

1) Please type the answer to Question 1 below.

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When finished with this question, click to advance to the next question.  
(Essay)

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### 2010 Will

#### Validity

**Capacity:** A will is valid under CA law if the testator (T) has capacity to create the will. A testator has capacity if they understand wthe implications of the will and have an understanding of property/items they possess.

Here, M was a widow and at least 18 years old when she drafted her will in 2010. The will was typed on her computer and it identified the property to be distributed and to whom it would be distributed to. There is no indication that M lacked capacity to understand what she was intending to will to her heirs.

Thus, M had capacity to create her will.

**Witnesses:** A will is valid under CA law if it is witnessed and signed by two competent adults. The witnesses can sign the document anywhere, but they must both sign the document while knowing what it is. If T does not physically sign the will in the presense of the witnesses, T must tell the witnesses that the signature is hers. The witnesses need not be familiar with all of the property included in the will, but they must understand that the will provides the distribution of the T's assets. Ideally, the witnesses would not substantially benefit from the will, but it is okay if they do. They will just have the burden of proving that they did not unduly influence the T.

Here, M printed two copies of the document and signed and dated both copies in the presence of C and N. Further, M signed and dated both copies of the will in the presence of C and N. C was aware of the contents and signed both copies of the will. N had no idea as to the bequests but declared that he was honored to be a witness and signed the will. The fact that N does not know of the bequests does not invalidate the will. Rather, the fact that N knows that this document he signed is M's will and he witnessed M sign the will is enough to make him a qualified witness. However, the facts do not indicate that C and N are over 18 years of age. If they are not, then the will is invalid because the witnesses must be 18.

Thus, the 2010 will is valid.

### **Revoking Will**

A will may be revoked if it is destroyed, burned, or ripped by the T. All material provisions must be ripped. Further, revocation requires that the T intended to revoke it simultaneously with the act of destroying the will. All copies of the will must be destroyed.

Here, M deleted the old document from her computer and tore up one copy of the will. In order for this revocation to be valid, M must have intended to revoke the will at the moment she ripped the will in pieces. The facts do not indicate that M intended to revoke the will, this must be apparent. Further, M forgot that she had another copy of the will in a safe deposit box. M did not destroy all copies of her will.

Thus, M's attempt to revoke the will is invalid.

### **Dependent Relevant Revocation (DRR)**

When a T attempts to revoke a will but fails to completely revoke it, the will will

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still be valid under DRR.

Here, M attempted to revoke the 2010 will by destroying it. However, M failed to destroy all copies of the will.

Thus, the 2010 will is still valid.

### **2014 Will**

In order for the 2014 will to be valid, it must be integrated into the 2010 will.

### **Validity**

Capacity: see rule above. There is no requirement that the will be dated. Lack of a date alone is not enough to invalidate the will. However, there will be issues concerning validity against a former or subsequent will that are raised by the lack of a date.

Here, M did not date nor designate a recipient for her remaining property. The fact that M did not date it is not enough to invalidate the will alone. Further, all items not accounted for in wills will be distributed through intestate to the T's issues.

Witnesses: See rule above.

Here, there is no indication that the will was witnessed.

Thus, it is invalid because of the lack of witnesses.

### **Holographic Will**

A holographic will is one that is handwritten. All material provisions must be in the T's handwriting. Further, it must be witnessed and signed by two adults.

Here, M wrote the material provisions on her corporate stationery with her business logo emblazoned on it. If it were witnessed, this would be considered a holographic will. The corporate stationery is not a valid replacement for the signature requirement.

Thus, the document is not a holographic will.

### **Integration**

the 2014 document may be able to be integrated into the 2010 will if there is evidence that the T intended it to be. Integration requires 1) the original document was in existence at the time, 2) the T intended the document to be integrated, 3) the document terms provide that it is to be integrated into the original.

Here, the 2014 document does not mention the previous 2010 will. It is not stapled or attached somehow to the 2010 will. Further, it cannot be said that M intended that this document be integrated with her 2010 will.

Thus, this document is not integrated with the 2010 will and it will not affect the distribution of M's assets.

### **Marriage to J**

CA is a community property (CP) state. All property, real or personal, acquired during the marriage is presumed to be CP. Items acquired before the marriage by Bequest, devise, gift, or inheritance is separate property of the person who acquired the property. Upon death, the CP assets will be distributed to the other person. The T cannot will the entire community property to others without the consent of the other partner. They can however, will their half of the community property interest. In 2016 M died survived by A, B, and J. The items will be discussed with these principles in mind and CA Will law.

M married J in 2014 and there is no evidence of a prenuptial agreement. on death in CA, a spouse will inherit their partners half of the CP. If they decide to take under the will, the forfeit their half of the CP.

### **Omitted spouse**

an omitted spouse will be able to take their CP portion of the assets.

Here, J is not mentioned in the 2010 will. He will however, be entitled to his 1/2 of CP interest.

### **Gamma Stock**

M purchased the Gamma stock in 2010. Tracing the funds used to purchase the stock, the funds were acquired by M prior to marriage to J and are thus SP. in the 2010 will, M left her stock to B. As her SP, M was free to will all of her interest.

Thus, B will retain 100% of the Gamma stock because it is SP.

### **Tango Stock**

In the 2010 will M stated she was leaving her stock to bob.

The tango stock was purchased with the proceeds from the Delta stock. M sold her delta stock while married to J and used those proceeds to buy tango stock. Generally stock proceeds are considered CP because they are earned income. Since M purchased this stock with income earned from the sale of the Delta stocks, she technically purchased the stocks with CP. Thus, the Tango stock is community property and J has an interest in them.

However, B will argue that the funds used to purchase the Tango stocks should be traced. The Delta stocks were purchased in 2010 with M's SP because she purchased the stocks before her marriage to J.

**House**

M left the house to A. The facts do not indicate whether the mortgage is paid off on the house. If the mortgage is paid off, the answer is simple. A will inherit the house pursuant to the 2010 will.

If the house is subject to a mortgage. The court will look to see what portion of the house was paid for by SP and is currently paid by CP. All income earned while married in CP. Thus, if M is paying off the mortgage of the house with any CP funds, then the court will determine what fraction of the house is SP. A will get the SP portion of the house.

Thus, if the mortgage is paid off, then A will get the house.

**200k Cash in SP funds**

M's 200k in cash will be distributed to her issues. Thus, J, A, and B all get 75k.

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Question #1 Final Word Count = 1445