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**Valid Will** - to have a valid will, the testator must be over the age of 18 and of sound mind, free from delusions/hallucinations. The testator must know the objects of his bounty (family, offspring, etc) and the general property he has to devise. The testator must have the intent to make a will, and the will must be executed properly to make it valid. (sign/date/witness, and other rules applicable by statute)

**Valid Codicil**, a Codicil is an amendment to a will, the creation of a codicil republishes the will as of the date/signature of the Codicil. All of the above requirements for a valid will also apply to a Codicil.

Here the facts state that both the 2001 Will and the 2006 Codicil were valid. However, Ted was a widower at the time, so the fact that Ted left the portion of his will "to remain the same" as to his devise to his first (deceased wife) Wendy, gives rise to question, and generally if the Testator knows that the beneficiary of the will is deceased at the time of the execution of the will (codicil) the gift will lapse unless it is expressly provided for with a anti-lapse clause or the heirs of the deceased to take take in succession. A lapsed gift will return to the residue of the estate, and pass by intestacy succession.

**1. What Rights if any, does Nell have in Ted's Estate?**

**Omitted Spouse-** Under the California Probate code a Spouse that has been omitted from a will may be provided for as an "Omitted Spouse." The exceptions would be if the Spouse was expressly omitted in the writing, or if the spouse was provided for outside of the will, and there is a writing evidencing the fact or if there is a valid waiver signed by the Surviving Spouse.

Here, Nell became Ted's wife 5 years after Ted executed his Valid Codicil republishing his will to include Bob. Ted did not update his will/Codicil after he married Nell. The facts are silent as to any waiver that may have been signed

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by Nell, or any provisions outside the will such as an annuity, totten trust, etc, and because Ted did not update his Codicil after marrying Nell, she is not expressly omitted in the writing. Therefore Nell is an Omitted Spouse.

Under the Probate Code, an omitted spouse takes under the terms of intestacy succession, but under no condition is she entitled to more than 1/2 of Bob's separate property as an omitted spouse. When decedent leaves a spouse + 1 or more children, then the Surviving Spouse is entitled to 1/3 of the Separate property and the children split the other 2/3.

Under the Rules of Abatement, the devise first comes from the residue, and then any portion not able to be fulfilled from the residue is taken in proportion from the other beneficiaries. A specific gift however, will generally be left alone by the courts as to not disturb the intent of the testator. The specific dollar amount to each of Ted's employee's does not likely qualify, as a specific gift as it's considered currency.

Here, Nell is entitled to her 50% of the Community Property (CP)/ \$100k + Ted's half of the CP / \$100k = 100% CP (\$200k) (In California, all property acquired during a marriage is presumed to be Community Property.)

She is also entitled to 1/3 of Ted's separate property (explained below in calculation.)

**2. What Rights if any, does Ann have in Ted's Estate?**

Ann is Ted's natural child from his 1st marriage to Wendy. Ann was provided for in the original will \$10k. The republishing of the Codicil does not change her devise. Ann is also entitled to her intestacy share of the lapsed residue formerly devised to her deceased mother Wendy. (explained below in Calculation)

**3. What Rights if any, does Bob have in Ted's Estate?**

Bob is adopted. Under California Statute, an adopted child takes in the same form as a blood child. Here, the reason for Ted's codicil was Bob. As such

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Bob is entitled to his devise of \$10k from Ted. Because a Codicil republishes the will as of the date of the Codicil, had Ted omitted Bob, there is the possibility that Bob would not have been afforded the same exception as Carol as a pretermitted Child (discussed infra) as the presumption may be raised that Ted did not intend to provide for him. Bob is also entitled to his intestacy share of the lapsed residue formerly devised to Ted's deceased wife Wendy. (explained below in Calculation)

***4. What Rights if any, does Carol have in Ted's Estate?***

**Pretermitted Child** - under the Probate code is a child that was born/adopted after the execution of the testamentary documents, who was likely left out by mistake. The exceptions to the Pretermitted Child statute, are if the child is expressly omitted in the testamentary writing, that the surviving parent of the child was provided for by the will, and received the majority of the estate (an would thus provide for the child) or that the child was provided for in a devise outside of the will. (life insurance, totten trust, joint annuity, etc).

Here, it appears that Carol could qualify as a pretermitted child. She was born after the execution of the Valid Codicil, there does not appear to be any outside devise and due to Nell inheriting via the Omitted Spouse exception, because the last writing was prior to Ted's marriage to Nell, it does not appear that Carol was provided for through Nell by Ted.

Under the Probate Code, a pretermitted child takes under the terms of intestacy succession. The same rules of Abatement apply as described supra. Carol would be entitled to 1/3 of the 2/3's of the intestacy share for Ted's children, of the lapsed residue formerly devised to Ted's deceased wife Wendy. (Explained in Calculation)

**5. What Rights if any, do the START Employees have in Ted's Estate?**

Under the common law doctrine of Acts of independent significance, a testator may use an present of future act not based on the will to disburse of property.

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Here, Ted leaves \$2k to each employee of START at the time of his death. Because it is presumed that Ted doesn't hire his employees for his company based on his wishing to leave them a devise in his will, the statement of "to each person who is employee of START, at the time of death" may be considered an act of independent significance, and may be used to define the Class that was formerly subject to open (His employees) at the time of his death. (The class is ascertainable at time of death via this act as well.)

Therefore each of the START employees who were employed at the time of Ted's death in 2016, are entitled to \$2k each.

***Final Disbursement:***

Community Property (\$200,000) - Nell gets her 1/2 of the CP plus Ted's half of the CP

Separate Property. (\$90,000)

Each employee of START gets \$2k (\$20k total disbursed to Employees)

The specific gift to Ann of \$10,000

The specific gift to Bob of \$10,000

Remaining SP after specific gifts \$50,000

1/3 to Nell as Omitted Spouse = \$16,666

2/3 to be split between the 3 children ~\$33,333 or \$11,111 each to Ann, Bob and Carol (\*Note rounding)

It does not appear to provide for the Omitted Spouse or the Pretermitted Child that the other devises will need to be subject to abatement to fulfill the gifts.

Question #5 Final Word Count = 1242

**END OF EXAM**

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