

GENERAL

When can a Will be revoked? At any time while the Testator is alive.

How can a Will be revoked?

1. By another Will or Codicil
2. Marriage of Testator
3. By some duly executed document
4. Destruction of the Will

LATER WILL OR CODICIL

s16(d) Wills Act Cancels all former Wills & Testamentary Dispositions

Express Revocation by later Will/Codicil

Express clause that "I revoke all former wills and testamentary dispositions..."

Toomer v Sobinska Wrote a note saying former Will is revoked and had 2 witnesses sign. HELD revoked the former Will

Re Thompson Hoo Seung Made 2 Wills that did not revoke the other because no revocation clause. 3rd Will had revocation clause so revoked all other Wills.

"This is my Last Will & Testament" is **NOT** sufficient to revoke

Implied revocation by a later Will/Codicil

Document must be construed because it does not expressly state.

LATER WILL OR CODICIL (cont)

Provisions which are inconsistent with those in an earlier Will the later Will is said to have impliedly revoked the earlier one to the extent of the inconsistency.

Partly Inconsistent

Lemage v Goodban If a subsequent testamentary paper is only partly inconsistent with one of an earlier date, the latter instrument is only revoked as to those parts where it is inconsistent, and both of the papers are entitled to probate.

Totally Inconsistent

Re Bryan's Estate The last document is so inconsistent with the others that they cannot stand together; and, further, that if this is not plain from the documents themselves. Revocation may be implied from the terms of the last document, even though it contain no express clause of revocation and the whole estate of the deceased be not thereby disposed of.

No Inconsistency - No Revocation Clause

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LATER WILL OR CODICIL (cont)

The documents taken together will constitute the Last Will

Revocation Clause - No Date

If priority of the documents is unknown then none of the documents will be admitted to probate.

Townsend v Moore A testatrix executed two codicils, both dated the same day, their provisions being to some extent inconsistent. The evidence of an attesting witness proved, in the opinion of the Court of Appeal, that the two codicils were executed on the same occasion and practically simultaneously. There was nothing to shew which was in fact executed first. Gorell Barnes J. refused to admit either codicil to probate, on the ground that an introductory clause in each shewed that it was intended to operate only in the event of the testatrix surviving her husband, whereas she died before him.

Revocation of revoking Will/Codicil

If later will revoked, cannot revive the previous Will.



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MARRIAGE

S13(1), (2), (3), (4) Wills Act Automatic consequence - Has to be by **VALID** marriage.

VOID & VOIDABLE MARRIAGE

VOID Marriage Does **NOT** revoke a Will because it does not effect change in status. eg Minor

Mette v Mette Testator married late wife's half sister's wife. Was a prohibited degree of marriage in English law. Did **not** revoke Will.

VOIDABLE Marriage Valid until annulled and **WILL** revoke a Will once annulled.

Re Roberts Married a person with senile dementia and other mental disorders. Will revoked because marriage not annulled.

EXCEPTIONS

s13(3) (4) Wills Act **Will made in CONTEMPLATION of marriage**

Expectation of the marriage must be inferred from the language used.

MARRIAGE (cont)

In The Estate of Langston Beck Inferred language - "bequeath unto my fiancée Maida Edith Beck" - Marriage did **NOT** revoke the Will as it was shown to be made in contemplation of marriage.

Pilot v Gainfort Presumption of Death - The testator, being married to a woman who had left him some years before and had not been heard of, bequeathed the whole of his estate to a woman with whom he was living and whom he described as his wife. Shortly afterwards he married the woman in question, relying on the legal presumption of the death of his wife:-Held- that the marriage was prima facie valid and that the will was expressed to be made in contemplation of it, and was accordingly within the protection of the section and not revoked by the marriage.

MARRIAGE (cont)

Must name or describe the person expecting to marry.

Sallis v Jones In the T's final sentence of the Will, he declared "that this will is made in contemplation of marriage."- TThe T married his second wife thereafter in 1927. He died in 1934. A probate action was begun by the executrices (his daughters) claiming to have the Will established. The D (the T's widow) alleged that the Will was invalid, on the ground that it did not come within the exception to s18 of the Wills Act, set out in s. 177 of the Law of Property Act, 1925. **Held:** for s18 Wills Act to operate to revoke a Will made before marriage, there must be found in the Will something more than a declaration relating to or a reference to marriage generally.



MARRIAGE (cont)

**Must marry the person intended to marry and not someone else.

s31 Marriage Act **Marriage in extremis/clinical marriage** (Death bed Marriage)

Does **NOT** revoke a Will

s31(7) Marriage Act No marriage solemnized under the provisions of this section shall operate as a revocation of any Will.

s14 Marriage Act **Dissolution of Marriage**

Cancels Appointment of former spouse as Executor

Gifts Lapse To former spouse **After** dissolution

REVOCATION BY DESTRUCTION

s16(d) Wills Act

Must be done by Testator, some other person in his presence and by his direction.

Two requirements: (1) Physical Act (2) Intent to Revoke

REVOCATION BY DESTRUCTION (cont)

Cheese v Lovejoy A testator drew his pen through the lines of various parts of his will, wrote on the back of it "This is revoked," and threw it among a heap of waste papers in his sitting-room. A servant took it up and put it on a table in the kitchen. It remained lying about in the kitchen till the testator's death seven or eight years afterwards, and was then found uninjured **HELD** Will was not revoked.

Physical Act of Destruction

Must burn, tear or other act of destroying. Must be **actual** destruction.

Doe d Reed v Harris Act of burning revoked the Will.

Extent of destruction Entire Will need not be destroyed.

Otherwise destroying

Crossing out Ejusden generis rule applies. Striking through the body of the Will with a pen and crossing out the names of the Testator, Witnesses and attestation clause was a cancellation and not a destruction.

Stephens v Taprell

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Revocation Declaring Intent to Revoke

The intention to revoke may be in the form of a letter written by the testator and executed in the same manner as a will.

It is executed like a Will so it is treated like a Will.

Toomer v Sobinska

Supra

