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I. VALIDITY OF THE WILL

In California, a valid will requires that (1) the testator has capacity, (2) the testator intended to create the will, (3) identifiable assets, (4) ascertainable beneficiaries, (5) an executor, and (6) compliance with will formalities. Under "California's Clear and Convincing Evidence Standard of Wills," for any testator that dies after January 1, 2007, his will will not be rendered invalid if the executor can show with clear and convincing evidence that he attempted to comply with the will formalities. California is also a community property state, and a testator cannot devise more than his community property share of his estate.

In this case, there is no indication that Ted (T) lacked capacity. T's intent to create a will can be shown by his actions creating the document "Will of Ted." T intended this document to serve as his will. Whether or not the beneficiaries are ascertainable will be discussed below, but overall, terms like "wife" or "stepson" will most likely not render a will invalid. Jane was also appointed as executor under Ted's will. If Jane is unable or unwilling to serve as an executor, a probate court will appoint an executor.

California generally requires two uninterested witnesses to witness the will. In this case, neither witness saw T sign his will. Under the facts he created his will, then showed his signature to Jane and Dot. Dot is considered an "interested witness" because under the terms of the will, she is to receive \$10,000 from T's estate. T's other witness, Jane, is not an interested witness because under the will she was only appointed executor. Her witnessing the will may be questioned because she did not sign the will immediately due to the emergency phone call. Courts have held that even though witnesses did not see the testator sign the will, the court will not render the will invalid so long as the parties can show that T intended the will to be valid. Furthermore, a court will probably not invalidate the will just because Dot, an interested witness, was one of the two witnesses to T's will. The executor will most likely argue that T substantially complied with the will

formalities, and since his death was after 2007, clear and convincing evidence is sufficient to show this.

II. RIGHTS OF THE PARTIES

A. Bertha (Wife)

Holographic Codicil

A holographic codicil is a writing in the testator's own handwriting that supplements a valid will.

In T's original will the term "wife" was left unspecified. Even though at the signing of his will T was then married to Wilma, she predeceased him and later married Bertha. In the holographic codicil, T wrote that "wife" was to refer to Bertha, T's widow. A court will probably accept this holographic codicil because T's intent can be shown and it does not otherwise contradict the will made in 2000.

If Bertha can show that she was the "wife" referred to in T's will, she will receive \$300,000 of T's community property (CP).

Pre-Terminated Spouse

A spouse that is married after a will was written, may still take under intestacy as a "pre-terminated spouse." So long as the will does not contradict otherwise, a widow married after the will would still be protected.

If a court is unpersuaded by T's holographic will, Bertha can argue that she should still take as a pre-terminated spouse. Under this doctrine she would take under T's will and receive her intestate share. Bertha's intestate share would be half of the community property, which is \$150,000, and half of the separate property (SP), which is \$150,000. In total, Bertha would receive \$300,000.

Widow's Election

A widow has the option to take under the terms of the will or take under intestacy.

Here, Bertha's share would be the same as the pre-termitted spouse share. Bertha can elect to take \$300,000 under the terms of the will or \$300,000 as her intestate share. Bertha's interest would be the same.

B. Sam

Intestate. California follows the Modern Per Stirpes Rule, wherein the estate will be distributed at the first level of a living decedent. A stepson can take under the will if the testator had raised the child. Usually there is no question of raising the stepchild if the child was brought into the later marriage as a young adult. However, will contests arise when the stepchild is an adult and had no relationship with the testator.

If Sam contests the will and he has a relationship with T, he will be considered a full issue of T. That is, his intestate share will be much like Cindy's, and he and Cindy will receive a one-half share of the intestacy estate as T's only two issues. This is unlikely. T affirmatively made a specific designation to Sam and his value of his estate is equal to that of a friend. A court will consider this comparison and may view this as a "courtesy" to his late wife Wilma and to his stepson. Sam probably not take under the intestacy scheme as an issue.

Under the Will. Ascertainable beneficiaries are beneficiaries that can be known.

In this case, Sam was not specifically identified in T's will, but T did refer to a "stepson." If T had only one stepson, and no other stepsons by his later marriage with Bertha, Sam should have no difficulty in showing that he is the "stepson." Nothing in the facts indicate that T had any other sons or stepsons, so Sam

should take at least \$10,000 under the terms of the will. Sam will either receive nothing, or up to \$10,000 under the will.

C. Dot

Under the Will. Dot should be able to receive \$10,000 under the will. If T's will is contested, she will receive nothing.

D. Cindy (Daughter)

Intestate Share. Cindy will may contest the validity of document named "Will of Ted," and argue that it is not a valid will. Like the issues described above, Cindy will argue that T did not in fact substantially comply with the will formalities. If T did not have any prior wills, then T will have died intestate. Here, Cindy the daughter of Ted, and there is nothing to suggest that T had any other issue. If Cindy takes under intestacy, she will receive all of T's one-half of T's estate and T's wife, Bertha, would receive the other half. Specifically, Cindy would receive \$150,000 (1/2 SP) plus \$150,000 (1/2 CP), which is \$300,000 total. If, however, Sam can receive his intestate share as well, Cindy will have split one-half of the total intestate share (or \$150,000 as one-half intestate share going to then living issue).

Residue Under the Will. If the will is valid and Cindy does not contest its validity, under the terms of the will she will receive the T's residue of the estate. Since T died with an estate valued at \$600,000, Cindy will receive the entirety of the separate property that is not otherwise devised. Specifically, Cindy will receive at least \$280,000, since T had \$300,000 SP, but \$10,000 was devised to Dot and another \$10,000 was devised to T's stepson.

E. Conclusion

Bertha and Cindy are the two parties who will most likely contest the terms of the will. Bertha will receive the same share out of any will contests (\$300,000), but Cindy's will receive at least \$280,000 and at most \$300,000. Dot will receive nothing or up to \$10,000 under the terms of the will. Sam will receive nothing, \$10,000, or at most (but highly unlikely) \$150,000 under intestacy.