

Revocation of a Will by Subsequent Will

- Revocation can be by Subsequent Will or Codicil
 - Can revoke a previous will (or many) in whole or on part
 - Can be done even by a holographic or oral will where allowed
 - Does not need substantive provisions
 - Rules of intestacy would apply
- To the extent not revoked, all wills and codicils are presumed to be valid
- If two wills are inconsistent, the later one controls because it impliedly revokes the first one
 - However, ambiguities will be resolved to uphold both wills.
- Strategy tip: Have each will revoke all previous ones!

Revocation by Physical Act

- UPC: General Standard is that it needs to be clear that the intent is to revoke
 - Throwing it in the trash can is not enough
- Examples of effective revocation:
 - Burning, tearing, obliterating (UPC language)
 - Even then, evidence of intent may be required since if these things happen by accident, the will is not revoked
- Can be done by testator or someone at testator's direction
- Revocation of part of the will by physical act
 - Not allowed at all in some states
 - UPC allows it
 - But what happens when there is a partial revocation of a gift is very complex since it is not done with testamentary formalities.

Presumptions and Lost Wills

- If a will is found destroyed in Testator's possession, the presumption is that s/he revoked it.
 - But other evidence, such as preservation of a copy or testimony, can rebut this presumption.
- If found destroyed in someone else's possession, the presumption is accidental destruction.
- If a will is lost but there was no revocation, it can still be probated.
 - But there needs to be evidence of what the will said
 - An existing photocopy and testimony that there was no intent to revoke is usually enough to allow the copy to be probated.

Dependent Relative Revocation

- Applies where it's clear that an attempt to revoke was only based on the intent to replace with a new will.
- In the case that the second disposition was never completed, a court may rule that the first will is still valid.
 - The court may use evidence to determine whether the testator would have rather had the first will stay intact or die intestate.
- Can also be used when the second disposition is invalid for other legal reasons.

Revival

- If the second will revoking the first will is revoked, the question becomes whether the first will is revived
- This determination is based on the intent of the testator
 - Extrinsic evidence is allowable
- UPC Presumptions
 - Where the second instrument entirely revoked the first will, the presumption is against revival.
 - Where the second instrument was only a codicil to the first will, the presumption is that the whole first will is revived.

Other Revocation of Gifts

- Divorce automatically revokes provisions in favor of the spouse.
 - This is true even if the will was done before marriage
 - Remarriage reinstates the provisions
 - Other provisions remain intact as though the spouse was deceased without issue or disclaimed
- Lifetime gifts are generally irrevocable. This includes gifts to POD accounts.
 - Exceptions:
 - Gifts *causa mortis*
 - Conditional gifts (e.g., engagement ring)
- Trusts are now presumed to be revocable unless stated otherwise
 - Not all states subscribe to this rule.

Revocability of Other Transfers

- Life Insurance
 - Insured/owner can change beneficiaries at will
- Pension plans/ IRAs/ERISA, etc.
 - Owner can change beneficiaries, though spouses may have priority rights in some cases
- Joint tenancies
 - In the case of a joint tenancy (or tenancy by the entirety), many states allow the joint holder half the rights. So, removing all of your contribution to a joint account or tenancy may not be allowed.
 - This is especially true in the case of a married couple
 - As usual, intent of the parties can counter these presumptions
- Wills cannot generally affect property that passes by operation of law, even if that's what the owner/testator intended.