

1) Please type the answer to Question 1 below.

Â

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

(Essay)

===== Start of Answer #1 (1006 words) =====

Valid Will (#1)

In order to have a valid will, a testator (T) must have the intent to create a will, capacity, and two witnesses must sign the will in T's presence, and know that what they are signing is T's will.

Here, Mary typed the will herself at the computer, indicating she had the intent to create a will. She also printed, signed and dated both copies, thus further evidencing her intent and satisfying the signature requirement. Finally, Mary signed both copies in front of her best friend, Carol, and her neighbor, Ned, both of whom signed the will in Mary's presence, thus fulfilling the two attesting witnesses requirement. Carol was clearly aware that she was signing Mary's will per the facts. While the facts indicate that Ned did not know the bequests of the will, this is not a requirement of an attesting witness. A witness need only understand that what they are signing is T's will, it is T who needs to understand the objects of her bounty. Therefore, we have all the necessary requirements to form a valid will.

Revocation

A will may be revoked in a number of ways, including physical destruction or tearing up or obliterating, as well as deleting a file. However, the important element is not so much the manner of destruction as T's intent to revoke the will. Establishing T's intent may be inferred by conduct and physical destruction of a will, barring other explanations of the behaviour.

Here, Mary's intent to create a new will is clear. However, her intent to destroy

the old will must be based on her conduct. She made two affirmative acts to destroy the old will. First, she physically tore up the one signed physical copy. Second, we know she deleted the electronic copy totally from her computer. The fact that she forgot to destroy the second identical copy is more likely to constitute an oversight on Mary's part, and wouldn't appear to negate her clear intent to destroy the other copy and the electronic version. Moreover, it makes sense that Mary would revoke her will and create a new one after her marriage to John, so as to preclude the issue of having an omitted spouse from her first will. Thus, Mary likely validly revoked her first will by physical act(s).

Valid Holograph (#2)

A holographic will is a will in T's handwriting and must include material terms in T's handwriting, be signed by T, and indicate T's intent to create a will. A holographic will does not need to be dated to be valid.

Here, we know Mary wrote out the entirety of the document on her corporate stationery with her business logo. The facts indicate that she signed the document and did not date it. Given that Mary wrote out the entire document in her own handwriting and signed it, we likely have a valid holographic will. The absence of a date will not negate T's intent to create a new will, and the absence of a recipient for the remaining property means it will simply go to the residue. Thus, we have a valid holographic will containing the material terms Mary meant to convey.

Codicil

A codicil is an amendment or an alteration to an existing will. A holographic codicil is a handwritten change to a valid will.

Here, the facts explicitly tell us that Mary meant to prepare a new will. Thus, we have the requisite intent to create a new will. Nonetheless, we establish Mary's intent to destroy the first will in case there are ambiguities between the two wills, in which case a second will would not replace the first, but would become a

holographic codicil instead of a replacement will. However, here we have a valid revocation of the first will and an intent to create a new holographic will. Thus, we do not have a valid codicil.

BOB'S RIGHTS

Omitted Spouse

An omitted spouse issue occurs where T fails to include a spouse that was not an original part of T's will, and it is clear that T would have included the spouse and has not intended to do so otherwise. Normally, a spouse will be found to be omitted if a will fails to mention a spouse, and T later marries and does not provide for the spouse in any other way in her will or otherwise (i.e., through an annuity). Moreover, a pretermitted spouse is entitled to any community property (i.e., non-separate property or property acquired during marriage).

Here, we know Mary specifically created a new will after marrying Bob. Moreover, Bob is specifically provided for in Mary's new valid will, as she has provided Bob with Delta stock. Bob may also argue he is entitled to community property. We know the \$200k in residue is separate property per the facts. Mary's house is likely also separate property, as it was acquired and likely paid for exclusively through the use of Mary's separate property. Thus, Bob is not going to be an omitted spouse, and is likely only entitled to what is expressly given to him under the will.

Specific Devise

A specific devise is one that names a specific piece of property that cannot come from another source. Here, Bob is given Delta Stock in the will. While this would be considered a specific devise generally, it is traceable to Tango stock, and thus can likely be paid to Bob by tracing the assets as a general devise using the Tango stock. Thus, Bob is entitled to Tango stock.

Residue

The \$200k remaining residue will be distributed per capita to all the remaining folks. Bob, as the husband is entitled to half or \$100K and Amy and Bob split there share of \$100k and take \$50k each.

AMY'S RIGHTS

Specific Devise

Amy is specifically devised the house, which she will take under either will.

Residue

Per the above, Amy takes \$50k in residue.

JOHN'S RIGHTS

Specific Devise

John takes the specific devise of Gamma stock, which is available to him at Mary's death.

Question #1 Final Word Count = 1006

===== End of Answer #1 =====