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**DID DONALD EXECUTE A VALID HOLOGRAPHIC WILL?**

Donald lives in CA and thus, the California Probate Code will govern the contents and requirements of his will.

**HOLOGRAPHIC WILL**

CA PC requires for a holographic will (handwritten will)

1. testamentary capacity and intent
2. that the signature and the material provisions of the will be in the testator's handwriting

There are no facts to argue Donald lacked testamentary capacity. Thus, it will be assumed he did. Donald also signed his will with a "D." CA does not require a person's full signature to complete a will. An initial will suffice if that is what the testator intended his signature to be. The facts further state the entire will was in Donald's messy handwriting. Thus, the material provisions are in his handwriting.

However, Donald may not have intended this to be his will. On the napkin he did instruct where his assets should go. But the instructions are on a bar napkin. Bar napkins are small and do not leave much room to fully express one's intent. Plus, it was "a messy thing." Donald, a big movie star, with lots of money is likely to have signed many legal documents. He was aware that legal

documents generally are done with some formalities. Lastly, the facts state it was Donald's intention to go a lawyer soo to with the bar napkin in order to draft a real will. The fact that Donald took the time to write this indicates he believed that the messy bar napkin was not going to be his real will. It was in intention to get a real will from a lawyer.

Because Donald lacked the intent for the bar napkin to be his will, it will likely fail as a holographic will.

However, a court may find the will valid. Donald did give clear directions of where his assets should go and that intent may be enough. If the court finds Donald's holographic will as meeting intent, and it already meets the other requirements, the court must look to see if the other provisions of the will are valid i.e. conditional will.

### CONDITIONAL WILL

A conditional will is one that takes effect when a certain condition happens. Here, Donald has conditioned, that if anything should happen to him on a movie shoot, he directs where his money will go. Thus, Donald has drafted a conditional holographic will.

The minority view is that conditional wills will only be effective if the condition happens. Here, Donald died from something happening to him on the movie set; he was konked on the head with a mallet. Thus, the condition will invoke his will.

The majority view is that the condition does not need to happen in order for the will to be valid.

The majority view holds that the condition was what created the will, not necessarily that the intent to take away the devise if the condition never happens.

Using either the minority or majority view, Donald's conditional will is valid.

### CAR COLLECTION IF THE WILL IS VALID/ INCORPORATION BY REFERENCE

If Donald's will is valid, then the car collection may be brought into the will through incorporation by reference.

Incorporation by reference is where there is a writing in existence at the time a will is executed, it will be incorporated by reference if:

1. the will manifests the intent to do so AND
2. the writing is sufficiently described to permit its identification.

The writing was a piece of paper that Donald wrote on that directs where he wants his cars to go. It is in existence at the time he wrote his holographic will. He wants to use this piece of paper so the executor of his will will distribute his cars accordingly. Thus, the will manifests the intent for it to be incorporated. Daisy found the piece of paper which is a list of cars with directions to transfer them to certain persons. This is highly likely the piece of paper that Donald was

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referring to. Therefore, the writing is sufficiently described to permit its identification.

Therefore, if there is a valid will, the paper with the car list will be incorporated by reference.

**LUEY WILL CLAIM PRETERMITTED HEIR IF THE WILL IS VALID**

A pretermitted child is a dependant child that was left out of the will. Where there is a pretermitted child the courts will go into the testator's estate and take a portion of estate out to provide for the child. That portion will be what would be the child's intestate share.

In CA, a child born BEFORE the execution of a will will be able to claim pretermitted child status if:

1. the testator was unaware of his existence OR,
2. the testator mistakenly believed the child to be dead.

Here, the facts indicate Luey was born before the execution of the will. Luey was born in 1983. Donald executed his will in 1985. Luey will argue that Donald was unaware of his existence at the time he executed his will. Donald did not know Luey was alive until 23 after he executed his will. Thus, Luey will try to take a share of Donald estate.

Alternatively, however, a pretermitted heir may not take if there are facts to establish the child was provided for by other means. The facts indicate Donald left Luey a life insurance policy,

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where Luey was the sole beneficiary.

Because Luey has been provided for by other means, the life insurance, he will be unable to claim his intestate share through the pretermitted heir statutes.

### HUEY, DEWY AND DAISY TAKE IF THE WILL IS VALID

If the will is valid, Huey, Dewy and Daisy will take as the will provisions state. Daisy gets one-half of the movie money and everything else to his sons, in this case, just Huey and Dewy.

class?  
wd it include Huey?  
why, or why not?

### IF THE WILL IS NOT VALID

If the will is found to be invalid, since it was not intended to be Donald's will, the Donald will die intestate.

### COMMUNITY PROPERTY AND INTESTACY

Community property is all real and personal property acquired during marriage, except for gifts and inheritances.

In a CP state when a spouse dies intestate, the surviving spouse will receive the 1/2 share of the decedent's estate. Therefore, if Donald dies intestate, Daisy will receive Donald's 1/2 share to the

community property. In essence, this means Daisy takes the entire CP share. This will include, all of Donald's earnings from the re-executed contracts for the movie residuals. Even though some of the movies might have been made before Donald and Daisy were married, the contract they signed to make money from the reruns was during their marriage. All earnings during marriage are CP. *Good*

### SEPARATE PROPERTY AND INTESTACY

Separate property is all property acquired before marriage or property acquired by gift or inheritance.

Donald has left separate property when he died. This will be distributed to his heirs. Donald's living heirs are, Daisy, Heuy, Dewy and Lewy. For purposes of intestate succession, halfbloods are treated as whole bloods. Lewy will be able to take the same share as Hewy and Dewy.

When a person dies intestate with separate property but leaves a spouse, the surviving spouse will be able to take the entire separate property. However, the spouse will only a 1/3 share of the property, when the decedent leaves behind one or more children.

Here, Donald has three living children. They stand to inherit intestate from their father. Thus, according to separate property rules in CA, Daisy will take a 1/3 share of the separate property. The remaining 2/3 share will be divided equally to Donald's three sons.

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The separate property to be divided are the \$1 million in assets he had on his wedding day (provided he still has it) and the car collection. The facts state the car collection was in his possession before he got married.

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Question #2

Issue #1 - Did Darth have the intent to make the document his will?

A testator must have present intent to make the instrument his will. In this case, Darth told the lawyer that he wanted the entire estate to go to Mabel. If she didn't survive him, the house to Hans and Chewy and the residue to Leah and Luke. This is not what the codicil stated. A codicil to a will is a document which must be executed with the same formalities as a will, that alters, expands or modifies a will. This codicil expressly revokes the 1962 will. It leaves the house to Hans and Chewy and the rest of the estate to Mabel. This was not the intent of Darth. This codicil will fail for lack of testator intent.

Issue #2 - Assuming that somehow the courts found Darth had the requisite intent for the codicil, did he have the capacity to execute the codicil?

A testator must have the mental capacity to make a will or codicil to a will. The testator must comprehend the nature of their act, generally know nature and extent of their bounty, know the natural objects of their bounty and have the previous requirements in their mind long enough to make a reasoned judgment as to the disposition of his estate. Here, it appears that Darth understood that he was modifying his will. He went to the lawyer's office and discussed disposition of his estate. It appears that Darth knew generally the nature and extent of his estate.



A testator is not required to know exactly and precisely what their estate is made up of, but only needs to know generally. However, Darth seems to be lacking in capacity when it comes to knowing the natural objects (presumptive heirs) of his estate. Mabel would be a presumptive heir, however she's been dead for 43 years. There is no requirement that Darth leave anything to his presumptive heirs, but he must know who they are. ?

To make the lack of capacity argument even stronger, Darth seems to have been suffering from insane delusions. An insane delusion is a <sup>belief</sup> ~~reality~~ not founded in reality that the testator adheres to even when presented with evidence to the contrary. The insane delusion must affect the disposition of the estate in order for the courts to find the instrument lacking for capacity. Darth has left his entire estate to his sister who has been dead for 43 years. Even if the codicil was probated as written, he's leaving the entire estate minus the house to his dead sister. He believes that his sister visits him often.

Hans and Chewy could be found to have exhibited undue influence over Darth. Undue influence is the mental or physical coercion that deprives the testator of his free will and substitutes the will of another. In order to find undue influence Darth must have been susceptible to the influence. He believed his sister visited him frequently and Hans and Chewy played right into that. Hans and Chewy had the opportunity to unduly influence Darth. They were his gardeners for 20 years and they told Darth that Mabel was visiting them in the yard. Hans and Chewy procured a gift that personally benefited them and the result of the undue influence produced an unnatural result. It can be argued that it is not natural to leave gardeners your home, especially

over the children of his dear, dead sister.

Hans and Chewy's gift of the home could be invalidated because of fraud in the inducement.

Fraud is the will deception of the testator, who actually believes the deception and acts in reliance on it. Hans and Chewy deceived Darth about getting visited by Mabel which induced Darth to leave them the gift of the house. It could be argued that Darth didn't actually believe Hans and Chewy, however, the fact that he later leaves them the house, as Hans and Chewy told him that Mabel wanted, would lead one to believe that Darth not only actually believe Hans and Chewy but left them in a gift in reliance on their statement.

*even if  
Jokingly?  
intent reqd.*

This codicil is not valid for many reasons. Lack of capacity, insane delusions. Even if the court found it valid, the provision of the home to Hans and Chewy would likely be invalidated because of undue influence and fraud in the inducement.

Issue #3 - Who gets what?

As the 2001 codicil will not be held to be valid, the 1962 will controls and Leah and Luke will split the entire estate. The 1962 will won't be considered revived, as it was never validly revoked. An instrument that isn't valid cannot revoke a prior document and as such, the 1962 will remains valid. The law of Montana will control the disposition of the parcel of real property located there.

Hans and Chewy get nothing.

Issue #4 - Action against the lawyer

*what about  
look & make*  
Hans and Chewy could bring an action against the lawyer that assisted Darth with the codicil. A lawyer has a duty not only to his client, but to the intended beneficiaries of a will / codicil as well. Hans and Chewy will claim that they were intended beneficiaries of the 2001 codicil and since the lawyer didn't draft it as directed by Darth, they have lost their gift of Darth's residence.

✓ | This action would likely fail though because the codicil was not valid for many more reasons than just the scrivener's error.