

## July 1994 Question 6

Tess, a widow and resident of State X, a state with the same probate code as California, died in 1994. She was survived by a son, Bill, and a daughter, Jan. After Tess's death, a document was found that appeared to be her will. It is a printed will form, such as one would purchase at a stationery store. Several lines are written in what appears to be Tess's handwriting, including her signature and a date at the bottom of the document. The date indicates that the document was signed just after Bill was born and one year before Tess adopted Jan, who was ten years old at the time of the adoption. The document provides (the handwritten portions are underlined):

*I, Tess, being of **sound mind**, hereby revoke all previous wills and codicils. I make the following testamentary disposition of my property: **Everything to Bank in trust, to pay the income to those persons named on the accompanying list until they are 21 years of age, as needed for their support and education, each to receive an equal share of principal upon reaching that age.***

*Dated this ninth day of May 1961. Tess  
Witnessed: 1. [left blank] 2. [left blank]*

Paper-clipped to the will form are six newspaper clippings. Each is a story about a needy child.

In 1963, Tess had established an inter vivos trust of \$100,000 for Jan. In 1970, Tess told Jan that a trust had been created for Jan in lieu of leaving Jan anything in Tess's will. Jan later reported Tess's statement to her husband, Harry, but to no one else.

Bill and Jan each want that part of their mother's estate to which each claims he or she is legally entitled. Harry thinks Jan is being greedy, and would testify, if necessary, to what Jan told him about Tess's statement of intention regarding the trust. Jan denies that Tess told her any such thing, and does not want Harry to testify to the contrary.

Tess's net assets at her death consists of \$1,000,000 cash.

1. Is Tess's will valid? Discuss.
2. Is the testamentary trust valid, and if not, what result? Discuss.
3. If the testamentary trust is valid, to what share of the estate, if any, are each Bill and Jan entitled? Discuss.
4. In a judicial proceeding regarding the rights of Bill and Jan in Tess's estate: a) would Harry's testimony be admissible, b) assuming it is admissible, could he testify against Jan's wishes; and c) could Harry's testimony affect the outcome? Discuss.

ANSWER A TO QUESTION 6

## I. Validity of Tess's (T) Will

In order to admit T's will to probate, it must be shown that T had the requisite capacity, intent, and complied with the necessary formalities.

A. Capacity. T must show that she was over 18 years old and of "sound mind." She must have known the nature and extent of her bounty and that she was making a testamentary disposition. There's no problem here.

B. Intent. T seemed to have the necessary testamentary intent, and there are no facts to suggest that there was any fraud, mistake, or undue influence to negate such intent.

C. Formalities. T's will appears to be a valid holographic will. Modernly, if the material provisions and signature are in the testator's handwriting, the will is valid. Although the date is no longer required, it is present here. The only problem seems to be the attached newspaper clippings which, assumedly, are to constitute the "accompanying list" that T referred to. Under the doctrines of incorporation by reference or acts of independent significance, T may be able to validate this gift.

1. Incorporation By Reference. If T can show that the newspaper clippings existed before the making of her will and that the will adequately describes the document to be incorporated, the distribution may be okay. We do not have a date for the clippings, but in any event, the will's language of "accompanying list" is not a sufficient description. This doctrine should fail.

2. Acts of Independent Significance. If T can show that the newspaper clippings were made for a reason other than her own testamentary needs, the gift should be valid.

## II. Validity of Testamentary Trust

The trust will be valid if T, as settlor, can show the following: (1) Intent, (2) a corpus, (3) ascertainable beneficiaries, (4) a proper purpose, and (5) that the mechanics of action were proper. T had the requisite intent, the corpus was to be "everything" meaning her whole estate, and the purpose is proper. A testamentary trust is valid since it names a trustee (Bank). The only problem is with ascertainable beneficiaries, but the problem could be solved under either of the doctrines discussed in Section I.C. above.

If the trust is held to be invalid, the gift will fail. As there is no residuary clause, the only probable result would be that a resulting trust would ensue for the heirs of T. Bill and Jan would share equally.

## III. Bill's and Jan's Share.

A. Bill. If the trust is valid, Bill will appear to have gotten nothing under his mother's will. Bill cannot claim that he is "omitted" since he was born before the creation of the will. It will be presumed that T intended to disinherit Bill. He may, of course, introduce evidence to rebut this presumption. Absent other evidence, though, Bill gets nothing.

B. Jan. Jan was not provided for in the will either. She may, however, claim "omitted" status as she was adopted after the will was made. (Adoptees have the same rights as natural children.) If she was omitted, she would be entitled to her intestate share (1/2 of everything).

However, here, T expressly told Jan she was getting an inter vivos transfer (the trust) in lieu of a gift under the will. If this evidence is admitted, Jan will not take under the will. It appears, though, that Jan may keep this information secret, so she may get her intestate share.

IV. Harry's Testimony.

A. Admissibility. Harry wishes to testify as to what Jan told him about what T told Jan. While the testimony would be relevant to the issue of whether Jan is actually an "omitted" child, it presents problems of double hearsay. An exception would be necessary for Jan's statement to Harry and for T's statement to Jan.

1. Jan's Statement. Jan's statement would constitute a party admission (hearsay exception in state court) or a declaration against proprietary interest. Because she wouldn't have said it if it weren't true, this "link" is admissible.

2. T's Statement. There is no clear cut exception for T's statement. But if the court recognizes the FRE "catchall" it may come in because it's otherwise reliable and necessary.

B. Privilege. Jan will try to prevent Harry's testimony asserting the spousal incompetency privilege or the confidential communication privilege.

1. Incompetency. In state court, the person who is on trial is the holder of the privilege and can prevent the other spouse from testifying against her.

2. Confidential Communication. Jan can also stop Harry from testifying as to a communication made in confidence during the marriage. Either way, Jan should win.

C. Affect the Outcome? If Harry's testimony is admitted, it could affect the outcome of probate because it would be evidence that Jan was not an omitted child entitled to her intestate share.

ANSWER B TO QUESTION 6

1. Is Tess's Will Valid?

Generally, in order for a will to be valid and enforceable, it must be signed by the testator, and it must be witnessed by two disinterested witnesses who witness either the signing of the will by the testator or the acknowledgement by the testator that the document is, in fact, her will. The witnesses

need not sign the will at the same time, nor even at the same place. These requirements are those of a formal will. A holographic will is one that is written in the testator's own hand. All of the devises and amounts and most other material parts of the will must be in the testator's handwriting also.

### Holographic Will

Tess's will would probably qualify as a holographic will, and valid and enforceable. This is because the devises listed in the will are written in Tess's handwriting, and the signature is also written by Tess. The only part of the will that are not in Tess's hand is the general opening introduction and it is a standard opening in most wills. The fact that it is printed and not handwritten will not destroy the validity of this will.

### Witnesses

A holographic will, unlike a formal will, does not need witnesses in order to be valid. This is due to the inherent safeguards that are present when a testator writes in her own handwriting.

### Signature

The fact that the will is signed at the bottom of the document, at the end, gets rid of any possible integration problems that might exist had Tess signed in the middle of the will.

### Date

Although date is not a mandatory requirement in a holographic will (or any will), it would have been beneficial had Tess had another will written at a different time. The later will would be effective, if all factors were equal.

The will looks to be valid.

## 2. Is the Testamentary Trust Valid, And If Not, What Result? Trust Requirements

In order for a trust to be valid and enforceable, there are a few requirements that must be included. The trust needs a definite and ascertainable beneficiary. The trust needs a trustee. If there is no trustee appointed in the will, the court will appoint

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one in a testamentary trust (in an inter vivos trust, the failure to appoint a trustee by the settlor will prove fatal to the trust - shows a lack of intent on the part of the testator.) The trust needs a present and accountable res and not a mere expectancy. The trust needs a manifestation of intent on the part of the settlor, and the trust needs a proper purpose.

### Beneficiary(s)

Here Tess has named six beneficiaries in newspaper clippings. These will qualify as valid beneficiaries in the formation of a trust. Whether or not the separate clippings are valid and can be incorporated into the trust is an issue of its own.

### Can the Clippings be Incorporated into the Trust via Integration?

Integration of a document into a trust is used when there is more than one testamentary document. In

order for a document to be validly integrated into another, the formalities of a will must be complied with for both documents. Because the clippings do not comply with formalities (signed, witnessed, etc. ) they cannot be integrated into the trust.

#### Can the Clippings be Incorporated by Reference into the Trust?

In order for a document to be incorporated by reference into a trust, the document must (1) be in existence at the time the trust was executed; (2) be intended to be incorporated into the trust by the settlor; (3) be clearly identified in the trust; and (4) be completely unaltered. Here, there is an intent to have the clippings incorporated into the trust - she mentions the clippings (list) in the devise. They are not clearly identified. The trust mentions a list; the will includes six clippings "paper clipped" to the will. Unaltered? Because there is no dated list, we do not know whether or not Tess added to or subtracted from her clippings since the will was written; and this brings us to our last requirement - must be in existence at the time the will was executed or trust. Because trust was executed at death, the clippings could possibly become functional only if this trust qualifies as a "6300" trust - more on that later.

#### Can the Clippings be Brought in as Facts of Independent Significance?

In order to be valid under this theory, they must have a significance entirely independent from their testamentary significance. Here the trust is purely testamentary, and therefore, they - the clippings - are not of independent significance.

#### Can the Clippings Qualify as a Codicil?

A codicil requires that the formalities of a will be met. Here the clippings - with no signature, etc. - are not a codicil.

#### Conclusion to Clippings

The clippings will probably not be allowed in to affect the disposition of the trust, even though the intent of the testator is clearly the opposite.

#### Is the Trust Valid?

Is there trustee? Bank is named valid trustee.

Is there a trust res? A "6300" trust will not fail because of a lack of a valid res; the res can be filed by the will as it is done here. Valid res.

Manifestation of intent? "To pay the income to ..." This is good enough for this requirement to be met.

Proper purpose? Here - there looks to be a proper purpose.

Charitable trust - Tess is leaving the money in the trust for the support and education of six needy children. (This looks also to be a support trust, and a spend thrift clause will most likely be implied.) Valid purpose.

#### Valid Trust - Conclusion

If the beneficiaries' requirement is not met because of the failure of the clippings to be allowed in - no ascertainable beneficiary - no valid trust. But we will assume both arguments for purpose of these essays.

### 3. If Testamentary Trust Is Valid, To What Share Of The Estate If Any, Are Bill And Jan Entitled?

#### Assuming Trust is Valid

The facts state that Bill was born before the will was executed. Therefore, Bill would not be entitled to any share by pre-termitted heir status. Bill may argue that because the will was "signed just after Bill was born," that it was written before he was born, and he should be able to take his intestate share due to his pretermitted heir status because it was written before he was born. Not a very strong argument, however, day of execution is the key.

Jan's adoption by Tess, one year after the will was executed, may entitle her to her intestate share due to her pretermitted heir status. The fact that she was born nine years before Tess wrote the will is not fatal to her claim. She only became Tess's daughter legally after the will was written, and therefore, may claim as pretermitted heir.

However, the facts state that Tess had established another trust - inter vivos - for Jan in lieu of Jan taking under the will. This will act as a satisfaction of Jan's-share in advance. Because Harry is willing to testify as to this fact, Jan will most likely not collect as pretermitted heir. Also the fact that Jan was left this inter vivos trust in advance will act to even further show Bill was not intended to take anything.

#### If Trust Is Invalid - Jan and Bill Will Take Half Each.

### 4. (a) Would Harry's Testimony Be Admissible?

Relevance - Harry's testimony is relevant. It would show that Jan was not intended to take at Tess's death.

#### Hearsay

Is it offered for truth of the matter asserted?

Yes - Harry wants to prove Tess's intention regarding the trust - is hearsay.

If Harry want to show Jan's notice of Tess's intent - may be allowed in as non-hearsay.

Exceptions? - State of mind - exception shows Jan's intent to collect more than she should or was intended to. Admission - considered non-hearsay - this may be an admission that Jan knew the inter vivos trust was intended to take the place of the testamentary disposition.

Declaration against interest - is against her interest but declarant must be unavailable - not applicable here.

### (b) Could Harry Testify?

Spousal Immunity? - Harry holds it - he could testify under this theory against

his wife's interest, but he could not be compelled. Marital Communication - Jan would have a better chance keeping it out with

this exception - Jan holds it if she told Harry,

relying on the confidential nature of the marriage.

### (c) Could Harry's Testimony Affect The Outcome?

Jan - is not on trial - the validity of the will is. If Jan fights to collect her intestate share through her status as pretermitted heir - Harry's testimony regarding Tess' attempted satisfaction in advance toward Jan could affect the outcome. But Jan may be able to keep it out as a privileged marital communication.

February 1995

### Question 6

Gloria, a widow, signed a typewritten will in the presence of Tom and Larry, who, being present at the same time, witnessed Gloria's signing, understood the document was Gloria's will, and signed the will as witnesses. The will contained the following provisions:

1. \$10,000 to my friend, Tom.
2. My residence to my only daughter, Dora, provided she survives me by thirty days.
3. All my Mega Corp stock to my friend, Max, requesting that he distribute it as indicated in a letter to be found with this will.
4. The residue of my estate to my only son, Seth.

Subsequently, Gloria and Dora were involved in an automobile collision. Dora was killed instantly, and Gloria died one day later in the hospital.

Gloria's will is found in her safe deposit box together with a typewritten, signed, but unwitnessed

letter requesting Max to distribute the Mega Corp stock to Ben, a needy cousin whom Gloria had assisted financially in the past. Max truthfully testifies that the letter was prepared after the will was executed and that he orally agreed with Gloria to distribute the stock as requested in the letter.

Dora is survived by her husband, Hank, and her daughter, Gail. In addition to Hank and Gail, Tom, Max, Ben and Seth all survived Gloria. Gloria's net estate consists of her residence, Mega Corp stock, and \$100,000 in cash.

What portion of Gloria's estate, if any, should be distributed to each of Tom, Hank, Gail, Max, Ben and Seth? Discuss.

Assume that the applicable statutory law is the same as that of California.

#### ANSWER A TO QUESTION 6

A. Gloria's will is valid under California law as a formal (attested) will. She signed the will in the presence of two witnesses who both signed and knew the instrument was Gloria's will. The fact that Tom was both a witness and a beneficiary of the will does not automatically invalidate the entire will - see discussion below.

1. The \$10,000 Gift to Tom  
Tom as Interested Witness

Because Tom was to receive a general devise of \$10,000 under Gloria's will at common law, he was not competent to be a witness. Under California law if there are not two other disinterested witnesses, Tom's witnessing creates a rebuttable presumption of undue influence, fraud or duress. If Tom fails to rebut the presumption he can take no more than his intestate share. If Tom had unduly influenced Gloria or otherwise he would be denied any share of her estate.

We do not know Tom's relationship to Gloria. If he was in a confidential relationship with

her or the gift to him appeared unnatural, undue influence would be presumed. Tom had the opportunity and disposition to affect the will and the disposition seemed unnatural. We do not have enough facts to establish undue influence on behalf of Tom. He is required, however, to rebut the presumption that arises from there only being two witnesses (and one interested).

Tom is not described as a relative, he is a friend of Gloria's. Therefore, he is entitled no share if he doesn't rebut the presumption, as friends are not heirs under the intestacy statute.

## 2. MY Residence

The specific devise to Dora (if it is considered a specific devise, the use of the word "my" presumes only one residence but if there is ambiguity, the devise may be classified as general) conditioned upon her surviving Gloria fails. Under a Simultaneous Death Act, clear and convincing evidence would need to be established only if it can't be determined who dies first. In this case Dora clearly died before Gloria.

In common law the death of a beneficiary after the will was executed and before the testator died meant the gift to that person "lapsed" and went to the other class members (if a class gift) or the residuary estate. California like most states has an "anti-lapse" statute to prevent the harsh result of the common law. Under California law, the issue of the deceased deviser receives her share, if the devisee was kindred of the testator or the testator's spouse. Dora is survived by her husband Hank and daughter Gail. Hank is not considered "kindred" under the anti-lapse statute and cannot take under it. Gail, as a child of Dora, is "kindred" under the statute and takes the devise of Gloria's residence so as to prevent lapse.

Sam will argue that the anti-lapse statute doesn't apply as Gloria specifically conditioned Dora's devise of the house on surviving Gloria by 30 days. Since Dora failed to survive Gloria by 30 days the gift fails and passes to the residuary estate (i.e. Sam) as per the intent to Gloria.

## 3. "All my Mega Corp. Stock"

The gift of Gloria's stock to Max to distribute according to a letter to be found with the will should be analyzed as to integration, incorporation and acts of independent significance.

### Integration

All the documents present at the execution of the will may be integrated into that will upon a showing of testator's intent to integrate. Here Gloria evidenced an intent to integrate but according to the truthful testimony of Max, the letter was prepared after the will was executed and therefore was not present and integrable.

### Incorporation by Reference

Documents may be incorporated by reference of the testator in the will if the document is sufficiently described in the will, in existence as of the date of the execution of the will, and the document can be shown to be that identified in the will. Gloria described the letter as one to be found with her will, which it was, in her safety deposit box. The letter fit the description of the one specifically mentioned in the will as it provided for Max to distribute the Mega Corp. stock to Ben. However, the letter was not in existence at the time of Gloria's execution of her will according to Max's testimony, therefore it cannot be incorporated into the will even though Gloria intended it.

### Acts of Independent Significance

The "blanks" in a will can be filled in by use of acts or documents executed by testator, non-testamentary acts that have meaning apart from and independent of any testamentary intent. The letter described in Gloria's will clearly was intended to be testamentary as it provided for the distribution of her Mega Corp. stock upon her death. Therefore the letter has no independent significance and cannot be used to "fill in the blanks" in Gloria's will.

Max's oral agreement to distribute the stock as requested may be considered a secret trust. A secret trust arises when a beneficiary is given an outright gift but evidence shows the testator intended it to be held in trust by the beneficiary for another. In this case, if the gift becomes an outright gift to Max because the letter is not given any weight, Ben may show extrinsic evidence of Max's promise, and the court will impose a constructive trust in favor of Ben. Courts have imposed constructive trusts even when the beneficiary has promised to hold the devise in trust for another after the execution of the will (as occurred here) even though testator didn't rely on the promise in executing the will.

The other heirs will argue that Max's gift of the Mega Corp. stock failed when the letter was found not to be integrated or incorporated. They can argue that Max's devise was conditioned upon his power of appointment to distribute the stock. Max can argue that Gloria's "request" is only precatory language and he takes outright. Ben can then argue that Gloria's language was not precatory as it was a specific request and she had financially assisted Ben in the past.

#### Codicil

Ben and/or Max can argue that the letter was a codicil thereby incorporating the will (and curing any defect). However, codicils must be prepared with the same formalities as a will and the lack of witnesses is fatal to a contention that the codicil was valid. The codicil fails under the statute of wills which by ritual, evidence and protective measures governs the testamentary transfer of property.

#### 4. Residue of Estate

The \$10,000 to Tom, if the undue influence presumption is not rebutted, would return to the estate as he is not entitled to an intestate share as he is a friend, not considered an heir under the intestate statutes. Under common law a failed/void gift becomes part of the residuary.

Sam would receive the \$100,000 cash, and depending on whether Max's devise is void, he may receive the Mega Corp. stock.

If Gloria's will is considered invalid and the intestate succession controls, Sam would receive the entire estate as Dora predeceased Gloria, Gloria is widowed, and Sam is her only son. (There may be more siblings but the problem doesn't provide for them.)

### ANSWER B TO QUESTION 6

#### I. Validity of Will

##### Witnessed Will

Gloria signed a typewritten will in the presence of Tom and Larry. The witnesses observed Gloria publish her signature to the witnesses, and then Gloria observed Tom and Larry sign the will. All the requirements for a witnessed will have been met: (1) testator's signature and publication of the will, and (2) two witnesses's signatures on the will.

Thus, Gloria's will appears to be valid.

#### II. Distribution of Gloria's Estate

##### A. \$10000

Gloria bequeathed that \$10,000 from her estate be given to her friend, Tom. Gloria's estate has \$ 100,000, so this gift would be valid except that Tom signed Gloria's will making him an interested witness.

1. Interested Witness

If one of the required two witnesses is an interested witness, then a presumption of undue influence exists. The burden shifts to the interested witness to prove that the will was not made with his undue influence over the testator. Tom will have to show that he only witnessed the will after Gloria had prepared the contents. Tom will have to show that he was unaware of the distributive scheme until after the dispositions had been made by Gloria.

If Tom is unable to succeed, then the court has a number of options. They may either: (1) invalidate the entire will, (2) invalidate the interested witnesses' gift, or (3) create a constructive trust in favor of Gloria's estate.

2. Failed Gift - Intestate Share

If the gift fails, Tom may still take under the will the amount he would have taken intestate. Here, Tom was only a friend of Gloria's and would not be entitled to anything intestate. Thus, the gift to Tom will probably fail and he will receive nothing.

The \$10,000 gift will go back to the residue of the estate, and Seth will inherit the \$10,000.

B. Residence

Gloria bequeathed the residence to her only daughter, Dora. However, Gloria and Dora were involved in an automobile collision. Dora was killed instantly, and Gloria died one day later. Dora is not alive to take the residence under the will.

1. Anti-Lapse Statute

In California, the court has implemented an anti-lapse statute when the beneficiary has predeceased the testator if: (1) the beneficiary left a lineal descendant, and (2) the beneficiary was a blood relative of the testator or the current or former spouse of the testator.

Here, Dora was Gloria's only daughter, thus, a blood relative. Additionally, Dora left a lineal descendant, her daughter, Gail. If no other conditions were attached to this gift, Gail would be bequeathed the residence.

2. Condition Precedent

Gloria's gift to Dora was subject to a condition precedent, that "she survive" Gloria "by thirty days." Here, Dora did not even survive Gloria by one day, thus, the condition precedent was not met.

The court may try to carry out the testator's intent and find the condition invalid so as to gift the residence to Gail. However, Gloria certainly knew about Hank, Dora's husband, and Gail. By creating the condition precedent, Gloria's intent could be construed as an attempt to avoid gifting the residence to Hank and Gail.

Thus, the gift will fail and the residence will go to the residue. So Seth will take the residence.

C. Mega Corp. Stock

1. Validity of Testamentary Provision

Gloria bequests all her Mega Corp. stock to her friend, Max, requesting that he distribute it as indicated in a letter that was to be found with the will. Upon Gloria's death, the will accompanied by a letter was found in Gloria's safe deposit box.

a. Codicil

Gloria's typewritten letter that was found with the will may have been an attempt to create a codicil or an amendment to the will. However, the letter met the requirements for a witnessed will, typewritten and signed by Gloria, but failed to have two witnesses' signatures. Thus, the note will not be deemed a codicil.

b. Incorporated by Reference

Gloria's reference to the letter may indicate her attempt to incorporate the letter into the will by reference. However, to successfully incorporate the letter, two requirements must be met: (1) the will adequately describes the letter, and (2) the letter is in existence at the time of the will's creation.

The will adequately describes a letter that was to be found with the will, and, in fact, was found with the will. However, there is no indication that the letter was in existence at the time of the will's creation, since there are no dates on the documents. Thus, the letter is not adequately incorporated by reference.

c. Act of Independent Significance

The letter may be valid if it has validity apart from its meaning under the will. The letter has no independent significance, thus, this gift will fail.

2. Semi-Secret Trust

This gift attempted to create a semi-secret trust. Gloria devised the stock to Max and only hinted as to the distribution that Max was to undertake according to an independent letter.

Courts will not allow extrinsic evidence to be introduced to reveal the meaning of the secret. Thus, the trust will fail.

3. Valid Trust

If the court were to validate the trust, five elements would have to exist: (1) interest, (2) identifiable trust corpus, (3) ascertainable beneficiaries, (4) proper purpose, and (5) mechanics.

Here, all the elements are met. Gloria's intent to create a trust is clear, the trust corpus is the Mega stock, the beneficiary is Gloria's cousin Ben, whom she helped financially in the past. Additionally, the purpose is proper, to assist her needy cousin, and all the mechanics have been met, the declaration of the transfer of stock and the letter. Thus, the statute of frauds is met, even though the gift would not have needed to be in writing to be valid.

Thus, if the court upholds the trust, Ben would be the income beneficiary of the stock.

4. Resulting Trust

The trust appears to fail because it was a semi-secret trust. Thus, the court may create a resulting trust and the stock will revert back to the residue, and Seth would take the stock.

However, the court may also deem the gift as having passed to Max and Max will keep the stock.

5. Constructive Trust

The court may also create a constructive trust in favor of Ben. The courts try to carry out the testator's intent, and here the intent was clearly to benefit Ben.

Residue of Estate

The residue of Gloria's estate was left to Seth, her only son. Thus, depending on the above court decisions Seth will receive \$ 100,000, the residence and the stock.

E. Intestate

If the court negates the validity of the will, due to Tom's undue influence, then Gloria's estate will pass intestate.

Right of Representation

In California, the court follows the distribution scheme for intestate of per capita by right of representation. The court will look to the testator's closest level of surviving relatives and relatives on the same level that left lineal descendants. Then the court will divide the estate on that level, the lineal descendants receiving the portion that their heir would have received.

Thus, Seth would received his 1/2 of the estate intestate, and Gail, as Dora's lineal descendant, will receive Dora's 1/2 of the estate intestate.

