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STUDENT NOTES

Implied Revocation of Wills In West Virginia

"A man may as oft as he will make a new testament, even unto his last breath, neither is there any cautel under the sun to prevent this liberty, but no man can die with two testaments, and, therefore the last and newest is of force so that if there were a thousand testaments, the last of all is the best of all and maketh void the former."[1] Thus wrote Swinburn, one of the earliest writers on wills.[2] That the last is "best" and voids all prior wills is now a principle followed in a minority of jurisdictions in the United

[1] Kearns v. Roush, 106 W. Va. 663, 667, 146 S.E. 729, 730 (1929); SWINBURN ON TESTAMENTS, § 14. Formerly the word "testament" referred exclusively to the final disposition of personal property. This interpretation carried over to the United States in some jurisdictions. See Wyers v. Arnold, 347 Mo. 413, 147, S.W.2d 644 (1941); Aubert's Appeal, 109 Pa. 447, 1 Atl. 336 (1885). Today, however, the common usage is to employ the words "testament," "will," and "last will and testament" interchangeably. Occidental Life Ins. Co. v. Powers, 192 Wash. 475, 74 P.2d 27 (1937).

[2] 5 HOLDSWORTH, HISTORY OF ENGLISH LAW 14 (1924). Holdsworth states that Swinburn's text was the most practically useful book of the period, having been first published in 1590.