



FACULTY OF JURIDICAL SCIENCES

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The subject matter of a Will

Any type of property, corporeal or incorporeal, moveable or immovable, can constitute the subject matter of the Will. But a legator can bequest a property in a Will only under two conditions-

- If he owns the property at the time of his death.
- The property must be transferable.

A property bequeathed under a Will may or may not exist at the time of execution of Will but it is mandatory that the bequeathed property must be in ownership of the legator at the time of his death. The logic behind this rule is very simple. A Will comes into operation after the death of the legator and the transfer of property to legatee takes place from the date of legator's death and not from the date of execution.

For example, 'A' executes a Will giving all his property to 'B'. Suppose 'A' owns a house at the time of execution of Will but at the time of his death, he owns a car as well. Thus, 'B' is entitled to have the house as well as the car under the Will.

Principle limitations on testamentary powers

Contrary to the general rule, there are certain restrictions on the testamentary powers of a Muslim. There are two types of restrictions:

- With respect to the extent of the property that can be bequeathed

If a Muslim desire to make a Will of his property, he is allowed to do so only to the extent of one-third of the bequeathable property. This extent of one-third is calculated after the expenses of his debts and funeral etc. Any bequest exceeding the limit of one-third Will not come into effect unless the heirs of the legator give their consent to it. In case the heirs do not give their consent, then the bequest will be valid to the extent of one-third only and the remaining two-thirds Will be transferred through intestate succession.

A Muslim who does not has any heir may bequest his property to anyone and in whatsoever amount he may desire to give. But if a Muslim bequest his property to a non-heir or a stranger,

then the consent of the legal heirs is of utmost significance if the property exceeds the one-third of his total property.

The reason is to protect the rights and interests of the legal heirs which may adversely affect in case of such bequest. If heirs give their consent to give an entire property to a stranger, the Will is valid otherwise it is valid to the limit of one-third.

- With respect to the legatees to whom the property is given

Furthermore, the second restriction comes into action only where the legatee is one of the heirs of the legator. Whether the property bequeathed is one-third or less, the consent of the other legal heirs of the legator is a dominant factor in order to establish a valid Will. The ground of this rule is that a legator may make a bequest in favour of one of the legal heirs giving more precedence to him which may result in a feeling of jealousy and enmity among the other heirs.

On the other hand, Shia law doesn't discriminate between an heir or a non-heir. A bequest can be made in favour of anyone till the extent of one-third of the property is treated to be valid. Thus, it can be concluded that Shia law provides ample powers to make a Will as compared to Sunni law.

MCQ

1. What is the subject matter of a Will?
a) Movable property b) Immovable property
c) Corporal & incorporeal property d) All the above
2. A legator can bequest a property in a Will only under conditions-

a) If he owns the property at the time of his death. b) The property must be transferable.

c) Both A & B c) None of these
3. A Muslim desire to make a Will of his property –
a) 1/3 b) 1/4
c) 1/5 c) 1/6
4. With respect to the legatees to whom the property is given ?
a) Where the legatee is one of the heirs of the legator.
b) Whether the property bequeathed is one-third or less.
c) Both A & B
d) None of these
5. Shia law provides ample powers to make a Will as compared to Sunni law.

a) True

b) False