



**FACULTY OF JURIDICAL SCIENCES**

**COURSE NAME : LLB**

**SEMESTER : IIIrd**

**SUBJECT : FAMILY LAW II**

**SUBJECT CODE: LLB -304**

**LECTURE : 38**

**FACULTY NAME: Mr JP Srivastava**

## **Who can take property under a Will?**

Besides competency of legator, there is one more essential requirement of a valid Will and that is the competency of the legatee. The following are the characteristics of a legatee who is capable of taking a Will executed by a legator.

### **He must be a person in existence**

A legatee is competent to take a Will on condition that he must be living at the time of death of the legator. This is because a Will comes into effect only after the death of the legator and not when it is made by the legator. Thus, a legatee has to be a person in existence at the time of death of the legator.

A Will can be declared in favour of a non-muslim, minor or an insane person. What is important is that a legatee must be in existence and competent to hold the property. The age, sex, caste, religion, gender and state of mind is insignificant in order to become a lawful legatee. A charitable or religious institution is also capable legatee and any Will in favour of it is lawful.

#### **○ Child in mother's womb**

A child in a mother's womb is treated as a living person and thus, is a competent legatee under Islamic law under two conditions. Firstly, he must be in existence in the mother's womb at the time of declaration of the Will. Secondly, the child must be born alive within six months from the date of execution of Will under Sunni law and within 10 months under Shia law.

#### **○ Murderer of Legator**

A Will comes into effect only after the death of legator. Thus there is a possibility that an avaricious and impatient legatee may cause the death of the legator in order to grab the property as soon as possible.

A legatee kills or causes the death of the legator either intentionally or unintentionally is not allowed to take the Will and generally disentitle to take the property. However, under Shia law, if a legatee causes the death of the legator either unintentionally, negligently or accidentally, then he is qualified to take the property and the Will is treated as a valid Will.

#### **○ Consent of Legatee**

Before transferring legal title to the legatee under a Will, it is important to take the consent of the legatee to know whether he wants to accept the Will or not. The acceptance can be expressed or implied. A legatee has a complete right to disclaim the Will. So, if a legatee declines to own any property bequeathed to him, then the Will is considered to be incomplete and invalid.

- **Joint Legatee**

Sometimes, legator issues Will jointly in favour of several legatees. In such circumstances, the legatees are known as joint legatees. A Will can be made in favour of joint legatees in two ways-

### **Where the share is specified under will ?**

If the share of all the legatees is specified explicitly by the legator himself under the Will, then there arises no point of confusion regarding the share. The property Will be distributed as per the ratio mentioned by the legator in the Will and each legatee Will get the respective share allotted to him.

For example, if a legator executes a Will in favour of his three sons, mentioning that the ratio of the distribution of S1: S2: S3 should be 3:2:1 respectively. Here the property Will be distributed among the three sons in the same ratio as specified by the legator.

### **Where the share is not specified**

It might be possible that under some cases, the share of each legator is not explicitly described. In such cases, applying the general rule, the property is supposed to be divided equally among the legatees. When a Will is made in favour of a class of persons, such class is treated as a single legatee only and each person gets the equal property.

For example, if a legator makes a Will under which the property is to be given to a mosque and the poor people of the locality of the legator, then half of the bequeathable property Will be given to the mosque and the remaining half Will be distributed equally among the poor people in the locality.

### **Formalities of a Will**

Muslim law does not expressly propound any specific formalities for the execution of the Will. The intention of the legator plays a crucial role in validating a Will. The intention must be explicit, clear and unequivocal in nature.

A Will can be made either orally or in writing or even by gestures.

### Oral Will

A simple oral declaration is also considered as a valid Will. It is not abiding to follow any particular process or formality in order to constitute a Will. A mere oral declaration is enough. But the burden to corroborate such Will is very hefty. Eventually, an oral Will has to be proved with extreme fidelity with precision in date, time and place.

### Written Will

For a Will to be declared in writing, no specific form is described. A Will is valid even if it is not signed by the legator or attested by the witnesses. The name of the document is immaterial. If it possesses the essential characteristics of a Will, then it Will be treated as a valid Will.

### Will made by Gestures

Under Islamic law, a Will may be made by gestures. For example, if a sick person makes an endowment and cannot speak due to weakness, gives a nod with his head in a comprehensive way and if it is understood what he is trying to convey and subsequently, he dies without regaining his ability to speak, the bequest is valid and lawful.

## MCQ

- |    |                   |  |   |   |                                     |
|----|-------------------|--|---|---|-------------------------------------|
| 1. |                   |  | A legal declaration of intention of a testator With respect to his movable property | A legal declaration of intention of a testator With respect to his immovable property |                                     |
| 2. | What is will –    | To sale the property Means instrument made in relation to a will | Means instrument made in relation to family settlement                              | Means instrument made in relation to gift   | A legal declaration of intention of |
|    | What is codicil ? |  |   |   | All of the above                    |

- |    |   |            |            |                      |                      |
|----|---|------------|------------|----------------------|----------------------|
| 3. | According to mitakshara gift may be –             | By orally  | In writing | Orally or in writing | Depends upon parties |
| 4. | What is limit of testamentary power by Muslim is: | One third  | One eighth | One fifth            | None of these        |
| 5. | who can make a will?                              | sound mind | Muslim     | major                | all the above        |