

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)

===== Start of Answer #1 (666 words) =====

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

**Formally Attested Will--2010**

In California, in order to be an attested will certain formal requirements must be met: (1) there must be testamentary intent, (2) will must be in writing, (3) signed by testator (any where on the instrument) in the joint presence of two disintrestred witness, (4) the witnesses must sign the will during the testator's lifetime (it does not have to be in the presence of testator or each other), (5) the testator must acknowledge it is his will (although no publication is required), just that the witness must understand it is the testator's will.

Herem Mary in 2010 bought Gamma and Delta stock. She then sat at her computer and typed a will leaving the house to Amy and "my stock" to Bob, her two adult children. Her actions evidence an testamentary intent. Moreover, the will was in writing since it was typed. Moreover, Mary signed and dated the will in the presence of her best friend Carol and her neighbor Ned, both of whom were not beneficiaries under the will. As such, she signed the will in front of two disinterested witness.

Additionally, both Carol and ned signed the will. Finally, it appears Mary fully advised Carol of the contents of the will, but not Ned. However, Ned dose not need to know of the full contents of the will so long as he knows it is Mary's will. If Ned was aware it was Mary's will despite having no knowledge of the bequests then all the formalities would be met. If he did not know it was the testator's will

then the doctrine of substantial compliance discussed below may still make the will effective.

### **Substantial compliance**

In CA, as long as there is substantial compliance with the formalities of the will and there is clear and convincing evidence that the testator intended the document to be her will then the will is valid.

Here, it is likely that Mary intended the document she typed in 2010 to be her will based on the fact that she typed it up herself and had Ned and Carol serve as witness.

Thus, her 2010 will is valid and effective absent revocation, discussed below.

### **Holographic Codicil/will--2014**

A codicil can amend, modify, or revoke a prior will. To be valid a holographic codicil, which is handwritten, must state all the material provisions in the testator's handwriting (the beneficiaries, gifts, and testator's signature).

Here, in 2014, after marrying John, Mary decided to prepare a new will wherein she wrote on her corporate stationery with her business logo "I leave John my gamma stock. my delta stock, I leave to bob. Amy is to get my house." Although, the beneficiaries and gifts were in her handwriting her signature was not.

Thus, this was not a valid holographic codicil or will because her signature was not in her handwriting.

### **Will 2014--Valid Attested will/codicil**

(Question 1 continued)

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Here, will is not valid because there were no witnesses.

**Revocation by Subsequent Written Instrument**

A revocation can occur when a subsequent written instrument disposes of all the provisions in a prior will.

Here, as discussed above, Mary's 2014 holographic codicil or will was not valid so no revocation occurred.

**Revocation by Physical Act**

Revocation can occur by physical act such as destruction, obliteration, cancellation, mutilation, etc.

Here, there was no revocation by physical act because Mary only destroyed one of the copies of the duplicate will executed in 2010. Deleting the will from her computer was also not sufficient.

Thus no revocation.

**Ademption by Extinction of Specific gift**

The Delta stock did not adeem by extinction because it can be traced to the tango stock.

**Separate property**

1/3 John, Amy and Bob 2/3 equally.

**Conclusion:** Since will from 2010 is valid, Bob gets tango stock, Amy gets house and John gets 1/3 of Mary's separate property. The other two thirds are shared by Amy and Bob,

(Question 1 continued)

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Question #1 Final Word Count = 666

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