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Validity of Will #2

David is the party challenging the second will that Joe made. He is challenging it on the basis that the will is invalid. David will have standing to challenge the change in will as an intended beneficiary of the first will. The 007 Club will be the proponent of the will, given that the club received the entire estate under the second will. In order to be a valid will, the testator must have testamentary intent--that is, he must intend the document to be his will. He must also have the capacity to execute a will and must comply with certain formalities. We assume that the formalities were met for the second will (we have no facts to the contrary) and also assume Joe had the intent to make the document his will. He went to the lawyer with the intention of executing a new will that would reflect his newly changed opinion of David. The problem with the validity stems from capacity problems. A person has the capacity to execute a will when he is over 18, knows the nature and extent of his assets, understands the nature of his bounty, and understands the nature of his act. Here, David will argue that Joe was unable to care for himself, as evidenced by David's frequent visits to Joe to help him with the mail and landscaping. David helped him for a total of 5 years, a significant amount of time in which David will argue Joe has become more dependent on him. Joe also takes medications--we don't know what they are for. If they are for a mental impairment, this will help David. For their part, 007 will argue that Joe manages his own affairs without assistance, takes his medications property and talks on the phone to his investment advisor. 007 will argue that Joe may be getting older, but he is still aware of the nature and extent of his bounty and understands that he was executing a will (and

Mental Capacity is the inquiry to physical impairment because to especially distinguish the two.

what the will was for). With this evidence, along with the neighbor's statement that David only comes every two weeks, David's argument that Joe lacks capacity will fail--there's not enough facts to show he is incapacitated (for testamentary purposes. OR

However, David will be able to assert that Joe lacks capacity because he suffers from an insane delusion. This condition is characterized by a false belief that is the product of a sick mind. The delusion has to have no evidentiary basis (a reasonable person would not believe the delusion to be real), and the belief must have caused the testamentary act that the challenger wants to invalidate. Here, Joe believes David was installing spy cameras and poisoning him by spraying substances around the foundation. David will argue this is a delusion--we know from the facts (including neighbor's testimony) that David is spraying insecticide and tending to the landscaping. We also know that he is helping him with chores around the house. 007 will argue that there is some evidentiary support for David's poisoning (or at least Joe's belief that David is poisoning him) from all the spraying that David is doing. The court will probably side with David here. No reasonable person could really believe that David was installing cameras and poisoning Joe. This is the kind of paranoia that is the sign of a sick mind, not a well one. In addition, we know from the facts that the lawyer said that Joe changed the will because of his belief in David's hostile acts toward him--"David is sneaky. I think he is stealing from me." This means that Joe's testamentary act was based on the delusion. Thus, the will will be invalidated. Joe just doesn't have the capacity to make the new will. Note: if there were other provisions that were not affected by the delusion, those might considered valid--there weren't any of those, however.

Good

Contract between Mabel and Uncle Joe for Will #1

Joe and Mabel decided together that they would leave their estate (after they both died) to Mabel's nephew David. We know from what was said in the lawyer's office (Okay, let's give it all to David) that they decided together to give the residue of the estate to David. We also know they discussed it in front of Mabel's friend and Mabel said, "We have a deal" relative to the bequest to David. The problem is that we know they decided to give the estate to David, but there was no consideration for the promise. David will argue it was a K, but there was no consideration, so no K was actually formed. Mabel seemed to be the party most interested in David's getting the rest of the estate, but she never promised anything to Joe in exchange for her promise to go along with her idea. In fact, she really said that she wanted her whole estate to go to David. The lawyer then drafted the will that left everything to the surviving spouse, and then to David. Mabel could have insisted at that point that the lawyer change the language so that David would get a portion of her sizable estate at her death rather than waiting for Joe to die. Also, there was no writing that memorialized the agreement (a K for a will must be in writing). Although sometimes a lack of writing may be excused if there are services rendered based on a quantum meruit claim, that didn't happen here. Again, there K was between Mabel and Joe, not between David and Joe. Therefore, there was no valid K. And even if there was a K, David's standing in being able to sue based on a third party beneficiary theory is shaky. He may have a third party claim, if there had been an actual K, and he was the intended beneficiary of the K, but there was none.

Effect of the invalidation of Will #2

With Will #2 invalidated, it is not clear whether Will #1 will be revived. We know from the facts that the second will expressly revoked the first will. However, if the second will was invalidated, the revocation was probably also invalidated. Thus, the only valid will was the first will that Joe did. This leaves everything to David, so he will get the estate. 007 will take nothing. Note: if the court happens to find the new will invalid, but the revocation valid, this will leave the parties in legal limbo. If Will #1 is considered revoked and Will #2 isn't valid, Joe will have died intestate, which means without a will. His heirs will then take by intestate succession (David may be one of them, depending on how close other relatives are. Parents and siblings take over nephews --- issue take even before the other relatives, but we have no facts to indicate that Mabel and Joe have children).

2)

Dear Charity, please see the below for an assessment of the issues relative to your case:

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Charity's interest

Charity here will want to argue that the will itself was validly executed, since they'll take nothing if the will is invalidated. They will want the court to reform the will, however, so that Charity receives the original 75% that Ted wanted them to receive. While the will has a no-contest clause, Charity may argue that the court should hear their challenge without cutting them out of the will. Charity will claim that they are just trying to get the court to ascertain the intentions of the testator (i.e. that the Charity receive 75%), not challenge the will. Charity will have success with this plan--there is an issue of mistake as well as the testator's intent.

Nieces and Nephews's interests

Nieces and nephews may take more under intestacy then they would under the will (whether they get 50% or 25%) depending on how closely related they are to Ted (relative to his other kin). Assuming they'll take more if the will is not valid, they'll argue against the court finding the will to be valid. Alternatively, if they take more under the will than intestacy, they'll want the will to be valid, but they won't want the court to change the percentages to what Ted intended.

Validity of the will

In order to be a valid will, the testator must have testamentary intent--that is, he must intend the

document to be his will. He must also have the capacity to execute a will and must comply with certain formalities. Charity will argue that Ted had the intent to execute a will--he wanted to devise his property. Any intestate takers of Ted's (who want the will invalidated since they may take under intestacy), will argue that he did not have the intent to execute the will that he did execute. They'll argue that he meant to devise his property differently. The court, however, won't invalidate the entire will because he intended to devise differently. He still had the intent to make a will, thus his intent is adequate here. There are no issues with capacity (blind people have no impairments with respect to understanding the nature and extent of their bounty or the nature of their testamentary act). We know that he has "declined in health," but we have no facts to show that he has lost his capacity to execute a will. However, there are issues with the formalities of the execution, particularly the witnessing of the will.

A valid will must be signed by the testator, as well as two witnesses (among other formalities). The purpose for the formalities is to protect the testator and make sure his intentions are carried out (the requirement of disinterested witnesses, and the publishing--announcing--of his will, and the signature of the testator is to make sure his wishes are protected from those who would influence him negatively). In Calif., there is a requirement that two witnesses, in the presence of each other, either see the testator sign or witness him attest that the signature on the will is his. The witnesses must then sign the will, but they do not have to be in each others' presence or the presence of the testator when the witnesses sign. Here, we know that one witness was with the testator when Ted signed the document. However, the witness was interrupted and "while talking on the phone," waived in the other witness. The second witness was not told that Ted had

signed--the first witness just pointed at the document. A court would find that this was not technically in compliance with the requirements. However, Charity will argue that this was substantial compliance and ask the court to rule the execution was still valid. After all, the protective functions were carried out--there were no allegations of fraud or undue influence. Plus, there were two witnesses and they were both aware of each other (in conscious presence, even if not "line of sight" while Ted signed). The court will probably rule under is "dispensing power" in California that the execution was valid. Excellent!

Percentages that would go to charity

Charity will argue that the will should be valid, but the court should reform the percentages that will go to Charity based on a mistake. In fact, the percentages do not reflect Ted's intent--he intended that Charity take 75%, not the 50% that is on the face of the will. Traditionally, courts have discerned the testator's intent from the four corners of the document. Extrinsic evidence was not allowed to establish the testator's intent. However, modernly, courts will allow extrinsic evidence for a mistake that is on the face of the will, particularly when there is a "scrivener's error." This type of error is one made by the drafter of the will (as happened here). Courts will also allow extrinsic evidence of an ambiguity on the face of the will (patent) as well as as applied to a disposition (latent). Thus, Charity will argue that this is an attorney error that should be corrected for equitable reasons. They'll have a hard time arguing ambiguity--the document is not reasonably susceptible to more than one meaning. However, the court will probably act to reform the will based on the mistake. They'll allow evidence from the lawyer about his error--there are plenty of witnesses to the mistake that was made (and it's clear how such a mistake

could be made given that Ted was blind).

Malpractice

Charity may have an action against the attorney based on a third party beneficiary theory. After all, Charity was a party that Ted intended to benefit with his will. Courts will often allow malpractice suits of this type even though there was no privity of K between Charity and the attorney. Charity will allege that Lawyer was negligent in how he handed off the project to Partner (Partner will be liable too, and maybe secretary) and how he didn't ask in the beginning about what the percentages were. This seems negligent--it shows a lack of ordinary care on the part of lawyer and his firm.

Tortious interference with inheritance

Charity will also be able to bring this type of tortious interference action against lawyer. These kinds of claims only succeed where the other party has acted outrageously and has intentionally acted in a way that interfered with another's inheritance (Marshall Case). While lawyer has been extremely negligent, this claim is not likely to succeed. Charity may argue it, however. Charity should point out that the testator was blind and that Lawyer had a duty to use reasonable care necessary in dealing with a blind client. This would require reading everything out loud, or arranging for a braille copy of the will, or another party that Ted trusted should have been present (at the lawyer's insistence). Charity would also have to prove that the outrageous behavior on the part of the law firm caused the mix up. Charity's damages would be the 25% that it would have received if the will had been done correctly.

Impact if Charity loses

If Charity argues that the will is valid and succeeds, Charity will get at least the 50%. If Charity argues that the will should be reformed to reflect the higher percentage and succeeds, they'll receive the full 75%. Charity will only have a cause of action against the lawyer if they receive only 50% or if the will is invalidated and they take nothing. (note: under intestacy law, only relatives take, not charities).