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Wills -- Partial Revocation for the Benefit of a Pretermitted Spouse

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illegal activity can be inferred from the actions of the individual in furtherance of Party goals. In *membership* prosecutions, the statute provides that membership shall be "knowing"[48] and the specific intent can be inferred from the actions of the defendant.

2) The Party is engaged in the requisite illegal advocacy, committed in the present, and tending to "incite" either immediate or future violent action on the part of the hearer. The narrow but vital distinction between intent to advocate in the future, and present advocacy of future action, can be described as the "distinction between the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken."[49] In *conspiracy* prosecutions, this establishes the conspiracy and the required overt act by a conspirator. In *membership* prosecutions this evidence is necessary to show that the organization of which the defendant is charged with being a knowing member, is in fact an organization which engages in this illegal advocacy. There is little difference between a charge of being a knowing member of a group which engages in criminal conduct (membership clause cases), and a charge of being a member of a large conspiracy, many of whose members are unknown (conspiracy clause cases).[50]

The *Noto* trial was held prior to the rendering of the decision in *Yates*.[51] It is probable that the Government was unaware at that time of the importance of clearly establishing that the *organization* is engaged in present overt illegal advocacy of action. In the *Scales* prosecution, the Government was alerted to the standards established by *Yates*.[52] It therefore proved illegal activity on the part of the Party, and the Supreme Court properly affirmed.

ELLIOT L. MILLER

WILLS—PARTIAL REVOCATION FOR THE BENEFIT OF A PRETERMITTED SPOUSE

An unmarried testator executed a will in which he made a bequest to the petitioner in her married name. Two years later, the petitioner divorced her husband and married the testator. During coverture, the testator made no change in his will. He subsequently died without lineal

48. 18 U.S.C. § 2385 (1958).

49. Frankfurter, J. concurring in Dennis v. United States, 341 U.S. 494, 545 (1951).

50. Scales v. United States, 367 U.S. 203, 226 n.18 (1961).

51. The decision in *Yates* was rendered in June 1957. Scales and Noto were indicted in November 1954.

52. The first Scales prosecution, begun in 1954, was reversed in 1957 on a confession of error by the Government, due to the decision in Jencks v. United States, 353 U.S. 657 (1957). Scales was subsequently retried in 1958, after the decision in *Yates* had been rendered.

descendants. Seeking construction of the will, the petitioner asserted that she was the surviving pretermitted spouse, not provided for in her husband's will, and entitled to her intestate share.[1] The trial court adopted the petitioner's view. On appeal, *held*, affirmed: a surviving spouse, designated by her former name as a beneficiary in the testator's will, but who, after the will was executed, had become the testator's wife, was not "provided for in the will" within the meaning of the statute and, therefore, may take her intestate share. *In re Steinert's Estate*, 137 So.2d 856 (Fla. App. 1962).

At common law, marriage and the birth of issue revoked, by operation of law, a man's previously executed will;[2] neither event alone was sufficient.[3] Marriage alone did revoke a will previously executed by a woman.[4] Legislation in the various states[5] designed to cope with the effects of a change in the marital status of a testator or testatrix has resulted in a

1. FLA. STAT. § 731.10 (1961) states: "When a person marries after making a will and the spouse survives the testator, such surviving spouse shall receive a share in the estate of the testator equal in value to that which such surviving spouse would have received if the testator had died intestate, unless provision has been made for such spouse by marriage contract or unless such spouse is provided for in the will, or unless the will discloses an intention not to make such provision. The share of the estate which is assigned to such pretermitted spouse shall be raised in accordance with the appropriation of assets set forth in this law."

2. Belton v. Summer, 31 Fla. 139, 12 So. 371 (1893); Hoy v. Hoy, 93 Miss. 732, 48 So. 903 (1908); Rankin v. McDearmon, 38 Tenn. App. 160, 270 S.W.2d 660 (1953); ATKINSON, HANDBOOK OF THE LAW OF WILLS § 85 (2d ed. 1953); 95 C.J.S. *Wills* § 291 (1957). See Annot., 92 A.L.R. 1010 (1934) for a discussion of the common-law rule regarding the effect of an antenuptial agreement.

3. For examples involving marriage alone, see Herzog v. Trust Co., 67 Fla. 54, 64 So. 426 (1914); Hilton v. Johnson, 194 Miss. 671, 12 So.2d 524 (1943); *In re* Santelli's Estate, 28 N.J. 331, 146 A.2d 449 (1958).

For examples involving birth of issue alone, see Easterlin v. Easterlin, 62 Fla. 468, 56 So. 688 (1911); Burns v. Burns, 224 P.2d 178 (Wyo. 1950).

4. Colcord v. Conroy, 40 Fla. 97, 23 So. 561 (1898). In many states today, even in the absence of a statute, marriage has no effect upon a wife's previously executed will, since other statutes, *e.g.*, FLA. STAT. § 708.02 (1961), have removed the wife's traditional disabilities. See *In re* Tuller, 79 Ill. 99, 22 Am. Rep. 164 (1875); Hastings v. Day, 151 Iowa 39, 130 N.W. 134 (1911); Vanek v. Vanek, 104 Kan. 624, 180 Pac. 240 (1919); Roane v. Hollingshead, 76 Md. 369, 25 Atl. 307 (1892); *In re* Walter's Estate, 60 Nev. 172, 104 P.2d 968 (1940), noted in 8 U. CHI. L. REV. 166 (1940); *In re* Wehr's Will, 247 Wis. 98, 18 N.W.2d 709 (1945). *But see In re* Lewis' Will, 41 N.M. 522, 71 P.2d 1032 (1937), in which the court discusses the statutory scheme of New Mexico (which did not include a statute on the effect of marriage), and concludes that upon marriage, each spouse obtains a new heir, hence marriage alone revokes the previously executed will of either a man or woman.

5. For one apparent situation in which there has been no legislation, see Rankin v. McDearmon, 38 Tenn. App. 160, 270 S.W.2d 660 (1953). See generally 2 PAGE, LAW OF WILLS §§ 21.86-.111 (Bowe-Parker rev. ed. 1960); 1 VERNIER, AMERICAN FAMILY LAWS § 61 (1931) (This contains a table which, although somewhat out-dated, gives an excellent portrayal of the diversity in statutory structure among the several states.); Annot., 127 A.L.R. 770 (1940); 95 C.J.S. *Wills* § 291 (1957); Bordwell, *Statute Law of Wills—Revocation*, 14 IOWA L. REV. 283, 290 (1928-29); Durfee, *Revocation of Wills by Subsequent Changes in Condition of Circumstances of the Testator*, 40 MICH. L. REV. 406 (1942); Graunke & Beuscher, *The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of Testator*, 5 WIS. L. REV. 387 (1928).

variety of views, making it impossible to speak of a majority or minority position. The trend, however, has been to provide for revocation by operation of law, as the statutes dictate the following varying results:[6]

(1) the testator's marriage revokes the will absolutely;[7]
(2) the testator's marriage partially revokes the will, giving the surviving spouse an intestate share;[8]
(3) the testator's marriage revokes the will unless it appears that the will was executed in contemplation of marriage;[9] and

6. ATKINSON, HANDBOOK OF THE LAW OF WILLS § 85, at 424 (2d ed. 1953). There are other factors which complicate a classification of the various statutes:

1) Whether a statute which refers only to a man's will also applies to a woman's will. See Estate of Stark, 52 Ariz. 416, 82 P.2d 894 (1938).

2) Whether a statute that sets out the means of revocation of a written will is exclusive, or whether there might still be revocation by operation of law. *Compare* Rabe v. McAllister, 177 Md. 97, 8 A.2d 922 (1939), *and* Durfee v. Risch, 142 Mich. 504, 105 N.W. 1114 (1905), *with* Owen v. Younger, 242 S.W.2d 895 (Tex. Civ. App. 1951). The *Owen* case is extremely interesting in that by strict interpretation of a statute, the court placed Texas in the position of having no form of revocation by operation of law, whether statutory or by common law, and there was no Texas statute indicating such was the intent of the legislature.

3) Whether a statute that refers to an "unmarried" testator (or testatrix) is to be interpreted strictly, hence barring the revocation of a will executed during a previous coverture. See Parker v. Foreman, 252 Ala. 77, 39 So.2d 574 (1949), noted in 13 U. DET. L.J. 105 (1950); *In re* Lufkin's Estate, 32 Hawaii 826 (1933) (HAWAII REV. LAWS § 322-11 (1955) eliminates the problem); Grave v. Kittle, 122 Ind. App. 278, 101 N.E.2d 830 (1951), noted in 21 U. CINC. L. REV. 322 (1952) and 14 GA. B.J. 482 (1952) (the author of the latter concluding that Georgia would reach an opposite and more desirable result).

7. *E.g.*, ILL. REV. STAT. ch. 3, § 197 (1959), which provides: "Unless the will expressly provides to the contrary: (1) marriage of the testator revokes a will executed by the testator before the date of the marriage . . ."; ORE. REV. STAT. § 114.130 (1961), which provides: "A will made by any person is deemed revoked by his or her subsequent marriage . . . ."

A statute, unless it expressly so provides, will not be construed to allow partial revocation; rather, a will would be struck down in its entirety. Examples of unsuccessful attempts to engraft an interpretative rule of pro tanto revocation where not expressly provided in a statute are: *In re* Tenner's Will, 248 N.C. 72, 102 S.E.2d 391 (1958); McJunkin v. Moody, 194 S.C. 95, 9 S.E.2d 209 (1940); *In re* Larsen's Estate, 18 S.D. 335, 100 N.W. 738 (1904).

The Illinois statute, cited above, has an interesting but inconsistent history, which may be traced through *In re* Day's Estate, 7 Ill. 2d 348, 131 N.E.2d 50 (1955), noted with approval in 34 CHI.-KENT L. REV. 267 (1956), and with disapproval in 5 DE PAUL L. REV. 332 (1956); *In re* Kent's Estate, 4 Ill. 2d 81, 122 N.E.2d 229 (1954); Gartin v. Gartin, 371 Ill. 418, 21 N.E.2d 289 (1939).

8. *E.g.*, CAL. PROB. CODE ANN. § 70, provides: "If a person marries after making a will, and the spouse survives the maker, the will is revoked as to the spouse, unless provision has been made for the spouse by marriage contract, or unless the spouse is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received."

Also, although no longer in effect, N.Y. SESS. LAWS 1931, ch. 562, § 3, provided: "If after making any will, such testator marries, and the husband or wife, or any issue of such marriage, survives the testator, such will shall be deemed revoked as to them unless provision shall have been made for them by some settlement, or they shall be provided for in the will, or in such way mentioned therein as to show any intention not to make such provision . . . . No evidence to rebut such presumption of revocation shall be received, except as herein provided." See the following cases which discuss similar statutes: Appeal of Mendoza, 141 Me. 299, 43 A.2d 816 (1945); Appeal of Fidelity Ins. Trust & Co., 121 Pa. 1, 15 Atl. 484 (1888).

9. *E.g.*, CONN. REV. GEN. STAT. § 45-162 (1958), which provides that marriage revokes

(4) the testator's marriage revokes the will unless there is a marriage contract, or the survivor is provided for in the will or is otherwise mentioned therein so as to indicate an intention not to have the will revoked by the marriage.[10]

An analysis of Florida's position is best prefaced by a perspective of relevant Florida statutory provisions. Florida Statute section 731.14(2) provides: "Neither subsequent marriage nor subsequent marriage and birth of issue shall revoke the prior will of any person . . . ."[11] However, three statutory provisions protect a pretermitted spouse from being excluded from the deceased spouse's estate. Section 731.34 protects a widow by allowing her to elect dower over a will or her intestate share.[12] Section 731.10 allows an intestate share to widows or widowers, thus providing protection from an omission from the deceased spouse's existing will executed prior to the marriage,[13] and section 731.23 specifies the size of such share.[14]

Referring to the varying results occasioned by the diverse state legislation indicated above, it may be seen that the Florida statute

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a will unless it makes "provision . . . for such contingency"; S.C. CODE OF LAWS § 19-232 (1952), whereby marriage revokes "unless the will shall have been made in contemplation of marriage expressed on its face." See Levine v. Ramler, 325 Mass. 141, 89 N.E.2d 339 (1949).

W. VA. CODE ANN. § 41-1-6 (1961), a similar statute, has an interesting history, as indicated in the *Reviser's Note.* Francis v. Marsh, 54 W. Va. 545, 46 S.E. 573 (1904), held, under a previous statute, that marriage revoked the testator's will notwithstanding the evidence on the face of the will that the testator's possible intent was that the will remain effective after marriage. *But see* Smith v. Smith, 134 W. Va. 842, 62 S.E.2d 347 (1950), which reaches an opposite result under the present statute.

10. *E.g.*, CAL. PROB. CODE ANN. § 70, *supra* note 8; N.Y. SESS. LAWS 1931, ch. 562, § 3, *supra* note 8; WASH. REV. CODE § 11.12.050 (1951), which provides: "If after making any will, the testator or testatrix marries and the wife, or husband, is living at the time of the death of the testator or testatrix, such will shall be deemed revoked, unless provision has been made for the survivor by marriage settlement, or unless such survivor is provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received."

11. FLA. STAT. § 731.14(2) (1961).

12. FLA. STAT. § 731.34 (1961). This should be contrasted with New York today, where a spouse has an election of intestacy. N.Y. DECED. EST. LAW § 18. N.Y. DECED. EST. LAW § 35, as amended by Laws 1932, ch. 459, is of little utility today, applying only to wills executed prior to September 1, 1930. Thus, the effect of marriage after execution of a will is practically a moot question in New York, and current New York decisions are of little assistance to a Florida court attempting to construe FLA. STAT. § 731.10 (1961). However, the holdings under the old form of the New York statute, *supra* note 8, are good guides in statutory construction. For a discussion of the evolution of New York law, see Dean, *Economic Relations Between Husband and Wife in New York*, 41 CORNELL L.Q. 175, 208-13 (1955-56). See also Phelps, *Revocation of Wills by Marriage—An Outmoded Relic*, 7 OKLA. L. REV. 307 (1954), in which the author contends that the Oklahoma revocation by marriage statute is unnecessary in light of Oklahoma's overall statutory scheme.

13. FLA. STAT. § 731.10 (1961). Pretermitted children are protected in Florida by FLA. STAT. § 731.11 (1961). The changes wrought by this statute are discussed in the leading case of *In re* Hatfield's Estate, 153 Fla. 817, 16 So.2d 57 (1943).

14. FLA. STAT. § 731.23 (1961).

accomplishes[15] partial revocation,[16] which occurs unless one of the three exceptions in the statute is met.[17] Although the court in *Steinert* did indicate that none of the exceptions would apply,[18] it dealt specifically with the question of whether the petitioner was "provided for" within the meaning of the statute by the substantial bequest left to her under her former married name.

Since this was a case of first impression in Florida, the court looked to other jurisdictions having similar statutory provisions. The two Washington decisions cited by the *Steinert* court,[19] *In re Steele's Estate*[20] and *In re Adler's Estate*,[21] represent the strict view that any provision, by any name, in an antenuptial will is sufficient to prevent revocation, the parol evidence rule being applied to extrinsic facts.[22] It is pertinent, however, that the Washington statute provides for total revocation.[23] In *Steele*, the testator made a bequest in the maiden name of a woman whom he later married. The provision was held to constitute provision for her in his will, thereby preventing revocation.[24]

The court in *Steinert* adopted the more flexible view that all the circumstances and conditions must be investigated to determine whether the will refers to a legatee solely in the capacity indicated in the will or

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15. With regard to the other statutes which were of concern in *Steinert*, the California and New York statutes, *supra* note 8, embrace (2) and (4), while the Washington statute, *supra* note 10, embraces (1) and (4).

16. *In re* Suarez's Estate, 145 Fla. 183, 198 So. 829 (1940), allowed an intestate share—in effect, partial revocation—to a widow who had not been mentioned in any fashion in the testator's will.

17. In *In re* Adler's Estate, 52 Wash. 539, 100 Pac. 1019 (1909), the court held that each of the three exceptions in the Washington statute, *supra* note 10, is in the disjunctive. See FLA. STAT. § 731.10 (1961), *supra* note 1, for wording of the exceptions.

18. "Thus, this court is unable to say of Helen Beaver Steinert that the statute precludes her right to distribution as the surviving pretermitted spouse, through any one of the phrases [the court here cited the three statutory exceptions] . . . ." *In re* Steinert's Estate, 137 So.2d 856, 858 (Fla. App. 1962).

19. *Id.* at 858.

20. 45 Wash. 2d 58, 273 P.2d 235 (1954).

21. 52 Wash. 539, 100 Pac. 1019 (1909).

22. See Ellis v. Darden, 86 Ga. 368, 12 S.E. 652 (1890) (woman mentioned by maiden name in will executed same day as, but prior to marriage), cited in Ingersoll v. Hopkins, 170 Mass. 401, 49 N.E. 623 (1898); Barlow v. Barlow, 233 Mass. 468, 470, 124 N.E. 285 (1919), in which the court stated, "The statute prohibits the elucidation of the will by anything outside its four corners"; White v. Conference Claimants Endowment Comm'n, 336 P.2d 674 (Idaho 1959) (no extrinsic evidence admitted to prove intent to provide for wife when 80 acres were conveyed to wife shortly after marriage which was performed on same day as, but after execution of will).

23. WASH. REV. CODE § 11.12.050 (1959), *supra* note 10.

24. This view was followed under a partial revocation statute in two early California cases, *In re* Brannon, 111 Cal. App. 38, 295 Pac. 83 (1931), and *In re* Appenfelder, 99 Cal. App. 330, 278 Pac. 473 (1929) (cites *In re* Adler, *supra* note 21, with approval), both of which, however, have since been overruled by *In re* Poisl's Estate, 44 Cal. 2d 147, 280 P.2d 789 (1955), which is cited with approval in *Steinert*, 137 So.2d 856, 858 (Fla. App. 1962).

in the capacity of a prospective spouse.[25] Having adopted this view, the court referred to *In re Scolopino's Estate*,[26] a New York case in which the testator made a bequest to the wife of another man two years before the latter died. Two years after her husband's death she married the testator. The will was revoked as to the wife's intestate share, as the circumstances precluded a finding that the provision was made in the prospect of her becoming the testator's wife. Two other New York decisions cited in *Steinert*, *In re Bent's Estate*[27] and *In re Mosher's Will*,[28] allowed partial revocation.[29] Several New York cases, however, reached an opposite result.[30] A recent and leading California case cited in *Steinert*, *In re Poisl's Estate*,[31] allowed partial revocation where a testator left property to his pretermitted spouse in her maiden name, and died

25. While dealing with another exception in FLA. STAT. § 731.10 (1961), the Florida Supreme Court said in Perkins v. Brown, 158 Fla. 21, 24, 27 So.2d 521, 523 (1946):

> It is our view that the provision contained in the statute, to the effect that the surviving spouse shall share in the estate of the decedent "unless the will discloses an intention not to make such provision" does not mean that such intention must be written into the will in express words; but that such result may follow as an unavoidable inference to be drawn from the conditions and circumstances of the parties at the time of the execution of the instrument.

Although no reference to this case was made by the court in *Steinert*, *Perkins* is indicative of the prevailing attitude in Florida. It should be noted that the court in *Steinert* did say that "No evidence was offered here to support the view that testator contemplated marriage to appellee at the time of the execution of his will . . . ." 137 So.2d at 858.

26. 13 Misc. 58, 244 N.Y. Supp. 195, *aff'd*, 231 App. Div. 690, 248 N.Y. Supp. 634 (1931). The rules of this case were synthesized as follows in *In re* De Coppet's Estate, 142 Misc. 816, 818, 255 N.Y. Supp. 544, 547 (Surr. Ct. 1932):

> 1) When a testator marries after making a will, it is revoked unless the manner of reference to the individual named as legatee is such as fairly to warrant the view that the reference or bequest to her is in her prospective or new status of wife.
> 2) If the reference to her is in a different status, then the provision for her does not save the will from revocation . . . .
> 3) If the reference to her is by her maiden name, but the period of time, between the making of the will and the marriage is short, and the provision in the will is of such a character as to indicate that it was made by the testator with the change of status in mind, then the provision in the will may be construed to have been made in contemplation of the new status, and the presumption of revocation is overthrown. Such a provision is construed to be an antenuptial bequest . . . .
> 4) If the language of the will is of such a character as to be fairly construed as indicating that the testator, with the prospective status in mind, made the provision for the individual considered in his or her prospective status, even though there be a considerable lapse of time between the making of the will and the marriage of the testator, such language so construed overthrows the presumption . . . .

27. 142 Misc. 811, 255 N.Y. Supp. 538 (Surr. Ct. 1932).

28. 143 Misc. 149, 256 N.Y. Supp. 235 (Surr. Ct. 1932).

29. *Cf. In re* Reilly's Estate, 130 Misc. 320, 224 N.Y. Supp. 316 (Surr. Ct. 1927).

30. *E.g.*, *In re* Gaffken's Will, 197 App. Div. 257, 188 N.Y. Supp. 852, *aff'd*, 233 N.Y. 688, 135 N.E. 971 (1922) (the testator gave one-third of his estate to a woman in her married name and married her two days later). *Accord*, *In re* Neufeld's Will, 145 Misc. 442, 260 N.Y. Supp. 302 (Surr. Ct. 1932); *In re* De Coppet's Estate, 142 Misc. 816, 255 N.Y. Supp. 544 (Surr. Ct. 1932) (see *supra* note 26); Appeal of Fidelity Ins. Trust & Co., 121 Pa. 1, 15 Atl. 484 (1888).

31. 44 Cal. 2d 147, 280 P.2d 789 (1955). This case is also significant with regard to disinheritance provisions, *infra* note 36. *Cf.* Estate of Axcelrod, 23 Cal. 2d 761, 147 P.2d 1 (1944), noted in 32 CALIF. L. REV. 213 (1944), and 42 MICH. L. REV. 1132 (1943-44); *In re* Ryan's Estate, 191 Cal. 307, 216 Pac. 366 (1923) (appointment of pretermitted spouse as executrix held not to constitute provision for spouse).

eleven months after their marriage. In overruling two prior decisions,[32] the California court stated, "no consideration was given to the underlying purpose and policy of [the statute] . . . ."[33]

The New York decisions and the reasoning adopted by the California court appear to justify the court in *Steinert* in stating that "in these jurisdictions, the statutes comport more closely with the policy of the law to hold, whenever legally posible, that a will is valid."[34] It is submitted, however, that the above statement must be read cautiously. In *Steinert*, the Florida court obviously was not reluctant to strike down the will to the extent necessary to protect the pretermitted spouse. Florida Statute section 731.10 (1961) prevents the injustice which could occur by an unintentional omission from a deceased spouse's will, and the Florida courts have adopted a flexible interpretation of this statute, which will allow the testator's intent, as revealed by all circumstances, conditions, and relevant extrinsic facts, to prevail. The New York decisions helped the court in *Steinert* in selecting this view, but the utility of New York holdings as regards the other two exceptions in the statute, *i.e.*, provision by marriage contract and disclosure in the will of an intent not to provide for the spouse, is minimized by New York's presently different statutory scheme.[35] California, however, has had extensive litigation on those two exceptions,[36] and should provide excellent guides for the Florida courts.

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32. *Brannon* and *Appenfelder*, *supra* note 24.

33. *In re* Poisl's Estate, 44 Cal. 2d 147, 150, 280 P.2d 789, 792 (1955).

34. 137 So.2d 856, 858 (Fla. App. 1962).

35. See note 12 *supra*.

36. With regard to provision by marriage contract, see *In re* Smith's Estate, 15 Cal. App. 2d 548, 59 P.2d 854 (1936); Corker v. Corker, 87 Cal. 463, 25 Pac. 922 (1891).

With regard to disclosure of intent not to provide, see *In re* Poisl's Estate, 44 Cal. 2d 147, 280 P.2d 789 (1955); *In re* Papidus' Estate, 123 Cal. App. 2d 289, 266 P.2d 803 (1954), which follows the leading case of *In re* Duke's Estate, 41 Cal. 2d 509, 261 P.2d 235 (1953), discussed in 42 CALIF. L. REV. 710 (1954), 26 ROCKY MT. L. REV. 351 (1953-54), 1 U.C.L.A. L. REV. 400 (1954), and 1953 U.C.L.A. INTRA. L. REV. 109; *In re* Turney's Estate, 101 Cal. App. 2d 720, 226 P.2d 80 (1951); *In re* Rozen-Goldenberg's Estate, 1 Cal. App. 2d 631, 37 P.2d 132 (1934); *In re* Kurtz's Estate, 190 Cal. 146, 210 Pac. 959 (1922).

As to whether a codicil containing no reference to a husband prevents revocation of a will executed before marriage, see *In re* Riddel's Estate, 104 Cal. App. 2d 162, 230 P.2d 863 (1951).

As regards a gift to a future but indefinite spouse, see *In re* Lunn's Estate, 197 Cal. App. 2d 848, 17 Cal. 705 (1961). See also Czepiel v. Czepiel, 146 Conn. 439, 151 A.2d 878 (1959); *In re* Shepherd's Estate, 183 Ore. 629, 194 P.2d 425 (1948).