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)

I. VALIDITY OF FIRST WILL

There are two types of wills that are recognized as valid under California law. The first one is a Properly Attested Will, signed in the presence of two witnesses; and the second one is a holographic will - with either the entire will being handwritten or the substantive terms being filled in, signed, and then dated.

Here, because Mary (M) typed up the entirety of her first will on her computer, it is not a holographic will. Therefore, I will go on and analyze the requirements of a properly attested will.

Properly Attested Will

In California, there are several requirements as to the validity of the will. First, the testator has to be fully aware of her property and what it amounts to; Second, the testator cannot be incapacitated; Third, it has to be signed within the presence of at least two witnesses; and lastly, it has to be signed and dated by the testator. The document does not have to fulfill any other formalities, but it must be clear that the testator intended the document to be their will.

Awareness of Personal Property

Here, in 2010 Mary (M) typed up the first will on her computer, leaving the house to her adult daughter Amy (A), her stock to her adult son Bob (B), with any residual amount to be divided equally amongst the two. M seems to be fully aware and cognizent of what property she owns and the limitations, for her will does not write out any impossible or invalid bequests. The facts also indicate that M did not unintentionally leave out any personal property that she was not aware of, and finally, the facts also show that M discussed the contents of her will with

her best friend, Carol (C).

Therefore, M had a proper awareness of her personal property and what it amounts to.

Capacity

Here, the facts indicate that M was in full and healthy mental capacity when she wrote the first will. There are no issues of lapses of memory, forgetfulness, or deterioration of health.

Therefore, because the facts indicate that M had full capacity, M meets this requirement of validity for creating a will.

Witnesses

There are several requirements for witnesses for a will. First, the law requires a will to be signed and dated within the presence of two witnesses. California law does not require that the witnesses have to be fully aware of the contents and bequests, just as long they are aware that it is a will. In addition, while some other jurisdictions require that the witnesses have to be uninterested witnesses, California does not have this requirement - but any interested witnesses do have to overcome a presumption of undue influence.

Here, M signed and dated two copies of her will in the presence of her best friend, C; and her neighbor, Ned (N). This fulfills the first requirement of the will being signed within the witnesses' presence. There are some situations where the witnesses did not see the actual signing of the will by the testator, but thankfully M was able to avoid that occurrance.

The second requirement is that both witnesses have to be aware that they are witnessing the signing of a will. Here, the facts state that C was fully aware of the contents and the bequests; whereas N had no idea as to the bequests - but that

he was honored to be a witness. While the facts are a bit unclear as to whether or not N was fully aware that M was signing a will, it is more probable than not that he was made aware of it when M asked N to be a witness to her will signing. And seeing that C was fully aware of the contents, it is likely that they made some reference to a will when the signing took place.

Therefore, M is likely to be found to be a valid witness under California Law.

And finally, because there was no interested witnesses (witnesses who are beneficiaries of the will), M does not have to overcome the presumption of undue influence.

In conclusion, the first will shall be found to be proper since it was validly attested and because M made it clear in her first sentence that this was her will.

II.VALIDITY OF SECOND WILL

In 2014, after M married John (J), she decided to create a new will.

Revocation by Destruction

There are several ways to render a previously written will void. One of those ways is to physically destruct a will by tearing it up, burning it, or marking it void.

Here, M deleted the old will document from her computer and tore up one copy. The law states that digital destruction and deletion of a will is unlikely to be seen as a valid revocation, for the intent is not as clear cut as a physical destruction to a paper copy. However, if M physically tore up both copies of the original will, the court is likely to find that there has been a valid physical destruction. However, this is not the case here since M left one copy in her safe deposit box. Since it is arguable that M destroyed the physical copy outside the box in order to just leave one copy intact, M's intent was not made clear.

Therefore, it is likely that the court will find that the will was not successfully revoked by destruction.

Revocation by Subsequent Legal Instrument

Another way to render a previous will void is to use a subsequent legal instrument - such as a new will or a codicil.

Here, J will likely argue that by creating the new will, she revoked the previous will. However, in order for this argument to bear any weight, the second will will have to be found valid.

Holographic Will Requirements

For a holographc will to be found valid, the testator has to be aware of her personal property and what it amounts to; the document either has to be completely handwritten, or the testator can handwrite the appropriate terms of bequeathment; the testator has to sign and date it; and it must be made clear that the document is a will.

Here, the facts state that M did not have any issues of capacity, therefore, her capacity and awareness will be likely to be found valid. Additionally, the second will was handwritten completely by M - fulfilling the second requirement. However, there are two main issues that arise with this document. First, M did not date it; and second - M did not explicitly state that the document is a will.

Did not Date

A and B will likely argue that the second will is not valid since M did not date the document. However, J will argue that with his inclusion into the will, it can be presumed that the second will was written after their marriage in 2014.

In California, the testator's intent is the most important requirement as to determining the validity of a will. Therefore, if it can be shown that it was indeed

M's intent to include J - then the terms of the will are valid.

Did not State Document is a Will

However, another problem exists for J since unlike the first will, M did not explicitly state that the new document was a will. A and B will likely argue that it was only a draft or some notes and therefore not valid. This is an insurmountable problem for J since one cannot claim that a document is a will without the testator saying explicitly so on the document.

Therefore, in conclusion, the second will will likely be found to be invalid since M did not date it and she also did not state 'This is my will' on the new document. However, I will go on and anaylze the bequeathments under the second will to each beneficiary.

III. BEQUEST TO AMY

House

Under both the first and second will, M clearly left A her house. This is a specific bequest and it does not run into any issues of transmutation or tracing.

Residual

Under the first will, M said that the rest they can split. The facts state that she has $200,000 in cash in separate property funds. Because J is an unintentionally omitted spouse under the first will, A and B will only be entitled to 1/3 each of the residual SP.

Therefore, A will be entitled to the House and 1/3 of the residual SP under both wills.

IV. BEQUEST TO BOB

Stock

Here, under the first will, M said that she leaves '[her] stock' to B. This can be

interpreted to mean all her stock and therefore, B will acquire both the Gamma Stock and the Tango Stock

The facts state that in 2015, M sold the Delta stock to but Tango stock. In California law, when the sources of one bequest is used to buy something sufficiently similar, it will not be categorized as an adeemed bequest - since the gift was not already made to B. Here, because M merely used the funds to buy a new stock, it is likely that B can argue that the bequest was transmuted. Under the law, if the beneficiary can sufficiently trace the sources of their original bequest to a new one, then they can stand to inherit that as well if it can be shown that it was the testator's original intent.

Therefore, under the second will, B will inherit the Tango stock since he can trace it from the Delta stock.

Residual

See anaylsis above under 'Amy - Residual'

Therefore, in conclusion - under the first will B can inherit all of M's stock and 1/3 of the SP; and B can inherit the Tango stock and 1/3 of the SP.

V. BEQUEST TO JOHN

California is a Community Property State. In CA, the marital community begins at the commencement of marriage and ends upon divorce, permanent separation, or death. All income and property bought during the marriage shall be presumed to be community property. All property acquired before the marraige or any gifts or inheritance acquired during the marriage shall be presumed to be separate property.

First Will

Under the first will, J is an unintentionally omitted spouse. An unintentionally

omitted spouse is when the marriage happened after the attested will was created. Under such circumstances, J is entitled to all of the community property during the marriage, as well as 1/3 of the unspecified residual SP in the will.

Second Will

Under the second will, J is entitled to the Gamma stock as well as the 1/3 of the residual SP.

Question #1 Final Word Count = 1785