failed to put material provisions and person's name in writing, it is irrelevant that he wrote okay and dated it. It may show Tom's intent but does not meet the requirements for a valid holograph. Thus, the change to \$12,000 fails. Frank will try to keep his gift using Dependant Relative Relocation.

Dependant Relative Relocation (DRR)

Here, a testator mistakenly revokes a will or gift under the will under a mistaken belief that another testamentary disposition would be valid. Further, the testator would not have revoked the first disposition but for the mistaken belief.

Here, Tom believed that by crossing out the amount \$10,000 and writing \$12,000 he would be validly changing the amount of the gift to Frank. This is demonstrated through the fact that Tom went so far as to write okay and date it. Thus, Tom obviously intended for Frank to receive a gift under the will, and would not have revoked the \$10,000 if he had not thought that the change to \$12,000 would be valid. Further, since the amount was an increase rather than decrease DRR may be applied to effect [sic] testator's intent. Here, since it is obvious Tom wanted Frank to receive at least \$10,000, DRR will be applied to save the gift.

Beta Corp Stock

As mentioned with Wynn, Frank would only be entitled to those shares of stock that belonged to Tom. Since the stocks were determined to be CP and be $\frac{1}{2}$ Wynn's and $\frac{1}{2}$ Tom's, Frank could only collect 50 shares of stock or $\frac{1}{2}$ of the total.

Frank is entitled to the $\frac{1}{2}$ because Tom is able to pass by devise his $\frac{1}{2}$ CP to anyone he

wants. Since the will said “my shares of Beta Corp to Frank” than [sic] Frank receives them. Further, by stating “my shares” in Beta Corp, Tom was only giving Frank the right to claim what belonged to Tom; meaning that Tom was only giving Frank a claim to his $\frac{1}{2}$ CP interest in the stocks, and not attempting to give away Wynn’s $\frac{1}{2}$ CP interest. (Thus, no widow’s election.)

In conclusion, Wynn has a right to $\frac{1}{2}$ of the Beta Corp stock as CP and \$410,000. Cole has no rights as Wynn received that bulk of the estate. Norm has a right to \$40,000, Kim and Lynn each have a right to \$20,000 and Frank has a right to \$10,000 & $\frac{1}{2}$ of Beta Corp stock (i.e. 50 shares).