

## QUESTION 1

Mary was a widow with two adult children, Amy and Bob.

In 2010, Mary bought Gamma and Delta stock. She then sat at her computer and typed the following:

This is my will. I leave the house to Amy and my stock to Bob.  
The rest, they can split.

Mary printed two copies of the document. She signed and dated both copies in the presence of her best friend, Carol, and her neighbor, Ned. Carol had been fully advised of the contents and signed both copies. Although Ned had no idea as to the bequests, he declared that he was honored to be a witness and signed his name under Mary's and Carol's signatures on both copies. Mary placed one copy in her safe deposit box.

In 2014, Mary married John. She soon decided to prepare a new will. She deleted the old document from her computer and tore up one copy. She forgot, however, about the other copy in her safe deposit box.

On her corporate stationery with her business logo emblazoned on it, Mary wrote:

I leave John my Gamma stock. My Delta stock, I leave to Bob.  
Amy is to get the house.

Mary signed the document. She neither dated the document nor designated a recipient for her remaining property.

In 2015, Mary sold her Delta stock and used the proceeds to buy Tango stock.

In 2016, Mary died, survived by John, Amy, and Bob.

Mary's estate consists of Gamma stock, Tango stock, her house, and \$200,000 in cash in separate property funds.

What rights, if any, do Amy, Bob, and John have in the assets in Mary's estate? Discuss.

Answer according to California law.

**1) Please type the answer to Question 1 below.****Â**

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

*Validity of 2010 Will*

In order for a written will to be presumed valid, the will must clearly demonstrate the intent to bequest specific assets to specific parties upon death, the decedent must have had the legally-required mental capacity at the time of signing, and two uninterested witnesses over the age of 18 must be present for the will's execution.

Wills may be attested or holographic.

*Intent*

In executing the will, the decedent must have had the intent to bequest specific assets to specific parties upon death.

Since M plainly stated "[t]his is my will," it is unlikely that her intention as to the document's purpose will be contested.

*Identity & Date*

A valid will must be unambiguous as to the identity of the executor and the date it was executed.

Outside of M's signature, the will does not seem to identify M by any means other than first-person pronouns, leaving it to readers to infer from the bequests, beneficiaries, and witnesses who the executor of the will was.

*Specific Bequests*

The will must bequest specific assets to specific parties.

The will only refers to "the house," rather than referring to a specific plot of land, address, or any other identifying information. If M only owned the one house at the time the will was executed, that may be sufficient to infer M's intent. But as to "the rest, they can split," this will make it difficult for A & B to claim and divide the undesignated assets, particularly considering the changes in those interests and assets between the 2010 will and M's death.

### *Capacity*

For a will to be valid, the decedent must have had the legally-required mental capacity at the time of signing.

There is no evidence that M was not of a right state of mind at the time she executed the 2010 will, nor is there any evidence that she was coerced or otherwise unduly influenced to bequest the home to M. It is unlikely that her capacity could successfully be put at issue.

### *Witnesses*

Two uninterested witnesses over the age of 18 must have been present for the will's execution and signed the will accordingly. In California, there is no such requirement that the witnesses be uninterested.

In any event, neither C nor N were named beneficiaries of the will, so that will not be at issue. Nor do the facts indicate either individual was under the age of 18 at the time. While C seemed to perform her duty with diligence, N "had no idea as to the bequests," but signed the will copies anyways. A contesting party could successfully argue that N's lack of actual knowledge as to what he was signing disqualifies him as a witness, and that there were insufficient witnesses for a valid will as such.

### *Recission of 2010 Will*

A party may rescind a previously executed will at any time. One of the ways a party can successfully rescind a will is to destroy all copies of it.

When M deleted the will from her computer and tore up a physical copy, she attempted to rescind the 2010 will. Because she neglected to destroy the copy in her safe deposit box, A can argue that the rescission was incomplete, and that therefore her half interest in M's remaining estate is still enforceable.

### *Codicil*

### *Community / Separate Property*

Under CA law, a marriage results in the formation of a community. Income and title to assets obtained by the married parties is presumed to belong to the community, and assets each party owned separately prior to the marriage are presumed to be separate property. The property interests in those assets may undergo transmutations based on circumstances during and after the marriage.

Mary was a widow at the time she executed the 2010 will, and there is no evidence she did not have a complete property interest in her estate at the time. Accordingly, the house and stocks predating her 2014 marriage will benefit from a presumption of being separate property.

Still, J could argue that the house became part of the community by his presumed cohabitation. If he succeeds in arguing such a transmutation, M's bequest of the entire house to A would not be possible.

If J was never given a property interest or responsibility over M's stocks during her life, and M maintained her stocks separately from the marriage, the stocks purchased in 2010 should be presumed separate property.

### *Tracing*

When assets are purchased using funds from the community, they are subject to tracing to determine part ownership based upon the married parties' proportional contribution to the community.

In 2015, M sold her separate D stock and used those proceeds to purchase T stock. It would appear that none of her stocks are traceable to the community, and that J would not be able to prove any stocks were community property.

*Invalidity of 2014 Will*

In order for a written will to be presumed valid, the will must clearly demonstrate the intent to bequest specific assets to specific parties upon death, the decedent must have had the legally-required mental capacity at the time of signing, and two uninterested witnesses over the age of 18 must be present for the will's execution.

Wills may be attested or holographic.

A new will is one way of rescinding a previously executed will.

But seeing as the 2014 will met even fewer of the criteria than the 2010 will, it will likely be found invalid, and only useable as evidence for claimants to show M's intent.

*Intent*

In executing the will, the decedent must have had the intent to bequest specific assets to specific parties upon death.

This time around, M did not say that the document was a will. She uses similar language to describe a similar division of assets to her family, but that may be insufficient to demonstrate the clear intent needed to execute a valid will. Moreover, her use of corporate stationery creates further ambiguity as to her

intent.

*Identity & Date*

A valid will must be unambiguous as to the identity of the executor and the date it was executed.

Outside of M's signature and the use of first-person pronouns, this 2014 will is identified by M's "business logo," although the facts do not seem to indicate she has any such business upon her death. If the will is identified by an unincorporated company at an address other than M's primary residence, the identity may be too ambiguous or incorrectly provided for the will to be valid.

In any event, M did not date the will.

*Specific Bequests*

The will must bequest specific assets to specific parties.

The will bequests her G stock to J, her D stock to B, and "the house" to A.

The identification of the stocks are specific than in her 2010 will, but again, this will is not valid. In 2010 M executed a more valid will bequesting all her stocks to B, which will likely take precedent over the invalid 2014 will's bequest of G stock to J.

The 2014 will does not bequest "the rest" of M's assets. Again, the 2010 will is more likely to be controlling and J will have to present more evidence that M indeed meant to leave him the G stock and the remainder of her estate.

*Capacity*

For a will to be valid, the decedent must have had the legally-required mental capacity at the time of signing.

*Witnesses*

Two uninterested witnesses over the age of 18 must have been present for the will's execution and signed the will accordingly. In California, there is no such requirement that the witnesses be uninterested.

There were no apparent witnesses, interested or uninterested, to the 2014 will. The will will likely be found uncurable.

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Question #1 Final Word Count = 1295