extension of liability is further supported by the consideration that the used car dealer is such an essential unit in the system of merchandising automobiles that without the used car turnover, the volume of new car sales would be smaller. At the same time, the secondhand car business under the prevalent trade-in arrangement owes its existence mainly to the sales of new cars. Thus it should share the overhead costs of distribution with the manufacturer and other dealers and should be no more immune than they from the obligation to deliver cars free from defects. This is especially true in view of the fact that the duty of manufacturers, dealers and repairmen to eliminate discoverable defects arises from the foreseeability of possible harm to third persons if they do not remedy the defects—a foreseeability of harm no more apparent in their case than in that of a used car dealer. This solution, however, may be unpopular because of a fear that the secondhand dealers will be unable to carry this additional burden.[21] But a slight rise in prices calculated on the basis of an increase in costs caused by insurance against the additional liability would be all that is necessary. This slight trade disadvantage would be negligible compared with the protection thus afforded to the public.

Wills—Implied Revocation—Remarriage by Testatrix—[Nevada].—The probate of a testamentary instrument executed by a married woman, who was later divorced and remarried, was contested by her second husband. The instrument, which was never explicitly revoked, originally provided for the decedent's two minor children and her first husband, but by codicil the bequest to the first spouse was revoked two months before the divorce. At the time of the testatrix's death, two months after the second marriage, no provision had been made by her for the second husband. On appeal from the decree of the district court admitting the instrument to probate, *held*, the will made by a married woman is not revoked by a subsequent marriage of the woman to another man. Judgment affirmed. *In re Walters' Estate*.[1]

Application of the doctrine of implied revocation raises two questions. First, does the doctrine express the general principle that any change in domestic relations operates as a revocation, especially if new duties arise, or is its application limited to a few, narrowly defined situations? Second, since the legislature has acted to remove the usually alleged reason for the rule that marriage revokes the testamentary instrument of a woman, namely, the testamentary incapacity of married women, has the rule likewise ceased to exist?

There were two reasons given at common law for the revocation of a woman's will

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theory. It might be methodically correct to exclude the bystander from the regulations of a "Sales" Act, but this proceeding may easily lead to an argument from the contrary denying liability even under a tort theory. Section 28(2) defines the manufacturer as a "person who processes or assembles goods which he thereafter markets for ultimate use in consumption." It might be advisable expressly to include the secondhand dealer.

[21] As to the similar fear of discouragement of enterprise which would be caused by an ex-extension of liability, see Labatt, Negligence in Relation to Privity of Contract, 16 L. Q. Rev. 168 (1900).

[1] 104 P. (2d) 968 (Nev. S. Ct. 1940). The husband was totally excluded from testatrix's estate unless mentioned in the will since Nevada law provides for neither estate by curtesy nor a statutory share. Nev. Comp. Laws (Hillyer, 1929) §§ 3361, 9906.

upon marriage. The rule usually cited was the doctrine of implied revocation by change of circumstances, explained upon the consideration that a person is presumed to revoke his will in the event of important changes in his family status.[2] The other reason for revocation was that upon marriage a woman lost her legal personality[3] and became, therefore, incapable of making or having a will.[4]

The doctrine of implied revocation is explained by a presumption of change in intent, hence it is not favored[5] since it confuses the actual intent of the individual testator with the presumed intent of testators in general.[6] It has been occasionally held that any change in circumstances which would create new moral duties would revoke a prior will.[7] In states where the statutes provide for or have been construed to allow revocation by implication, it has been held that a divorce accompanied by a property settlement constitutes such a change in circumstances as to revoke a testamentary instrument.[8] With possibly one exception,[9] however, there are no American cases, which in the absence of statutory provisions,[10] have held that a divorce alone will revoke a will.[11]

Adjudicated cases,[12] on the question of whether the second marriage of a testatrix revokes an instrument executed during a previous marriage have, with one exception,[13] held that the instrument is not revoked by implication. Some of these cases involved statutes similar to that in the principal case, which enactment provides that the will

[2] 4 Kent, Comm. *521. [3] 1 Schouler, Wills 732 (6th ed. 1923).

[4] Atkinson, Wills § 72 (1937); 2 Bl. Comm. *497–99.

[5] See, e.g., In re Adler's Estate, 52 Wash. 539, 100 Pac. 1019 (1909).

[6] "Every material addition to the property of a testator, or alteration in the circumstances of his family, varies his relations and duties, either in kind or degree, and might be made the ground of very plausible and pathetic claims upon the Court for the application of this doctrine of a presumed revocation. Courts would be running the hazard of substituting their will for that of the testator." Brush v. Wilkins, 4 Johns. Ch. (N.Y.) 506, 519 (1820).

[7] Morgan v. Ireland, 1 Idaho 786 (1880) (will of husband made during the first marriage deemed revoked by subsequent marriage); Young's Appeal, 39 Pa. 115 (1861) (antenuptial will of woman deemed revoked by birth of unmentioned son). But see Jones's Estate, 211 Pa. 364, 385, 60 Atl. 915, 923 (1905).

[8] Lansing v. Haynes, 95 Mich. 16, 54 N.W. 699 (1893); Donaldson v. Hall, 106 Minn. 502, 119 N.W. 219 (1909).

[9] In re McGraw's Estate, 228 Mich. 1, 7, 199 N.W. 686, 688 (1924). See note by Puttkammer, 21 Ill. L. Rev. 282 (1926).

[10] Minnesota and Washington are the only states which have provided for revocation of a will by divorce as to the provisions in favor of the divorced spouse. Minn. Stat. (Mason, 1927) §§ 8741, 8742, and Wash. Rev. Stat. Ann. (Remington, 1932) § 1399.

[11] See 25 A.L.R. 49 (1923); 37 A.L.R. 312 (1925); 42 A.L.R. 1289 (1926); Evans, Testamentary Revocation by Divorce, 24 Ky. L.J. 1 (1935).

[12] Decided under statutes similar to that involved in the instant case are: In re Burton's Will, 4 Misc. 512, 25 N.Y. Supp. 824 (1893); In re Comassi's Estate, 107 Cal. 1, 40 Pac. 15 (1895); Hibberd v. Trask, 160 Ind. 498, 67 N.E. 179 (1903); In re McLarney's Estate, 153 N.Y. 416, 47 N.E. 817 (1897); In re Lufkin's Estate, 32 Hawaii 826 (1933); cf. Chapman v. Dismer, 14 App. D.C. 446 (1899); In re Ward, 70 Wis. 251, 35 N.W. 731 (1887); In re Van Guelpen's Estate, 87 Wash. 146, 151 Pac. 245 (1915).

[13] In re Van Guelpen's Estate, 87 Wash. 146, 151 Pac. 245 (1915).

of an unmarried woman shall be revoked by her subsequent marriage.[14] Simply upon the basis of the text of the statute it was held that the will of a married woman is not revoked by a subsequent marriage.[15] In addition some of the adjudicated cases have held that statutory enactments giving a married woman full power to hold and to dispose of property have rendered the common law rule of revocation of a woman's will ineffective.[16]

The doctrine of implied revocation, limited as it is to the common law applications, is not broad enough to cover the modern domestic situations which occur as a result of divorce and remarriage. The only argument that can be advanced to substantiate limiting the application of the implied revocation doctrine to a first marriage is an historical one.[17] As the result of common acceptance of divorce and remarriage by contemporary society, the legislatures of some states have broadened the doctrine of implied revocation to include the circumstances of divorce[18] and all marriages.[19]

If Nevada were still operating under the common law, the will of the testatrix would have been revoked.[20] The application of a statute providing for revocation of an unmarried woman's will by marriage and the lack of adaptability of the common-law rules to the instant situation required the court to admit the instrument to probate, although it is evident that in the absence of statutory provisions excluding the wills of married women from revocation by marriage, the court would have preferred to do otherwise.[21] The question of whether a divorce or a subsequent or second marriage, or both, should operate as a revocation of a will is for the legislature.[22]

[14] "A will executed by an unmarried woman shall be deemed revoked on her subsequent marriage. . . . ." Nev. Comp. Laws (Hillyer, 1929) § 9915.

[15] Cf. In re Lufkin's Estate, 32 Hawaii 826 (1933); Virginia & T. R. Co. v. Elliott, 5 Nev. 358, 364 (1870).

[16] Kelly v. Stevenson, 85 Minn. 247, 249, 88 N.W. 739, 740 (1902).

[17] The ecclesiastical courts had jurisdiction over will contests, and neither the canon law nor the English common law recognized divorce. 1 Page, Wills § 521 (2d ed. 1928); Rogers, Ecclesiastical Law 323 et seq. (1840).

[18] Note 11 supra.

[19] Ill. Ann. Stat. (Smith-Hurd, Supp. 1940) c. 3, § 46: ". . . . Marriage by the testator shall revoke any existing will executed by the testator prior to the date of the marriage." Cf. McJunkin v. Moody, 9 S.E. (2d) 209 (S.C. 1940), decided under a comparable statute and holding that the will of a male testator was revoked by remarriage.

[20] Note 4 supra and accompanying text.

[21] In re Walters' Estate, 104 P. (2d) 968, 974 (Nev. 1940).

[22] In re Lufkin's Estate, 32 Hawaii 826 (1933), was decided under a statute which provided that the will of an unmarried woman shall be deemed revoked on her subsequent marriage. Hawaii Rev. Laws (1925) § 3326. While the case was pending in the supreme court the legislature amended the statute to provide that a will executed by any woman shall be deemed revoked upon her thereafter entering into marriage. Hawaii Rev. Laws (1935) § 4920.