



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

SUBJECT CODE: LLB -304

LECTURE : 40

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Construction and revocation of a Will

Generally, a Will has to be construed in accordance with the rules laid under Islamic law and scrutinizing the language and intention of the legator. A Will is a document which is made by a person during his lifetime and comes into effect after his death. So, a Will must be interpreted to accomplish the intentions of the legator after his death. At certain times, the language may not be clear and the intention of the legator is ambiguous. In such circumstances, it is left to the discretion of the heirs to elucidate such Will in whatever way they want.

For example, a legator bequests a house and a shop for his two sons but doesn't specify what is given to whom. Here, the content of the bequest is perplexed. Thus, it is up to the option of heirs to mutually decide who wants to take what.

Revocation of a Will

Muslim law grants an emancipated right to legator exercising which he can revoke the Will or any part of the Will executed by him anytime. Similarly, he can add something reasonable to the Will as well.

A legator may revoke the Will either expressly or impliedly.

Express Revocation

An express revocation may be done in oral or in writing. For example, if a legator bequests some of his property to a person and by making a subsequent Will he bequeaths the same property to another person, then the first Will is considered to be revoked automatically.

If legator burns or tears off a Will executed by him, then also the Will is said to be expressly revoked. It is to be noted that mere denial of a Will is not sufficient to amount a Will as revoked. Some action must be taken by the legator which indicates his clear intention for the revocation of the Will.

Implied Revocation

Any act done by legator contrary to the bequest Will revoke the Will. In other words, an act which leads to the annihilation of the subject-matter of the bequest is considered as an implied revocation of the Will. For example, if a legator executed a Will giving land to a person and

builds a house on the same land, or if he sells or gifts that land to someone else, then consequently, the Will is said to be impliedly revoked.

Abatement of Legacies

When a bequest exceeds the limit of one-third and heirs deny to give their consent, the ratio of the legatees is subsidised in order to maintain the rule of bequeathable one-third. This reduction in the legacy of the legatees is known as abatement of legacies. Under the Sunni law, the abatement occurs in a rateable manner (proportionally) whereas in Shia law it is done preferentially.

Rateable distribution

This rule of abatement is followed in under Sunni law. In this method, if a Sunni Muslim bequeaths his property in a certain ratio which the limit of one-third, then the abatement is done in the same ratio in which the property was distributed.

For example, 'T' is a Sunni Muslim who makes a Will in favour of A, B and C. Under the Will, he directs to give Rs. 4,500/- to A, Rs. 3,000/- to B and Rs. 1,500/- to C and his total property amounts to Rs. 9,000/-. Now, as per the rule, only one-third of the total property is bequeathable. So, one-third of Rs. 9,000/- equals to Rs. 3000/- which is the required bequeathable property. It can be observed that the legator divided the property among A, B and C in the ratio 3:2:1 respectively. Applying the rateable abatement rule, the shares of A, B and C Will be reduced in the same ratio i.e. 3:2:1. Thus, the share of A Will become Rs. 1,500/-, the share of B becomes Rs. 1,000/- and the share of C turns to be Rs. 500/-.

Preferential distribution

The Shia law recognizes a different rule for abatement. According to this school, if the bequeathable property exceeds one-third of the total property and heirs refuse to give their consent, then the rule of preferential distribution is applied. This implies that no reduction Will be done in the shares of the legatees rather the share Will be given on the preference.

The preference is decided by the order in which the name of the legatees is mentioned under the Will. The legatee whose name is mentioned first Will get his full share as specified in the Will and the remaining Will be passed in favour of the second legatee and so on. As soon as one-third of the property is finished, the distribution comes to its end. Therefore, it can be concluded that either a legatee Will get his full share or he Will get nothing.

For example, 'T' is a Shia Muslim who executed a Will under which the share of A is Rs. 2,000/- , the share of B is Rs. 1,000/- and share of C is also Rs. 1,000/-. The total property is Rs.9,000/- which is beyond one-third of the bequeathable property. So, one-third of Rs. 9,000/- comes out to be Rs. 3,000/- which is the required bequeathable amount. Now, according to the preferential rule, A Will get his full share i.e. Rs. 2,000/-, B Will get the remaining Rs. 1,000/- which constitutes his full share and C Will not get any share because the bequeathable property exhausted after the share of B.

MCQ

1. A legator how may revoke the Will?
 - a) Express
 - b) Implied
 - c) Both A or B
 - d) None of these
2. What is Will?
 - a) A Will is a document which is made by a person during his lifetime and comes into effect after his death.
 - b) A Will is a document which is made by a person during his lifetime and comes into effect during his life time.
 - c) A Will is a document which is made by a person during his lifetime and comes into effect after his son death.
 - d) None of these.
3. An express revocation may be –
 - a) Oral
 - b) writing
 - c) Both A or B
 - d) None of these
4. Generally, a Will has to be construed in accordance with the rules laid under Islamic law and scrutinizing the language and intention of the legator.
 - a) True
 - b) False
5. Any act done by legator contrary to the bequest Will revoke the Will:
 - a) Express
 - b) Implied
 - c) Both A & B
 - d) None of these