Testaments and Testamentary Succession – WE, SW

WE: It seems to be universal that if an individual holds property, they are concerned with where that property ends up after they die. Certainly in the Anglo-Saxon period in England we see evidence of people trying to direct where their property went on death, whether this was movables, chattles or land. We also see attempts to do the same after the conquest in Anglo-Norman England. We see people making *post obit* grants of land, so grants which are effected upon their death. However, later in the twelfth century, English law, which was emerging into the common law, took a stance against *post obit* gifts. The technical legal reason for this was that in order to make a valid grant of land, you have to transfer seisin, that is to undertake the livery of seisin, which involves transferring something symbolically from one to another, which made the grant valid. Of course when someone has just died, they can't do that. So these grants were left incomplete and could be challenged by the heir, if the grant had been designed to direct land away from the normal succession. It became a rule of the common law that land could not be disposed of by will. This lasted until the Statute of Wills in 1540, which allowed it in some circumstances. But wills could be used to make bequests of movables.

SW: Wills concerning movable goods were actually part of the jurisdiction of the church courts. Michael Sheehan described the English will as 'an interesting example of a legal instrument born of the meeting of three great cultural strains in medieval Europe: the Christian practice of bequeathing property as alms; the Germanic family custom regarding family ownership; and legal notions of Roman law'. The original notion of wanting to give alms was very quickly expanded to provide a testamentary capacity in which you could bequeath items to family members, people in your household and so on, and it's not just regarding ecclesiastical property. In the eleventh and twelfth centuries, the church's involvement in wills and testaments primarily concerned the protection of property bequeathed to the church for pious purposes. That's how they initially became involved. If someone left a part of their estate to the church, it was the bishop who was supposed to make sure that the alms and bequests were properly administered. By the end of the twelfth century, the bishop's role had expanded to include the hearing of testamentary disputes and the administration of executors. In the law book called *Glanvill*, it says that 'if anyone has anything to say against the testament, for example that it was not properly executed or that the chattel claimed was not left as a legacy as it was alleged, the plea about this is to be heard in the ecclesiastical courts. Because pleas concerning testaments ought to be dealt with before an ecclesiastical judge and determined according to the courts of law by the evidence of those who were present at the making of the testament'. It's likely that if a person died without confession, it was the bishop's responsibility to distribute the goods as a remedy for the deceased's soul, which might be in jeopardy if they had died without this confession. And wills were composed in the presence of witnesses, as *Glanvill* noted, and these usually commended the testator's soul to God, named a place of burial, listed the bequests, and named the executors. The document itself was often written by a clerk and sealed by the testator and the witnesses as well. Wills then concerned bequests: gifts to individuals and institutions, mainly religious and academic institutions. They did not specifically name heirs, because only God can make an heir. But they listed legatees who were to receive money, rents, animals, clothing and whatever goods you might have, any movable chattles, as well as arranging for the payment and receipt of debts.

WE: There's an interesting coda to the common law's traditional aversion to the disposition of land by will and its focus on bequest of chattels. There's some evidence to suggest that burgage plots, so land held in towns by burgage tenure, could be deposited by will. Why this is, we're not entirely sure, but we see charters of exemption from certain inheritance actions, such as mort d'ancestor, which

would work to undercut the legal power of any testamentary disposition of land. The legal treatise known as *Bracton* also gives some indication that burgage plots could be left by will.