

Revoking wills

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Introduction

- Methods of revocation
 - New will/codicil
 - Written declaration
 - Destruction
 - Marriage/civil partnership

Wills Act 1837

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Section 20

No will to be revoked but
by another will or codicil, or
by a writing executed like a
will, or by destruction

(1) “by another will or codicil executed in manner herein-before required”

- Express
 - States that all wills are revoked by new will
 - Whether revocation clause revokes all previous wills may still depend on construction of the clause
 - *Re Wayland* [1951] 2 All ER 1041 – “this will is intended to deal only with my estate in England”
 - Description in will as “last” or “last and only” will is insufficient

(1) “by another will or codicil executed in manner herein-before required”

- Implied
 - Matter of construction
 - Prior will impliedly revoked by later will so far as later will contains inconsistent or repetitive provisions
 - The question is what dispositions did the testator intend, not which, or what number of, papers did he or she desire or expect to be admitted to probate: *Lemage v Goodban* (1865) L.R. 1 P. & D. 57

(2) “by some writing declaring an intention to revoke the same, and executed in the manner in which a will is herein-before required to be executed”

- Intention must be declared
- Comply with formalities for due execution of a will
- Otherwise no other limitations on form or content of document
- E.g. obliterated codicil, written words at the end that “we are witnesses to the erasure of the above”, signed by testator and attested by two witnesses: *Re Gosling’s Goods* (1886) 11 PD 79

(2) “by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same”

- Act of destruction:
 - Sufficient if essence/key component is destroyed
 - Must be carried out by testator or by person in his or her presence under instruction
 - Destruction must be completed

(2) “by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same”

- Intention:
 - By evidence of testator’s express intention to revoke
 - Inferred from state and condition of destroyed instrument
 - Inferred from intrinsic circumstances
- Rebuttable presumption that lost will has been destroyed with intention to revoke

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Sections 18-18C

Marriage and civil
partnership



Marriage and civil partnership

- Marriage and civil partnership automatically revoke a will made by either party prior to the marriage or civil partnership
- Exceptions
 - Certain appointments made by will
 - Wills demonstrating an intention that the will (or particular disposition) shall not be revoked by marriage or civil partnership

Scope for reform

- Law Commission Consultation Paper on Wills - 2017

What about dissolution or annulment?

- Will is not revoked
- The former spouse or civil partner is treated as having predeceased the testator

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