



CHAPTER

4

Property, Succession and Inheritance

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Learning Outcomes

After the completion of this chapter, the students will be able to:

- Explain the concept of property, succession and inheritance
- Differentiate between types of succession
- Apply the rules regarding intestate succession in different religions
- Draft a sample Will

I. Concept of Property: Joint Family Property and Separate Property

The term property is derived from the Latin term 'propertietat' and the French equivalent 'proprius' which means a thing owned.

Types of Property

There are two kinds of property:

- a) Joint family property- Property acquired by joint funds of the family is known as joint family property. All the needs of the family are fulfilled from it.
- b) Self-acquired property - Property acquired by self-exertion or labour is known as self-acquired property. Thus, it includes property by one's own learning.

What is Learning?

Gains of Learning Act, 1930: It defines 'learning' as education whether elementary, technical, scientific, and special or general.

It defines 'training' as every kind of training, which is usually intended to enable a person to pursue any trade, industry, profession or vocation in life.



II. Inheritance and Succession

What is Inheritance?

Inheritance is one of the means of acquisition of property. Inheritance means the right of an heir (to succeed to property on the death of an ancestor) by way of succession. Different laws of succession govern persons belonging to different religions.

After the death of the owner, all rights belonging to the deceased with regard to the property are divisible into two classes, namely:

1. Inheritable rights, and
2. Un-inheritable rights

Inheritable rights: A right is inheritable if it survives its owner. It remains functional even after the death of the person to whom it belongs and devolves on his/her legal representative. For instance, proprietary rights (rights attached to property) like debts are inheritable rights.

Un-inheritable rights: A right is not inheritable if it dies with the person. For instance, personal rights (rights associated with the person) are not inheritable as they extinguish with the death of the deceased.

What is Succession?

Succession is **the process in which property is transferred upon someone's death**. It is also used to refer to the estate a person leaves behind at death.

There are two ways of succession i.e. *intestate succession* and *testamentary succession*.

Who is an Heir?

The persons on whom the property devolves are called the heirs of the deceased. A person who is entitled to inherit property after the death of the intestate is known as heir.

Who is a Testator?

Testator is a person who has made a legally valid will before death.

What is a Will?

A legal declaration of a person's wish regarding the disposal of his or her property or estate after death.

PASSIVE

EUTHANASIA



On 9 March 2018, the Supreme Court of India made a landmark judgment permitting passive euthanasia under strict guidelines in the country.



Supreme Court of India legalised passive euthanasia by means of withdrawal of life support to patients in a permanent vegetative state. Passive euthanasia allows withdrawal of medical treatment with the intention to expedite the death of a terminally-ill patient.

In the landmark verdict, the Supreme Court also ruled that in specific circumstances, a person has the right to decide against artificial life support by creating a living will. The Supreme Court has attached strict conditions for executing a living will that was made by a person in his normal state of health and mind.

The Supreme Court declared the right to die with dignity as a fundamental right within the ambit of the right to live with dignity. It held that the right to life and liberty under Article 21 of the Constitution of India also includes the right to die peacefully and with dignity.

The judgment was delivered on a PIL filed by NGO Common Cause for an individual's right to make a living will document for passive euthanasia. However, the debate to legalise passive euthanasia got triggered in a 2011 Supreme Court judgment in the case of Mumbai nurse Aruna Shanbaug, who was in a permanent vegetative state for more than 40 years.

Testamentary Succession

When a person disposes off his property by making a will, it is known as testamentary succession. A person can make a will only of his/her separate property. *Testamentary succession* is governed by the Indian Succession Act, 1925.

In testamentary succession, the law empowers a person to determine, during his lifetime, the disposition of the property that he leaves behind him after his death. The law respects the will of the deceased and secures its enforcement (to compel observance and obedience to that will). A person who determines the disposition of his property in this way is said to have made a will.

III. Intestate Succession

A person who dies without making a will is known as intestate and succession to his property is known as intestate succession.

In Intestate Succession, the property devolves according to the law or custom by which the deceased is governed.

If a Hindu dies intestate i.e. without making a will, then, both separate property as well as joint family property passes on to his heirs in accordance with the Hindu Succession Act, 1956.

Under Hindu law, a son had a birthright in joint family property. The Hindu Succession (Amendment) Act, 2005 was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956. Now, under the Hindu Succession (Amendment) Act, 2005, daughters have inheritance rights equal to those of sons from properties of their fathers, grandfathers and great grandfathers.

Muslim Law

Muslims do not have any codified law for intestate succession. They are governed by rules contained in religious texts. They do not make any distinction between ancestral and self acquired property. The right of an heir comes into existence on the death of the ancestor.

Other Religions

The Indian Succession Act, 1925, governs intestate succession of Christians and Parsis. Every religion has its own rules of Intestate succession, but there are certain concepts that are common to all religions.



For example, A person who is entitled to inherit property after the death of the intestate is known as an Heir. These heirs could be of three types, i.e., Ascendants, Descendants, and Collaterals.

A. Heirs - Ascendants, Descendants, and Collaterals

Ascendants are the ancestors of a person both on the paternal and maternal side. The immediate ascendants are father and mother. It includes father (F), Mother (M), paternal grandfather (FF), paternal grandmother (FM), maternal grandfather (MF), maternal grandmother (MM), etc. There is no limit to degrees of ascent.

Descendants mean the offspring of a person. The immediate descendants of a person are his or her sons and daughters. It includes son (S), daughter (D), grandson (SS), granddaughter (SD), great grandson (SSS), great granddaughter (SSD), etc. There is no limit to degrees of descent.

Collaterals are descendants in parallel lines, i.e., from a common ancestor or ancestress. For instance, brothers, sisters, and their children how low so ever, paternal and maternal uncles and aunts and their children how low so ever are all collaterals. These heirs can relate to each other by full blood, half blood or uterine blood.

B. Relation by full blood, half blood and uterine blood

Relation by full blood: Two persons are related to each other by full blood when they have the same father and same mother.

Relation by half blood: Two persons are related to each other by half blood when they have the same father but different mothers.

Relation by uterine blood: Two persons are related to each other by uterine blood when they have the same mother but different fathers.

The rules pertaining to intestate succession are more or less similar in all the communities whereby first preference is given to the husband or wife of the deceased and their lineal descendants. In their absence, the preference is given to collaterals that are close to the deceased. In their absence, property goes to remote agnatic heirs and then to cognatic heirs.

However, every religion has adopted a different way of determining the disposition of property.

IV. Rules Relating to Intestate Succession

A. Rules of intestate succession of a Hindu Male:

Heirs belonging to a Hindu male are classified into four categories i.e. class I, class II, agnates and cognates.

- Class I heirs are the most preferred heirs and include mother, wife, son as well as daughter and their descendants upto the third generation.
- Class II heirs include father, brother as well as sister and their children, maternal and paternal uncles and aunts, maternal and paternal grandfather and grandmother etc.

Class II heirs will inherit property only in absence of Class I heirs.

- If there are no heirs belonging to Class I or Class II then property goes to agnates.

Who are Agnates?

When two persons are related by blood or adoption wholly through males, they are called agnates. For example:



The son of a great grandson (son, grandson, great grandson being dead)

P ⇒ S ⇒ SS ⇒ SSS ⇒ SSSS1

In the above diagram, S is son of P, SS is son of S and grandson of P, SSS is son of SS and great grandson of P, SSSS1 is son of SSS and great great grandson of P. Here, SSSS1 is agnate to P as he is tracing relation wholly through males i.e. his father (SSS), grandfather (SS), and great grandfather (S). No female has intervened in-between.

In case, all the above-mentioned heirs i.e. Class I, Class II and agnates are absent then property will go to cognates.

Who are Cognates?

When two persons are related by blood or adoption but not wholly through males, they are called cognates.

For example:

P ⇒ F ⇒ FM ⇒ FMF1

Father of paternal grandmother i.e. FMF1 is a cognate as female (father's mother) has intervened in between. In the above diagram, F is father of P, FM is mother of F and paternal grandmother of P, FMF1 is father of FM. Here, FMF1 is cognate to P as a female has intervened in between, i.e., father's mother (FM).

B. Rules of intestate succession of a Hindu Female

If a female Hindu dies intestate then heirs are divided into five categories. The heirs in earlier categories are preferred over the heirs in later categories.

- The first category includes husband, son, daughter and children of a pre-deceased son and daughter.
- The second category includes heirs of the husband.
- Father and mother fall under the third category.
- Heirs of father and mother are covered under fourth and fifth category respectively.

C. Rules of intestate succession among Muslims

There is no codified law for Muslims in the area of succession. They are governed by their religious texts.

Rules of intestate succession among Sunni Muslims

Among Sunnis, heirs are divided into three categories i.e.

- Sharers (Quranic heirs),
- Residuaries (agnatic heirs), and
- Distant kindred (uterine heirs)

Sharers are the most preferred heirs. First of all, sharers are allotted their Quranic shares. If something is left behind after allotting shares to them, then, it goes to residuaries. If their shares exhaust the entire estate, then sharers exclude residuaries and distant kindred. The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of sharers or residuaries. But there is one case in which distant kindred will inherit with the sharer: when there

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is only one sharer i.e. the wife or husband of the deceased and no other sharer or residuary exist.

Rules of intestate succession among Shia Muslims

Among Shias, heirs are divided into two categories i.e.

- Heirs by consanguinity and
- Heirs by marriage i.e. husband and wife

Heirs by consanguinity

Heirs by consanguinity are further subdivided into three classes:

- Class I includes parents and children.
- Class II includes grandparents, brothers and sisters, and their descendants etc.
- Class III includes paternal and maternal uncles and aunts of the deceased, and of his parents, grandparents etc.

Among the heirs by consanguinity, the first group excludes the second and the second group excludes the third. The claimants in both the categories i.e. heirs by consanguinity and heirs by marriage succeed together, if there are heirs of both the categories.

D. Rules of intestate succession under the Indian Succession Act, 1925

- The Indian Succession Act, 1925 is a central legislation and is applicable to every person, unless they are governed by any law particularly applicable to them. This Act is not applicable to Hindus and Muslims. Christians and Parsis are governed by this Act.

Rules of intestate succession among Christians under the Indian Succession Act, 1925:

- Among Christians, the first preference is given to the spouse of the deceased and his lineal descendants i.e. children, grandchildren, great grandchildren or their remoter lineal descendants.
- When there are no lineal descendants then property passes on to the spouse of the deceased and those who are kindred (consanguinity is the connection or relation of persons descended from the same stock or common ancestor) to him.
- If there are no lineal descendants or one who is kindred to him, then the entire property goes to his or her spouse.
- In the absence of such a spouse, property passes on to lineal descendants or to those who are kindred to him.

Rule of Escheat

A rule of escheat is applicable in all the communities. If no heir is present then property goes to the Government by this rule.



V. Testamentary Succession

Testamentary Succession under Muslim Law

An executor under Mohammedan law is called a wasi, derived from 'wasiyyat', which means a will. A Muslim who is of sound mind and who is not a minor, may make a valid will.

No particular form is required to make a valid will. Any unequivocal expression of a testamentary nature will suffice. It may be made either verbally or in writing. Any property which is capable of being transferred and which exists at the time of the testator's death, may be disposed off by a will. Needless to say, property that belongs to another cannot be bequeathed by a will.

A Muslim can dispose off only one third of his property, which is left after the payment of his funeral expenses and his debts. The balance two thirds of the property goes to the heirs of the deceased.

Testamentary succession among Hindus, Parsis and Christians

The rules relating to testamentary succession among Hindus, Parsis and Christians are contained in the Indian Succession Act, 1925. This Act does not deal with substantive law, such as what property may be transferred or what estates and interest may be created.

The Indian Succession Act, 1925 primarily deals with formalities related to the following matters:

- Execution (Validation of a legal document by the performance of all necessary formalities)
- Revocation (to recall, withdraw, or reverse the will)
- Revival (restoration to use, acceptance, activity, or vigor after a period of obscurity)
- Interpretation (an explanation or conceptualization) of wills
- The grant of Probate (the process of legally establishing the validity of a will before a judicial authority) and other legal representations, powers and duties of the Executors (a person who is appointed by a testator to execute the testator's will.)

Administrators are persons authorized to manage an estate, especially when the owner has died intestate or without having appointed executors.

However, it is a secular law that is applicable to each and every community in matters of testamentary succession.

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SAMPLE WILL

1. I _____ d/s/o _____ resident of _____ aged _____ years hereby write my final will and testament. Any wills written previously are hereby revoked under the laws of India. I am writing this will freely and under no duress. I am of sound mental and physical health and in a position to comprehend what I write in this will. I am married to _____ and we have two children namely _____ aged 20 years and _____ aged 25 years.
2. As of today, I own the following which I would like to bequeath by the virtue of this will.
 - o One 4 BHK flat located at _____ with area 1500 sq. feet bought on 24th November 2008 for Rs. 75 lacs;
 - o Cash amounting to Rs. 10 lacs in fixed deposit at _____ bank;
 - o 1 Honda city car bought in the year 2015;
 - o 1 fortuner car bought in the year 2018;
 - o Gold jewellery weighing approximately 300 grams lying in SBI locker located at _____.; and
 - o 1000 TATA power share certificates amounting to Rs. 10 lacs.
3. All the assets owned by me are self-acquired properties. No one else has any right, title, interest, claim or demand whatsoever on these assets or properties. I have full right, absolute power and complete authority on these assets, or in any other property which may be substituted in their place or places which may be Acquired or received by me hereafter.
4. It is my wish and desire that after my death all my assets as mentioned above, will devolve upon my wife _____ who shall then become the sole and absolute owner thereof to the exclusion of my other legal heirs. However, in the event, my wife predeceases me then all my assets will devolve upon my children equally, absolutely and forever to the exclusion of any other legal heir.
5. That all my loans and liabilities including but not limited to taxes, penalties, cess, charges etc. of whatsoever nature whether existing or created after my death shall be repaid and discharged by my wife or my children as the case may be out of my aforementioned assets.
6. I have made this will in full consciousness without any pressure, coercion, undue influence, mistake of any kind and with bonafide intent to avoid any dispute, misunderstanding or litigation that may arise between my legal heirs after my death.
7. I have carefully read and understood the contents of this will and the same is being signed by me in the presence of two responsible persons who will be the attesting witnesses.
In witness whereof I _____ have this to be my last will and set my hand on this ___ day of _____ in the presence of the under mentioned witnesses each of whom have simultaneously signed in my presence and in the presence of each other.

WITNESSES:

- 1.
- 2.

TESTATOR

Name:

Signature:



VI. Exercises

Based on your understanding, answer the following questions:

- Q-1** X, a hindu male, dies leaving behind a farm house that he purchased out of his own earnings and a flat that he acquired from his father. The heirs left behind after him included his mother, wife, brother and two sons. He bequeathed the house and farm house by way of a will in favour of his younger son and nothing for his elder son. Answer the following:
- Identify the two types of properties and the mode of disposing off both the types.
 - Is the above Will valid? If not, distribute the property of X amongst his heirs giving all the applicable rules.
- Q-2** What do you mean by inheritance? Differentiate between inheritable and uninheritable rights with relevant examples.
- Q-3** Differentiate between Testamentary and Intestate Succession.
- Q-4** A dies without an heir. She has left behind substantial property that is self acquired through her own learning. By what rule will her property be disposed of and who will acquire the property?
- Q-5** You are a practicing lawyer who is an expert in creating wills. Draft a Will for your client who is a Senior Vice President in a Company. She is married with two daughters. She owns a house in a posh locality in South Delhi, has share holdings, jewellery and fixed deposits and money in the savings account. She has two cars. She also has an old help who has been working for her for the past 25 years. She wants to divide her property equally between her husband and children. She also wants to ensure that she provides for some amount to her old help in her will.

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