Unless a confidential relationship exists there can not be a trade secret, although the information is the proper subject matter upon which to base injunctive relief.[15] Thus, if the information were obtained by legitimate methods, such as an examination of the plaintiff's marketed products, no protection would be given the trade secret.

It is clear that the information misused by the defendant in the principal case was obtained through a confidential relationship. Therefore, the four step approach used by this court is adequate to arrive at the correct result;[16] but it is a more indirect route than that advocated by Holmes, which penetrates immediately to the question of whether there has been a breach of a confidential relationship.

It is submitted that a better approach would be: 1) Did the defendant occupy a position of trust or confidence to the plaintiff, 2) which was breached by the defendant, 3) to obtain information of a business or commercial nature, 4) which was used by the defendant to the detriment of the plaintiff? This approach would emphasize the breach of the confidential relationship, rather than the "existence of a trade secret."

WILLS—DEPENDENT RELATIVE REVOCATION

La Croix v. Senecal, 99 A.2d 115 (Conn. 1953).

Testatrix died leaving a will and codicil. Although the codicil expressly revoked the residuary clause of the will, and substituted a new residuary clause, the only change made by the codicil was to eliminate the possibility of any uncertainty as to the identity

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342, 217 N.W. 339 (1928); Vulcan Detinning Co. v. American Can Co., 72 N.J. Eq. 387, 67 Atl. 339 (Ct. Err. & App. 1907); Tabor v. Hoffman, 118 N.Y. 30, 23 N.E. 12 (1889); Witkop & Holmes Co. v. Great Atlantic & Pacific Co., 69 Misc. 90, 124 N.Y. Supp. 956 (Sup. Ct. 1910); Pressed Steel Car Co. v. Standard Steel Car Co., 210 Pa. 464, 60 Atl. 4 (1904); RESTATEMENT, TORTS § 757, comment *b* (1939). *But cf.* Bristol v. Equitable Life Ins. Co., 132 N.Y. 264, 30 N.E. 506 (1892).

15. Stewart v. Hock, 118 Ga. 445, 45 S.E. 369 (1903); Chadwick v. Covell, 151 Mass. 190, 23 N.E. 1068 (1890); Tabor v. Hoffman, 118 N.Y. 30, 23 N.E. 12 (1889); See Conmar Products Corp. v. Universal Slide Fastener Co., 172 F.2d 150 (1949).

16. The second and fourth steps used in the approach to the problem by the court in the principal case, that the subject matter was communicated to the defendant and that such information was used by the defendant to the detriment of the plaintiff, do not provide any difficult questions of law in this case.

of one of the legatees. One of the subscribing witnesses to the codicil was the husband of a residuary legatee. The gift in the codicil to the wife of the witness, but not the codicil itself, was invalid under the applicable statute. But the trial court held, however, that the gift to the wife of the witness was valid under the will. The appellate court affirmed and held that the testatrix's intention to revoke the residuary clause of the will was conditional upon the efficacy of the codicil, and that, because the gift in the codicil was invalidated by statute, the gift in the will was not revoked.[1]

Generally the doctrine of dependent relative revocation is applied when the testator cancels or destroys a duly executed will with the present intention of making a new disposition of his property; the cancellation is considered dependent on, and relative to, the validity of the new dispositive act, and if the new act is invalid, the old will is given effect.[2] The rule is one of presumed intention rather than substantive law,[3] and seeks to avoid intestacy where the acts of cancellation appear conditional and equivocal. The rule, however, does not create a conclusive presumption. It can be rebutted or substantiated by extrinsic evidence pertaining to declarations and conduct of the testator.[4]

The doctrine was limited originally to cases in which the testator canceled or destroyed a will by physical acts.[5] Such acts were considered equivocal and deserving of explanation. Subsequently it was recognized that there was little difference in principle between a revocation by physical acts and a revocation effected by the execution of a later instrument. The doctrine has been expanded to encompass both situations.[6]

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1. La Croix v. Senecal, 99 A.2d 115 (Conn. 1953). The Statute involved is CONN. GEN. STAT. § 6952 (1949): "Every devise or bequest given in any will or codicil to a subscribing witness, shall be void . . . but the competency of such witness shall not be affected by any devise or bequest."

2. 1 PAGE, WILLS § 478 (3d Lifetime ed. 1941).

3. McIntyre v. McIntyre, 120 Ga. 67, 47 S.E. 501 (1904); Wallingbad v. Wallingbad, 266 Ky. 723, 99 S.W.2d 729 (1936); Thomas v. Thomas, 76 Minn. 237, 79 N.W. 104 (1899). Warren, *Dependent Relative Revocation*, 33 HARV. L. REV. 335, 339-341 (1920).

4. *In re* Sheaffer's Estate, 240 Pa. 83, 87 Atl. 577 (1913). See *In re* Kaufman's Estate, 25 Cal.2d 854, 155 P.2d 831 (1945); Flanders v. White, 142 Ore. 375, 18 P.2d 823 (1933). ATKINSON, WILLS § 386 (1937).

5. Warren, *Dependent Relative Revocation*, 33 HARV. L. REV. 335 (1920); POWELL, DEVISES 637 (1st Am. ed. 1807).

6. *See* Blackford v. Anderson, 226 Iowa 1138, 1157, 286 N.W. 735, 746 (1939). 1 PAGE, WILLS §§ 479, 480 (3d Lifetime ed. 1941).

The doctrine has been applied to validate wills: where the testator obliterated parts of the will and interlined certain clauses, and the interlineation failed for want of due authentication;[7] where the testatrix revoked her will in the mistaken belief that she had a superseding one;[8] and where a testator had executed a codicil inconsistent with the original will, but containing no revocatory language and devising the property to substantially the same persons, and the codicil was void under the rule against perpetuities.[9] At least two courts have limited the doctrine to cases where an attempted new disposition took place at the same time as the acts of cancellation, and refused to apply it to cases where the testator had only a present intention to make a new disposition unaccompanied by any overt act.[10] These courts may have felt that the application of the doctrine to cases where the testator did not attempt a new disposition would lend itself to abuse.

Most courts have not applied dependent relative revocation where a subsequent instrument is duly executed and contains a revocatory clause although its dispositive provisions may fail for causes outside of the instrument.[11] This rule giving effect to the revocatory clause notwithstanding the ineffectiveness of the dispositive provisions has been applied to cases where the subsequent instrument has been substantially the same as the original document,[12] as well as where they were totally inconsistent.[13] A strong minority of courts, however, apparently feeling that the majority rule defeats rather than effects the intent of the tes-

7. Casey v. Hogan, 344 Ill. 208, 176 N.E. 257 (1931); Walter v. Walter, 301 Mass. 289, 17 N.E.2d 199 (1938); Gardiner v. Gardiner, 65 N.H. 230, 19 Atl. 651 (1890).

8. Strong's Appeal, 79 Conn. 123, 63 Atl. 1089 (1906).

9. Altrock v. Vandenburgh, 25 N.Y. Supp. 851 (Sup. Ct. 1893). The court said that the doctrine of dependent relative revocation would apply since the codicil did not expressly revoke the will, but if it had, the revocation would be valid and the doctrine would be inapplicable.

10. McIntyre v. McIntyre, 120 Ga. 67, 47 S.E. 501, (1904); *In re* Houghten's Estate, 310 Mich. 613, 17 N.W.2d 774 (1945); *In re* Bonkowski's Estate, 266 Mich. 112, 253 N.W. 235 (1934).

11. *In re* Melville's Estate, 245 Pa. 318, 91 Atl. 679 (1914); Price v. Maxwell, 28 Pa. 23 (1857); *see* Ely v. Megie, 219 N.Y. 112, 139, 113 N.E. 800, 807 (1916). 1 PAGE, WILLS § 481 (3d Lifetime ed. 1941).

12. Burns v. Travis, 117 Ind. 44, 18 N.E. 45 (1888); *In re* Melville's Estate, 245 Pa. 318, 91 Atl. 679 (1914); Teacle's Estate, 153 Pa. 219, 25 Atl. 1135 (1893); Lutheran Congregation's Appeal, 113 Pa. 32, 5 Atl. 752 (1886); Price v. Maxwell, 28 Pa. 23 (1857).

13. Wallingford's Executor's v. Wallingford's Administrator's, 226 Ky. 723, 99 S.W.2d 729 (1936).

tator, have applied dependent relative revocation in this situation and have held that the revocatory clause will be treated as conditional upon the validity of its dispositive provisions if the devises under the second instrument are substantially the same as the first.[14] This is the view of the more recent cases.[15]

The trend appears to be to limit the doctrine's application to cases where the act of cancellation and the execution of the new provisions take place simultaneously. But once this requirement is met, the tendency is to apply the doctrine with great flexibility to any equivocal revocation where the intent of the testator manifests a preference for the old will to intestacy. The principal case is exemplary of these trends. The act of revocation was simultaneous with the execution of the codicil. The codicil was validly executed and contained a revocatory clause, but the devise in the codicil was ineffective. The Connecticut Supreme Court of Errors applied to the doctrine of dependent relative revocation in order to effect the obvious intention of the testatrix, and thus vitiated the effect of the Connecticut statute which would have caused that portion of the estate intended for the legatee to descend by the state laws of intestate succession.

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14. Linkins v. Protestant Episcopal Cathedral Foundation, 187 F.2d 357 (D.C. Cir. 1950); *In re* Thompson's Estate, 185 Cal. 763, 198 Pac. 795 (1921); *In re* Kaufman's Estate, 25 Cal. 2d 854, 155 P.2d 831 (1945); Security Co. v. Snow, 70 Conn. 288, 39 Atl. 153 (1898).

15. Linkins v. Protestant Episcopal Cathedral Foundation, *supra* note 14; *In re* Kaufman's Estate, *supra* note 14.