CHAPTER 1: ISSUES TESTED

a. Summary of the Issues Tested

1. Intestacy
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   - Issue – Per Capita with Representation

2. Execution of Wills
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   - Intent
   - Attested Will
   - Holographic wills
   - Codicils
   - Will Substitute – Deed
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3. Revocation
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   - Revocation of Codicil
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5. Power to transfer
   - Surviving spouse rights
6. Will contests
   - Insane delusion
   - Undue influence
   - Fraud in the inducement

b. Intestacy

   Exam Tip 1: If a person dies without a will, or if a will is found to be invalid, the estate will be distributed following the intestacy rules below. A typical exam question will have a disputed will that might be valid. To earn full credit, you should discuss the distribution of the estate under the will (if found valid) as well as the distribution under intestacy (if the will is invalid).

1. Surviving Spouses

   The surviving spouse must be legally married to the decedent at the time of death, and must also survive the decedent by 120 hours to take by intestacy.

   a. Community Property Share

      At death, the surviving spouse is entitled to 1/2 of the Community Property (CP). The surviving spouse of an intestate decedent is also entitled to the decedent’s 1/2 CP and quasi-CP. Therefore, the surviving spouse will take 100% of the CP.

   b. Separate Property Share

      The surviving spouse’s SP share will depend upon the number of surviving lineal descendants, parents, or issue of parents.

      ▪ If there are no surviving relatives of the decedent, the surviving spouse gets 100% of the decedent’s SP.
      ▪ If there is one surviving relative of the decedent, the surviving spouse gets 1/2 of the decedent’s SP. The other surviving relative gets the other 1/2 of the SP.
      ▪ If there are two or more surviving relatives, the surviving spouse gets 1/3 of the decedent’s SP and the other surviving relatives split the other 2/3 SP equally.

2. Issue

   Issue refers to lineal descendants of the testator, including children, grandchildren, and great-grandchildren. Adopted children take the same as non-adopted children.

   a. Calculating Share – Per Capita with Representation

      Per Capita – If the surviving issue are all of equal degree of kinship (all the same level of relation to the decedent), the property passes equally to each person.

      Per Capita with Representation – If the surviving issue are not of equal kinship, the property is divided at the first generation in which at least one member survives the decedent. The
shares that would go to the member that predeceased the decedent would go to his/her
issue.

**Example 1:** Decedent had two sons, A and B. He dies without a will. A
survives the decedent (is still alive), but B died before Decedent. B is survived by
two children, C and D (grandchildren of Decedent). Under Per Capita with
Representation, the property would be divided between A and B because A is
the first generation where issue is still living. A would get 1/2 of the estate. B is
dead, so he would not get anything. Instead, B’s children, C and D, would take
B’s share and split the other 1/2 of the estate equally and receive 1/4 each.

c. Execution of Wills

**Exam Tip 2:** If the fact pattern states that there is a valid will, you do not have
to discuss the execution of the will. However, if the facts do not state that there
is a valid will, you must discuss whether the will was validly executed. If there
are multiple wills or codicils in the fact pattern, discuss each one in the order
presented.

**Exam Tip 3:** You should always discuss Capacity and Testamentary Intent when
analyzing whether a will was validly executed.

i. Capacity

**Exam Tip 4:** Look for facts indicating that the testator lacks capacity to create a
will, such as mental illness and drug or alcohol abuse.

The testator must be at least 18 years old, understand the action he is taking, understand the
extent of his/her property, and understand who is receiving his/her property.

1. Conservator

A court can appoint a conservator for a person who lacks capacity. The court can authorize
the conservator to create a will for the person.

a. Fiduciary Duties

A conservator has a fiduciary duty to the testator when creating the will. The duties
include a duty of care (act as a reasonable person) and a duty of loyalty (no self-dealing).

ii. Testamentary Intent

The testator must understand he is executing a will and intend for it to have testamentary effect,
and must generally know and approve of its contents.

iii. Attested Wills

1. **Writing & Signature:** The will must be in writing and signed by the testator (T).
b. Witnesses

Exam Tip 5: Look for exam facts indicating that the witness requirement has not been met. For example: a witness is not present during the signing of the will by the testator, there is an “interested witness”.

The will must be signed in the joint presence of and attested to by two witnesses, and if the T doesn’t sign in presence of witnesses, he must expressly or impliedly acknowledge his signature to them before they sign. Each witness must be of sufficient mental capacity and maturity, and aware that the instrument is a will.

1) Interested Witness

Exam Tip 6: Be sure to discuss why the witness is an interested witness AND whether the presumption of undue influence can be rebutted.

A witness who has a financial interest in the will is an “interested witness”. In CA, a will be valid despite the presence of an interested witness.

a) Rebuttable Presumption: However, a rebuttable presumption is created that the interested witness/devisee exerted undue influence over the testator. If the presumption is not rebutted, the witness takes his/her intestate share of the will (the witness will not take under the terms of the will).

Exam Tip 7: If an interested witness is a family member of the testator, he/she will not take under the terms of the will, but he/she will take an intestate share.

b) Republication by Codicil

A valid codicil executed after the original will cures any interested witness problems that existed during the execution of the original will. The interested witness will not be considered an “interested witness” and he/she will take under the terms of the new codicil.

Exam Tip 8: Look for facts where a will is witnessed by an interested witness, but a valid codicil is later executed. The interested witness will be “cured” and will take under the terms of the will.

3. Compliance (“Substantial Compliance” in CA)

Exam Tip 9: You should discuss “substantial compliance” if you determine that a will was not validly executed. Then, you should discuss the outcome if the will is treated as valid and the outcome if the will is not treated as valid.

If a will is not executed in compliance with the law, the will is treated as if it had been executed in compliance if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended it to constitute the testator’s will.

iv. Holographic Wills

Exam Tip 10: After you discuss the existence of a valid attested will, you should always analyze whether there is a valid holographic (handwritten) will.
- T must handwrite the “material provisions” of a holographic will. “Material provisions” include the beneficiaries of the will and the items that they will receive. A preprinted will form can still be a valid holographic will, as long as the “material provisions” are handwritten.

- T must sign the instrument.

- No witness requirement: Although it need not be witnessed or dated, it must be clear that T intended the document to be a will.

4. **Codicils**

A codicil is a supplement to a will that alters, amends, or modifies the will, rather than replacing it. Generally, a codicil must be executed with the same formalities as a will (can be attested or holographic).

***Exam Tip 11:*** Be sure to clearly explain how the codicil is changing the terms of the original will AND whether the codicil was executed properly.

- Republication Date: A validly executed codicil republishes a will as of the date of the codicil.

  **Example 2:** A will is created in 2000. A valid codicil to the will is executed in 2002. The date of publication of the will (including the codicil) will now be considered 2002.

- Cure Invalid Will: A valid codicil executed after the original will cures any problems that existed at the execution of the will, including an interested witness. The interested witness will not be considered an “interested witness” anymore and he/she will take under the terms of the new codicil. *(See Interested Witness section, above.)*

- Attested Will and Holographic Codicil: A valid attested will can be altered, amended, or modified by a holographic codicil.

  **Example 3:** A valid attested will is executed in 2000 leaving $1 million dollars to C. In 2002, testator crosses out the $1-million-dollar amount and handwrites on the will that he is leaving $2 million dollars to C and signs below the change. Testator has executed a valid holographic codicil and C is now entitled to $2 million dollars.

5. **Will Substitute – Deed**

A deed of property can serve as a will substitute for transferring property upon the death of the landowner. If a grantor (owner of land) delivers a deed to a third party (agent) with instructions to give the deed to a person (grantee) upon the grantor’s death, the deed will serve as a will substitute and the deed will be transferred to grantee upon grantor’s death.

***Note 1:*** To be valid as a will substitute, the deed must meet the requirements of a valid attested will (writing, signed, witnesses) or holographic will (material provisions in handwriting and signed by testator).
6. Choice of Law

If a will is validly executed in another state, the will be treated as valid in California. If a will is not validly executed another state, but the decedent is domiciled in California and dies in California, his/her will is treated as valid if it meets the California requirements.

Exam Tip 12: A past bar exam question presented facts about a will that was created out of state and did not meet the out of state will requirements. The testator then moved to California, established domicile in California, and died in California. His will met the California requirements, so it was treated as valid in California.

d. Revocation

Exam Tip 13: A will or codicil may be revoked in whole, or in part, any time prior to death of the testator by a subsequent writing, physical destruction, or by operation of law.

i. Subsequent Instrument

A testator can revoke a will or codicil by executing a later will or codicil that partly or completely revokes the prior will or codicil. Oral revocations are not valid.

a. Partial or Complete Revocation:

A revocation can be partial (part of the original will or codicil is revoked, but part of it is not) or complete (the entire original will or codicil is revoked).

Exam Tip 14: When discussing revocation by will or codicil, carefully analyze and explain whether the original will or codicil is partially or completely revoked; consider both sides of the argument.

b. Express or Implied:

The revocation can be express (the new will or codicil expressly states that it is revoking the prior will or codicil) or can be implied (the terms of the new will or codicil conflict with the terms of the prior will or codicil) by the terms of the subsequent instrument.

Exam Tip 15: Implied revocation - be sure to explain why the new will or codicil conflicts with the prior will. For example, the original will gives testator’s house to B. A subsequent codicil gives the house to C. The testator has impliedly revoked the gift of the house to B.

c. Inconsistencies:

If there are inconsistencies between the prior will or codicil and the subsequent will or codicil, the later document controls and revokes the prior inconsistencies.

7. Physical Destruction

A will or codicil may be partially or completely revoked by destroying a portion of the will or codicil with the intent to revoke it. The act of destruction must occur with the intent to revoke (simultaneous act and intent).
Partial or whole defacement of the actual language of the will or codicil is required.
- A third party can revoke through physical destruction of the will or codicil on behalf of the testator if it is requested by testator and destroyed in testator’s presence.
- Destruction of a signed original or duplicate original presumptively destroys all copies.

8. Revocation by Operation of Law – Divorce or dissolution of domestic partnership

Divorce or dissolution of a domestic partnership automatically revokes all will provisions in favor of the former spouse or domestic partner unless it can be shown that testator intended for the will provisions to survive the divorce or dissolution. Separation does not revoke the will provisions.

9. Revocation of Codicil

A valid codicil alters, amends, or modifies the original will. If the testator revokes the codicil, the original will terms will be revived and the original will terms will be followed.

e. Revival

Exam Tip 16: Look for fact patterns where there a valid will and a later will or codicil is created, revoking the original will. If the later will or codicil is subsequently destroyed, the original will may be revived.

i. Republication

Revocation of a later will or codicil that revokes the original will revives the original will if there is proof that the testator intended to revive the original will. If the later will or codicil is revoked by physical act, extrinsic evidence of testator’s intent to revive the original will is admissible.

ii. Dependent Relative Revocation (DRR)

Exam Tip 17: DRR should be discussed when a testator revokes the original will under a mistaken belief of law or fact. DRR will revive the original will if the testator would not have revoked the original will but for the mistake of law or fact.

The doctrine of Dependent Relative Revocation (DRR) will allow a court to revive a revoked will when the testator revoked the will by subsequent instrument or physical act under a mistaken belief of law or fact. It must be shown that the testator would not have revoked the original will but for the mistaken belief.

Example 4: T creates a valid will giving B $10,000. Later, T attempts to create a second will giving B $20,000, but the testator does not know that the second will is actually invalid. T tears up the first will (physically revoking it), mistakenly believing that the second will is valid. T dies one year later. Because the second will is invalid and the first will was physically revoked, B would take nothing. However, applying DRR, a court will revive the first will because T mistakenly believed the second will was valid when he tore up the first will. B will take $10,000 under the first will.
CHAPTER 2: SUBSTANTIVE ISSUES CONTINUED

a. Construction

Construction of a will requires a court to determine the terms of the will and how to distribute the estate.

i. Integration

Under the doctrine of Integration, the will consists of all pages that are present at the time of execution and that are intended to form part of the will, which can be shown by physical connection of the pages (stapled or paper clipped together) or by the ongoing nature of the language of the will (pages are not attached, but page numbers indicate that the pages follow each other).

ii. Incorporation by Reference

Exam Tip 18: Look for facts where a testator’s will or codicil mentions or references a separate document. The separate document may be “incorporated” into the will or codicil and the terms of the document will be followed as if they were part of the will or codicil document.

A writing not executed with testamentary formalities may be incorporated by reference if it existed at the time the will was executed, is intended to be incorporated, and is described in the will or codicil with sufficient certainty.

- In CA, the writing need not exist at the time the will was executed if it only disposes of the T’s personal property (in other words, the testator can write a will referencing another document and then create the document later).
- A holographic will or codicil can incorporate a handwritten or typed document.
- A validly executed codicil can incorporate an invalid will and make the terms of the will valid.

Example 5: Based on a past CA bar exam essay: T creates a typewritten will giving his house to J that is invalid because there are no witnesses. Later, T executes a valid typewritten and witnessed codicil stating that he is now giving his house to B; he also states that everything else in his original will document is to be followed. T has executed a valid codicil and the terms of the original will document are now incorporated by his reference in the codicil (the terms of the original will are now valid).

iii. Acts of Independent Significance

A will can provide for designation of a beneficiary or amount of a disposition by reference to some unattested act or event occurring before or after execution of the will or the T’s death, if the act or event has some significance apart from the will.

Example 6: Testator leaves his house “to the person that is my brother’s spouse or partner at the time of my death.” T is designating the beneficiary
who will receive his house by referencing the act/event of his brother getting married; getting married is act/event with separate legal significance.

iv. Classification, Abatement, and Ademption

When distributing the real property (devise) and personal property (bequest or legacy) under a testator’s will, an estate’s assets may be insufficient to satisfy the gifts made under the will. In this situation, a court must determine the order of distribution and abatement (reduction or elimination of gifts) by classifying each gift.

**Exam Tip 19:** Be sure to analyze each devise and legacy/bequest in the will and determine its classification.

a. Specific Gift

A specific legacy, devise, or bequest is a gift of property that can be distinguished with reasonable accuracy from other property that is part of the testator’s estate (a specific car or item of furniture).

b. General Gift

A general legacy is a gift of personal property (such as money) that the testator intends to be satisfied from the general assets of his estate.

c. Demonstrative Gift

A testator intends that a demonstrative legacy be paid from a particular source, but if that source is insufficient, he directs that the legacy be satisfied out of the general assets of the estate.

**Example 7:** $100,000 to John from my Bank of Columbia account, but if funds are not sufficient, then the rest paid out of general funds.

d. Residuary

A residual legacy is a legacy of the estate remaining when all claims against the estate and all specific, general, and demonstrative legacies have been satisfied.

**Example 8:** I give the rest and residue of my estate to Mark.

v. Abatement

If the assets of the estate are insufficient to pay all debts of the testator and legacies, a court will “abate” or reduce the gifts to pay the debts. The court will abate the gifts in the following default order:

1) Intestate property (property that has not been addressed in the will)

2) Residuary bequests

3) General bequests to non-relatives and then relatives
4) Specific bequests (and demonstrative gifts) to non-relatives and then relatives

In other words, specific gifts are the last items to be sold/reduced in order to pay off debts of the estate; intestate property is the first item to be sold/reduced.

vi. Ademption by Extinction

**Exam Tip 20:** When a specific gift in a will is no longer in the testator's estate at the time of the testator's death, discuss the rules of ademption.

- Traditionally, if the subject matter of a specific gift is missing, destroyed, or there is a substantial change in the form of the gift (the court can trace the gift it undergoes a minor change), the beneficiary takes nothing. This does not apply to general or demonstrative gifts, which can be satisfied from the general assets of the estate.
  - The beneficiary is entitled to whatever is left of the specifically devised property or balance of the purchase price owing from the purchaser of the property.
  - However, California courts will examine the testator's intent at the time he disposed of the subject matter of the devise or bequest. If there is evidence that the testator intended for the beneficiary to receive the gift, despite ademption, the court may treat the specific gift as a general or demonstrative gift, or trace the specific gift to its new form.

- Examples from past CA bar exams:
  
  **Example 9:** Testator left beneficiary her condominium (a specific gift) in her will. Testator then sold the condominium and placed the sale money in a bank account. The beneficiary can ask the court to trace the condominium to the sale money in the bank account. Under CA law, the court will look to the testator's intent to see if tracing is appropriate.

  **Example 10:** Testator leaves 100 shares of Company A stock to beneficiary in his will. Testator then sells his shares in Company A and uses the money to buy 100 shares in Company B. The beneficiary claims she is entitled to the Company B stock. Under CA law, the court will look to the testator's intent and either treat the gift of stock as a general or demonstrative gift (which would allow beneficiary to receive the Company B stock or the value of it) or trace the Company A stock to the Company B stock.

vii. Lapse and Anti-Lapse

- Under the Common Law, if a beneficiary dies before the testator, the gift to the beneficiary lapses (fails).
- Under modern Anti-Lapse statutes (applicable in CA), if the beneficiary was blood-related to the testator, the beneficiary’s surviving issue (child, grandchild, etc.) will take in his/her place.
o Limitation: If the will beneficiaries are a class, such as “my brothers”, only the members of the class who are alive at the time of the execution of the will receive the benefit of the will.

Example 11: T creates a will giving his property to “my brothers” upon his death. His brother C died before he created the will. Neither C nor his issue would be entitled to a share of the property upon T’s death. Only T’s other brothers, A and B, who were alive at the time of the will creation would take the property. Note: Anti-lapse would apply to A and B and give their issue a share of the property if one of them died before T.

viii. Ambiguities in the Will

Generally, a court will only look to the will itself to interpret the terms; no extrinsic evidence is admissible. However, extrinsic evidence admissible if a patent ambiguity (apparent on the face of the will) or latent (not apparent on the face of the will) can be shown.

b. Power to Transfer

i. Community Property and Quasi-Community Property

At the death of one spouse or domestic partner, the surviving spouse or partner owns half of the community property and quasi-community property. The decedent can dispose of the other half by will.

ii. Omitted Spouse

o Omitted Spouse – a marriage or domestic partnership is formed after the execution of testator’s will and spouse is not mentioned in the will.

o An omitted spouse is entitled to an intestate share unless:

   ▪ The omission was intentional,
   ▪ The spouse was given property outside of the will in lieu of a disposition in the will, or
   ▪ The spouse is party to a valid contract waiving her right to a share in the estate.
   ▪ The omitted spouse takes as follows: one-half of the decedent’s CP and quasi-CP, and a share of decedent’s SP equal to what the spouse would have received if decedent had died intestate (see Intestacy supra).

iii. Omitted Children

Exam Tip 21: This is a frequently tested issue. To earn full credit, you should discuss why the child qualifies as omitted child and then consider any limitations that may apply.

o Omitted Children – A child who is omitted from the will can force an intestate share (see Intestacy, above) if certain requirements are met:

   ▪ The child is born or adopted after the will is created, or the testator mistakenly believed the child was dead, or did not know the child existed; and
   ▪ The child is unintentionally omitted from the will.
Limitations: A share will not be forced if the child has been provided for outside of the will, or if the testator had other children at the time the will was executed and left substantially all of his estate to the omitted child’s parent.

**Exam Tip 22:** A recent CA essay question presented a valid will executed before a child was born. The child would be a potential omitted child because he was born after the will was created. However, after the child was born, the testator executed a valid codicil to the will, changing one of the terms. The codicil would republish the entire will as of the date of the codicil. Therefore, the child would now be considered to have been born before the will, and he would likely not be an omitted child.

c. **Will Contests**

   i. **Insane delusion**

      **Exam Tip 23:** Similar to capacity, look for facts indicating that the testator is suffering from an insane delusion, such as mental illness and drug or alcohol abuse.

      An insane delusion is a belief for which there is no factual or reasonable belief, but the testator believes despite all reason and evidence to the contrary. If it is shown that the testator has an insane delusion, it must be also shown that but for this delusion, testator would not have disposed of his property in the manner he did. (In other words, the delusion must have caused the testator to make the disposition).

   ii. **Undue influence**

      General Rule: Undue influence occurs when mental or physical coercion is exerted by a third party on a testator with the intent to influence the testator such that he loses control of his own judgment. If undue influence is shown, the will may be invalidated in whole, or in part.

      1. **Undue Influence – Traditional Approach**

         A contestant must show four elements:

         a) Susceptibility: the testator was susceptible to being influenced.
         b) Motive: the influencer has reason to benefit.
         c) Opportunity: the influencer had opportunity to influence.
         d) Causation: the influencer caused an unnatural result.

      **Editorial Note 1:** California has adopted its own four-factor test for determining whether a person has exerted undue influence over a testator. Those factors are (i) the victim’s vulnerability, and whether the influencer knew—or should have known—of the alleged victim’s vulnerability; (ii) the influencer’s apparent authority; (iii) the influencer’s actions or tactics; and (iv) the equity of the result. These factors are discussed in more detail in your outline at Section VI.B.1. Unless you are instructed to apply the traditional approach, you should apply the California factors to determine undue influence on the California exam.
2. Undue Influence – Confidential Relationship

- A presumption of undue influence arises when:
  
  i. The principal beneficiary of the will has a confidential relationship with the testator (example: parent/child, attorney/client),

  ii. The principal beneficiary participated in executing the will, and

  iii. The gift to the beneficiary is unnatural.

- If a presumption arises, the beneficiary must show through clear and convincing evidence that he did not exercise undue influence.

- If the beneficiary exerted undue influence, he will only receive what he would be entitled to under an intestate approach (if the beneficiary is a friend of the testator he would receive nothing because friends do not take under intestacy; a family member would take an intestate share).

**Editorial Note 2:** California also has enacted its own statutory presumptions. California law holds invalid any will provision making a gift to (i) the person who drafted the will; (ii) a person who transcribed the will or caused it to be transcribed and who was in a fiduciary relationship with the testator at the time the will was transcribed; (iii) a care custodian of the testator who is a dependent adult, if the will was executed when services were provided or within 90 days thereafter; (iv) a person related to, living with, or employed by the drafter, transcriber, or care custodian; or (v) a partner or employee of the law firm of the drafter or transcriber. These presumptions are discussed in more detail in your outline at Section VI.B.3.d.

iii. Fraud

A will can be invalidated due to fraud. Fraud requires a misrepresentation made by a beneficiary with both the intent to deceive the testator and the purpose of influencing the testamentary disposition.

1. **Fraud in the Inducement:**

   A misrepresentation that causes the testator to make a different will that he otherwise would have made. It must be shown that the testator would not have made the gift if he had known the truth.

2. **Fraud in the Execution:**

   A misrepresentation as to the trust itself or its contents (testator does not know he is creating a will or is not told the true content of the will).
CHAPTER 3: FEBRUARY 2017, 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.

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Sample Answer

Validity of Mary's First Will:

The issue is whether the will that Mary signed in 2010 is valid. Because Mary typed this will out using her computer, this will needs to meet the requirements of an attested will.

1. Be written, dated and signed by the testator or someone at testator's direction.

Here, we're told that Mary herself typed out, signed and dated both copies of her first will. Therefore, there's no issue as to the validity of Mary's first will as to whether Mary's first will is written, dated, and signed by a permitted party.

2. Be signed by Mary in front of two uninterested witnesses at the same time.

These witnesses can either visually witness Mary's execution of the will, or be conscious of the execution in some way. The two witnesses need to countersign the will at some point during Mary's lifetime, not necessarily when Mary signs the will, and not necessarily at the same time as each other.

The facts establish that Mary signed both copies of her first will in the presence of both Carol and Ned (both of whom constitute uninterested witnesses as neither benefit from the bequests stated in Mary's first will), and they further establish that both Carol and Need countersigned the will while Mary was alive.

3. Each witness needs to understand that they're signing Mary's will (as opposed to a non-testamentary instrument).

As for whether each witness understood that they were signing Mary's will, it's arguable that this requirement is met because Carol certainly was aware as to the contents of the will, and Ned, though unaware as to Mary's specific bequests, declared he was honored to be a witness. There's no requirement that the witness be aware of the specific details of a will in order for the attested will to be valid.

Capacity, Undue Influence, or Fraud

There is no indication that Mary lacks capacity to create a will. There are also no indications here of any kind of undue influence or fraudulent behavior by any persons in Mary's life causing her to write and sign her 2010 will.

Revocation of Mary's First Will:

The issue is whether Mary's first will was effectively revoked by Mary's actions in 2014. A will can be revoked by physical act or implication. If a will is revoked by testator's physical act, the act needs to be one that effectively destroys the will (e.g., ripping the will in half, as opposed to tearing off a corner without any writing on it), and it needs to be done by Mary as testator (or by someone at her direction) with the simultaneous intent to revoke the will.

Here, Mary deleted the old document from her computer, which demonstrates the required intent present when she additionally tore up one original copy of her first will. The act does destroy the will
because she "tore it up." There's no indication in the facts that her act of tearing up that original of the first will was minor in any way so as to create a doubt as to whether or not she actually fully tore up the document. Lastly the act of tearing up the will was conducted by Mary herself, so there's no issue as to whether or not it was done by the testator.

**Revocation of Safe Deposit Box Copy:**

The issue here is whether the fact that Mary forgot about the other copy of her 2010 will in her safe deposit box affects the validity of the revocation of said 2010 will. There is a presumption that where there are two identical originals of one will, the revocation of one constitutes the revocation of the other.

Here, we've established above that the revocation of one of the originals of her will was effective and complete. For that reason, the revocation of the other original is also deemed valid and effective. There is no indication here of any intent in leaving the copy located in the safe deposit box untouched, so there are no grounds on which to rebut the presumption that all copies of Mary's 2010 will have been revoked.

**Validity of Mary's second (2014) Will:**

The issue here is whether Mary's second will, signed in 2014, is valid. The facts tell us that this will was written by Mary on her corporate stationery with her business logo emblazoned on it. This likely signifies that she did not type the will; rather this is a handwritten (holographic) will.

A holographic will needs to be signed by the testator (anywhere on the document) and the material terms of testator's will need to be in handwriting as well. Unlike an attested will, there's no requirement that the will be witnessed by any witnesses.

Here, the facts state that Mary signed the document, and all of the material terms of this second will were also presumably handwritten (as there's no indication that she started up her computer at any point to complete this second will). The material terms are that she left her Gamma stock to John, her Delta stock to Bob, and the house to Amy.

There's a related issue as to whether her 2014 will needs to be dated in order to be valid. It does not. The rule is that a holographic will does not need to be dated in order to be effective.

There's another related issue as to whether Mary designated a recipient for her remaining property (i.e., her residuary estate). There's no need for a holographic will to devise the entirety of a testator's estate; when the testator's estate is not entirely devised by a testator's will, the testator's estate goes to Mary's heirs by intestate succession.

**Capacity, Undue Influence, or Fraud**

As with Mary's first will, there are no indications here of any kind of undue influence or fraudulent behavior by any persons in Mary's life. Similarly, there's no indication here that Mary lacked the capacity to enter into her second will.
Amy's Rights in the Assets in Mary's Estate:

Under the 2014 will, Amy has been gifted Mary's house. This gift will be given to Amy, pursuant to the 2014 will, unless there is an issue with the house as community property.

Amy's gift, the house, was purchased prior to Mary's marriage to John. Although we do not know the exact date of purchase, we know that it happened prior to marriage because it was described in Mary's 2010 will. Since it was purchased prior to marriage, it will be considered separate property, and therefore John may not assert any rights to it. Thus, Amy will receive her gift under the will, and should get the house.

Bob's Rights in the Assets in Mary's Estate

Under the 2014 will, Bob is to receive Mary's Delta stock. Since Mary used the term "my" Delta stock, this is considered a specific gift under the will.

Under the theory of Ademption by Extinction, a specific gift may be extinguished under the will in the event that the testator no longer owns the specific property to be gifted at the time of death. However, under California law, a specific gift will not be automatically extinguished because it is no longer part of the testator's estate if it can be proven that the testator did not intend to have the gift adeemed.

Here, Mary sold Delta stock and therefore the Delta stock is no longer in her estate. However, Bob may argue that this extinction should not cancel the gift, as Mary did not intend to get rid of the gift. He may prove this by showing that the proceeds of the sale of the Delta stock were immediately used to buy Tango stock. Moreover, there is no evidence that the sale occurred because Mary was looking to get rid of Bob's gift. Therefore, given the direct tracing of proceeds and the lack of any evidence that Mary was looking to shut Bob out of the will, Bob has a good case to show that his gift should not be adeemed and he should receive the Tango stock, which can be directly traced from the proceeds of the Delta stock.

Likewise, there is no community property issue, as the Tango stock was bought from the proceeds of separate property (since the Delta stock was acquired prior to marriage).

John Rights in the Assets in Mary's Estate

Under the 2014 will, John is to receive the Gamma stock. There is no issue with this devise, and thus he will receive this gift.

$200,000 in Cash

The final issue is what to do with the $200,000 in cash. Since there is no residue clause in the 2014 will, this will pass by intestacy.

Under California's intestacy rules, the surviving spouse will take a share of separate property, depending on whether the testator left living children. In the event that the testator left a surviving spouse and more than one living child, the surviving spouse receives 1/3rd of the separate property passing through intestacy, and the children receive the other 2/3rd, to be divided equally among them.
Here, there is a surviving spouse (John) and two living children (Amy and Bob). Therefore, the $200,000 will go 1/3rd to John under intestacy rules, and 2/3rd to Amy and Bob. Thus, each will receive 1/3 of $200,000.