

ID: ALBAR\_2-17\_Q1-3) February 2017 California Bar Exam

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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)

### 2010 Will

A will is a testamentary instrument that describes how a person's estate is to be distributed upon their death. In order for a will to be valid, there must be 1) testamentary intent 2) capacity and 3) comply with the requisite will formalities.

#### Intent

A testator must have the present intent to create a will.

Here, Mary sat at her computer and typed a will that stated "this is my will."

Thus, Mary had testamentary intent.

#### Capacity

A testator must have capacity to create a will. Capacity includes at least 18 years old, understand the natural objects of her bounty, nature of extent of her property and know she is making a will.

Here, it is presumed that Mary is at least 18. She understands the natural objects of her bounty because she mentions her two children Amy and Bob.

Furthermore, she disposes of her stock and her house, indicating she knows the extent of her property.

Thus, Mary had proper capacity.

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### Attested Will

An attested will is a formal will that must :1) in writing, signed by the testator 2) in the presence of two disinterested witnesses 3) witnesses must sign the will 4) understand the document is the testator's will. In California, the witnesses do not need to know the contents of the will and the testator does not need to verbally declare the document is his will, there just needs to be enough information given to allow the witnesses to understand the document is testator's will.

Here, the will was in writing and signed by the Mary, the testator. Mary signed the will in the presence of two witnesses, Carol and Ned. Both witnesses were disinterested because they did not take anything under the will. Furthermore, both witnesses signed the will; it does not matter where the witnesses sign the will, as long as it is somewhere on the document and signed during testator's lifetime.

Thus, the 2010 was a valid attested will.

### 2014 Will- Holograph Will

A holograph will is a valid testamentary instrument that is in the testator's handwriting. It must be 1) contain all the material terms in the testator's handwriting and 2) signed by the testator. The testator does not need to date the document.

Here, in Mary's handwriting, she stated who and which property were to be disposed of. Therefore, the material terms were in her handwriting. Furthermore, she signed the document.

Thus, the 2014 document was a valid holograph will.

### Revocation - Subsequent Instrument

A will can be revoked by a subsequent instrument. It can either be *expressly*

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revoked by the testator stated "will #1 is revoked" or *impliedly* revoked by disposing of substantially all of the testator's property or property stated in the first will. The subsequent instrument must also comply with will formalities.

Here, the 2014 was a valid holograph will (see above). It disposed of substantially all of Mary's property that was stated in will #1.

Thus, will #1 was validly revoked by will #2.

#### Revocation by Physically act

A will can be revoked by physically burning, ripping, crossing out or tearing up the document. The testator must have present intent to revoke when physically revoking.

Here, Mary deleted the copy of the 2010 will from her computer and tore up the one copy. Her actions indicating present intent to revoke.

Thus, the 2010 will was also revoked by physical act.

#### Multiple Copies

When a testator creates duplicates of a will, it is presumed that when she revokes one copy of the will, the duplicate copy is also revoked.

Here, Mary forgot about the copy of the 2010 will in her safety deposit box. However, because she properly revoked one copy of the will (see above), the copy in the deposit box is also revoked.

Thus, the 2010 will in deposit was revoked.

#### Amy's Rights

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Since the 2014 will was properly executed, Amy takes under that will. Therefore, Amy has rights to the house.

### **Bob's Rights**

#### Mistake in Content- Ambiguity

When a testator disposing of property but it is uncertain who or what is to be given, the court may look to extrinsic evidence to determine property distribution. If it can not be determined, the gift fails.

Here, Bob may try to argue he has rights to both stocks because Mary stated in her 2010 will "my stock" to Bob and it is uncertain what she meant. However, the court will look to the fact the Mary created a second will that revoked will #1.

Thus, Bob cannot take both stocks.

#### Specific Gift

A specific gift is one a distinct asset in the testator's estate, typically given when stated "my."

Here, Mary's 2014 stated that Bob is to get her Delta stock.

Thus, Bob's gift was a specific gift.

#### Ademption by Extinction

When a testator devises a specific gift but the testator no longer owns the gift at their death, the gift is to adeem and the the beneficiary is to take nothing. In California, courts will look to the *intent* of the testator to determine whether they meant the gift to fail, or adeem. Such factors includes whether tracing is available, who changed the form and relationship of parties.

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Here, at Mary's death, she no longer owed Delta stock because she sold the stock and purchased Tango stock. Because the purchase of Tango stock can be traced to the proceeds of the Delta stock, it is evidence of Mary's intent to allow Bob to get the Tango stock. Furthermore, Bob is Mary's son indicating a close relationship.

Thus, the court will likely find Bob's gift did not adeem and he has right to the Tango stock.

### John's Rights

Since the 2014 will was validly executed, John takes under that will. Therefore, John get's the Gamma Stock.

### Intestate Property

When property is not disposed of in the will, the property passes by intestate. If the testator is survived by a spouse and two children, seperate property is divided by giving the surviving spouse 1/3 right and each child takes 1/3.

Thus, John gets 1/3 of the remaining \$200,000.

### Conclusion

Amy is entitled to the house and 1/3 of the \$200,000 (roughly \$66,000). Bob is entitled to the Tango stock and 1/3 of the \$200,000 (roughly \$66,000). John is entitled to the Gamma stock and 1/3 of the \$200,000 (roughly \$66,000).

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**2) Please type the answer to Question 2 below.**

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

**Misrepresentation**

In order to have a valid claim for misrepresentation, or fraud, the plaintiff must show: 1) Misrepresentation of Material Fact, 2) Intended to Induce Reliance, 3) Scierter, 4) Actual Reliance 5) Justifiable Reliance 6) Damages:

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**1) Misrepresentation of Material Fact**

*a) parking lot*

The plaintiff must show the defendant made an affirmative false statement regarding a material fact. A fact is considered material if a reasonably buyer would put weight on the information in order to make purchase of the property

Here, during negotiations, Steve told Betty that he was allowed to park on the adjacent lot for \$50 a month. However, Steve was aware of the fact that the owner of the parking lot was about to discontinue but still told her that he "had no reason to believe" that Betty wouldn't be able to continue parking there. The fact was material because parking was important to Betty since it was locate in congested area. Therefore, Steve misrepresented a material fact about the parking lot.

Thus, there was material misrepresentation.

*b) Omission of the murder*