

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 (1329 words) =====

WHAT RIGHTS, IF ANY, DO AMY, BOB, AND JOHN HAVE IN THE ASSETS
OF MARY'S ESTATE?

1. AMY AND BOB

VALID WILL

In order for a will to be valid, it must contain proper testamentary capacity, proper testamentary intent, and the proper formalities of execution.

CAPACITY

A testator must have the requisite legal capacity and mental capacity at the time of execution of the will in order for the will to be valid. Legal capacity is accomplished by being 18 years old or over. Mental capacity is accomplished by being of sound mind at the time of execution. This requires that she understands the nature and extent to her estate, and understand who she intends to name beneficiaries. The requirement for mental capacity is traditionally a low threshold.

Here, M had legal capacity because she was a widow with 2 adult children, which implies that she is over 18. M had the requisite mental capacity because the facts do not stipulate to diminished capacity, she understood that her estate consisted of her house and stock with a proper residuary clause for the rest of the property, and she understood to name 2 beneficiaries: A and B.

(Question 1 continued)

ID: ALBAR_2-17_Q1-3) February 2017 California Bar Exam

Thus, M had the requisite testamentary capacity.

TESTAMENTARY INTENT

A testator must draft an instrument with testamentary language in the present tense notifying to the reader that the that will is effective upon that date.

Here, M had requisite testamentary intent because she used the testamentary language, "this is my will," which demonstrates her intent to bestow gifts upon her death. The the language of each bequest is considered present intent because the language is present tense such as "I leave the house to Amy and the stock to Bob. The rest, they can split."

Thus, M had present testamentary intent.

FORMALITIES

ATTESTED WILL

An attested will is valid if the material provisions of the will are typed, the will executed in the presence of 2 disinterested witnesses, and the 2 witnesses sign acknowledging the signature. The witnesses are considered to have properly acknowledged the will if they both understand its testamentary nature before signing and they perceived the executor's signature with their senses.

Here, M properly signed her will because hse printed 2 copies of her will, signed and dated both copies, and C and N both acknowledged her signature by being in her presence at the time of execution. C and N properly acknowledged the will because they both understood the testamentary nature of the document, they have no interest in the estate, and they both signed the will. It is irrelevant

(Question 1 continued)

ID: ALBAR_2-17_Q1-3) February 2017 California Bar Exam

that N did not know the bequests.

Thus, M created a valid attested will in 2010.

REVOCACTION BY PHYSICAL ACT - TEARING

A will may be revoked either by physical act or subsequent testamentary instrument. When a will is revoked by physical act, it can be torn, burned, obliterated, or cancelled by the testator with the intent that the instrument be revoked. A will is properly revoked in its entirety if the will is torn through the material provisions of the will.

Here, M properly revoked the 2010 will because she tore up one copy of the will, which implies she tore it to pieces and thus through material portions of the will. Further, she had the intent to revoke the will because she decided she wanted to prepare a new will to include J.

Thus, the 2010 will was revoked.

DUPLICATE ORIGINALS

A will that has copies that are signed by the testator and witnesses are what is referred to as a duplicate original. If one duplicate original is revoked, then the remaining duplicate originals are also revoked.

Here, it is of no consequence that M forgot about the other copy in the safe deposit box because revocation of one duplicate original is revocation of all duplicate originals.

Thus, the 2010 will was revoked despite the existence of the other duplicate original.

(Question 1 continued)

ID CALBAR_2-17_Q1-3) February 2017 California Bar Exam

VALID WILL

See rule above under Valid Will.

CAPACITY

See rule above under Capacity.

Here, see above analysis for legal capacity under Capacity. Further, M likely had the requisite mental capacity because she still understood that she wanted to expand her list of beneficiaries to include J and she further understood that she owned Gamma Stock, Delta stock, and a home. While M's omission of the residuary clause from the previous will may indicate a lack of understanding the extent of her estate, mental capacity is a low threshold and it would likely not affect the validity of this will.

Thus, M has capacity.

TESTAMENTARY INTENT

See rule above under Testamentary Intent.

Here, again, M had present testamentary intent because the language used is in the present tense and her language is demonstrative of her intent to bequest and devise. It may be argued, however, that M's lack of including language about this document being her will, or using language as "bequest" or "devise" may not amount to testamentary language, but stating that she leaves these things to A, B and J, and demonstrating through her conduct of revoking the previous will demonstrate testamentary intent.

(Question 1 continued)

ID: ALBAR_2-17_Q1-3) February 2017 California Bar Exam

Thus, M likely had testamentary intent.

FORMALITIES

HOLOGRAPHIC

A holographic will is properly formed if the material provisions of the will are handwritten and the will is signed by the testator. A holographic will does not need to be dated, but in the existence of two wills, if one is dated and the other is not dated, the dated will prevails.

Here, the new will is likely validly executed because M signed the document after handwriting the material provisions of gifts of her estate. While the instrument is not dated, it is of no consequence because the previous will was properly revoked.

Thus, since this is the only valid will in existence, it prevails and is a valid holographic will.

REVOCATION BY SUBSEQUENT INSTRUMENT

Revocation may occur by the drafting and executing a new will or codicil. In the event that provisions of the new will/codicil conflict with provisions of the old will, the new instrument provisions prevail.

Here, if the 2010 will

REVIVAL

If a material provision in a previous revoked will contains a provision that is more in line with the testator's intent than intestate succession, and the current will is

(Question 1 continued)

II LBAR_2-17_Q1-3) February 2017 California Bar Exam

silent on the subject, the old provision can be revived and incorporated by reference to the new will.

Here, M's residuary clause may or may not be revived depending on M's intent because she may intend that the residuary goes to A and B, or if left out, it may better reflect her intent because then her separate property residue would go: 1/3 to J; 1/3 to A and 1/3 to B.

Thus, revival of the residuary clause depends on M's intent.

ADEEMPTION

A gift in a will is adeemed if a specific gift in the will is unavailable in the estate at the time of testator's death. However, the beneficiary of the adeemed gift may receive the new gift if it was likely the testator's intent that the beneficiary receive the new gift.

Here, J can likely still receive the Tango stock because the fact that M included B in the will and kept that provision in there both times implies that she wants him to take from the will. Since the Delta stock was used to purchase the Tango stock and is adeemed, that is what B is entitled to take.

Thus, B is entitled to the Tango stock.

Therefore, A is entitled to the house in accordance to the 2014 will, B is entitled to the Tango stock, and A and B are either entitled each to 1/2 or 1/2 of the residue depending on M's intent.

2. JOHN

See rules and analysis above under "1. Amy and Bob."

(Question 1 continued)

ID: BAR_2-17_Q1-3) February 2017 California Bar Exam

Here, in accordance to the terms of the 2014 wll, J is entitled to the Gamma stock.

Thus, J is entitled to the Gamma stock, and is possibly entitled to 1/3 of the residue depending on M's intent.

Question #1 Final Word Count = 1329

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