

INDIAN SUCCESSION ACT

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Class-room live lectures edited, enlarged
and updated**

INDIAN SUCCESSION ACT

INTRODUCTION

The Indian Succession Act 1925 is a bogey attached to this paper. This deals with the testate and intestate succession. But in respect of its application there is a difference. This Act is a consolidating Act and has combined Indian Succession Act 1865, Parsees Intestate Succession Act, the Hindus Wills Act 1870 and Probate and Administration Act 1881.

Containing a formidable 391 sections, the students may feel this subject to be 'too heavy' to be digested, . Hence, attempt is made to select the most relevant and important topics and to explain each topic with illustrations and case law.

In conclusion, Succession Act is here, made easy; Hence your way is made easier than ever before! Go ahead.

Textual and Reference Books

1. PARUK : *The Indian Succession Act*
2. MITRA B.B. : *Indian Succession. Act -*
3. SANJEEVARAO : *The Indian Succession Act*
4. SEN : *Succession Certificate*

INDIAN SUCCESSION ACT

1 Wills

- (1) Definition ,,,,
- (2) Kinds of Wills
- (3) Codicil ... '

•2 Definitions

- (1) Executor de son tort
- (2) Donatio Mortis Cause ...
- (3) Onerous Bequest

3 Domicile

- (1) Definition
- (2) Domicile of Origin and choice distinguished -

4 Legacies

- (1) Legacy ,Specific legacy ... , ...
- (2) Demonstrative ...
- (3) Residuary Legatee

5 Executor, Administrator

- (1) Who is?
- (2) Rights
- (3) Representative title ...
- (4) Petition for Probate ...
- (5) Administrator ...
- (6) Powers and Duties
- (7) Citation

6 Succession Certificate

7 Miscellaneous Topics

- (1) Contingent Bequest ...
- (2) Ademption of Legacies
- (3) Bequests of Annuity -
- 4 Void Bequests
- (5) Conditional Bequests ..
- (6) Refund of Legacies -
- (7) Consanguinity
- (8) Caveat

8 Genera!

- (1) Curator
- (2) Appointment....
- (3) Powers and Functions
- (4) Parsi Succession
- (5) Non Parsi Succession
- (6) Construction of Wills

SYLLABUS

(Sns. 1 to 392)

1. Definitions; Administrator, codicil, executor, probate, will.
2. Domicile—of Origin and of Choice—Methods of Acquisition—Importance.
3. Intestate Succession:
 - (a) Persons other than Parsis (fa) Special Rules for Parsis
4. Testamentary Succession: Wills, codicils, construction of wills.
5. Bequests : (a) Void bequests
 - (b) Onerous bequests
 - (c) Contingent bequests
 - (d) Conditional bequests
 - (e) Annuity bequests
6. Legacies : (a) Special legacies
 - (b) Demonstrative legacies
 - (c) Ademptfon of legacies.
7. Election
8. Gifts—Death bed gifts.
9. Protection of Property and Representative title to the property of the deceased
10. Probate and letters of administration
- 11. Executor de son tort**
12. Powers, duties, and liabilities of executor or administrator-Devastation.
13. Succession Certification.

QUESTION BANK

1. What is domicile? Distinguish domicile of origin from domicile of choice. What is the importance of domicile?
2. What is a will ? What are the essentials of a valid will ? What is a codicil? Distinguish a privileged will from an unprivileged will?
3. (a) What are the special rules made available for Parsi intestate?
(b) What are the rules in case of intestates, other than Parsis.
4. (a). What is a bequest? Explain void bequest
(b) Explain : (i) Contingent bequest
(ii) Conditional bequests
5. (a) What is a legacy?

(b) Explain special legacies and distinguish them from demonstrative legacies.
(c) When is a legacy adeemed ?
6. What is appropate? To whom is it issued? What are the powers and duties of an executor ?
7. Who is an administrator? How is he appointed ? What are his powers and duties ?
8. What is a succession certificate? To whom is it issued ? What are its contents ? Can a certificate be revoked ?
9. Write short notes on :

(i) Onerous bequests, (ii) Bequest of annuities, (Hi) Gifts made in contemplation of death, (iv) Universal legatee, (v) Residuary legatee, (vi) Executor de son tort, (vii) Devastation, (viii) Citation, (jx) Attestation, (x) Caveat, (xi) Curator (xii) Refund of Legacies (xii) Consanguinity
10. How is a will Interpreted?

CHAPTER 1

WILLS

Ch. 1.1 Will:

The Indian Succession Act defines in Sn, 2 (h) a will. It means a legal declaration of the, intention of a testator with respect to his property which he desires to be carried into effect **after his death**.

Essentials of a Will : (Unprivileged Will)

(i) It must be in writing. Stamp paper not required, (ii) It must contain a legal declaration of his intention (Animus testandi).

(iii) It must be with regard to -his property. Movables and Immovables.

(iv) It must take effect after the death of the testator, (v) Person with legal incapacity cannot make a will. A minor cannot make a will. The deaf, dumb or the blind can make a will if he is able to know what he does by a will. During lucid intervals, an insane may make a will, (vi) If a will is made under fraud undue influence or coercion it is void.

(vii) A will may be revoked at any time by the testator, (viii) Amendments or changes may be made by writing a codicil.

Registration : A will may be registered. But, registration is only optional according to the Registration Act. It may be sealed and deposited with the Sub-Registrar to ensure security and secrecy.

Attestation : The will shall be attested by two or more witnesses.

Each witness must have seen the testator sign or affix his mark. It is

not necessary that both the witnesses should be present at one and the same time. The attesting witness need not know the contents of the will.

Ch. 1.2 Kinds of Wills : There are two kinds of wills : (a) Privileged wills and (b) Unprivileged wills.

- (a) **Privileged Will:** Soldier will:

A soldier engaged in actual fighting, may not be in a position to follow all the formalities to execute a valid will. The legislature has made some provisions dispensing with the formalities.

The privileged will may be executed by any soldier employed in an expedition or engaged in actual warfare. It applies to land, Navy and Air Personnel. A Medical Officer attached to the regiment is a 'soldier' for this purpose and hence can execute a privileged will.

Features:

The will may be oral or in writing ; if written it may not be signed or attested. It may be partly written by the testator and the balance may be written by any other person with his direction. It need not be attested. If a soldier leaves instructions for the preparation of his will but before it is prepared he dies such instructions will constitute his will. By declaring his intention, before two witnesses the soldier may make a will.

The will is void of the testator if made for more than 30 days after making the will. This is so because he can make an un-privileged will.

(6) Unprivileged Will: Refer Ch, 1.1. **Ch. 1.3**

Codicil:

Means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It shall be deemed to be part of the will.

It is necessary that the Codicil should be in writing. The person shall have attained majority and must be of sound mind. An insane person can make a Codicil but only during lucid intervals. The Codicil must be executed by the testator himself by putting the signature. There must be attestation, as in a will.

The attestation shall be by two or more witnesses who must have seen the testator putting his signature. The other formalities of the will apply to the Codicil also, •

CHAPTER 2

DEFINITIONS

Ch. 2,1 Executor De Son Tort: (Executor of his own wrong) Sn 303

He is neither an executor nor an administrator but is a self appointed executor who inter-meddles with the estate of the deceased. He may do any other act which a legal executor could have done. Such a person is an executor of his own wrong.

There are some exceptions:

(i) If a person intermeddles with the goods of the deceased to preserve them. or to provide for funeral expenses or for other immediate legal necessities, he is not an Executor de son tort.

(ii) If a person deals with the goods of the testator in the ordinary business, he is not an Executor de son tort.

E.g.: A sells the goods of the deceased testator to satisfy his own debts. He is an executor de son tort.

In English Law the principle is very strict. In case of milking the cows or taking a dog to satisfy his own debt, the person becomes liable as executor de son tort.

An executor de son tort is answerable to the rightful executor or administrator or to any legatee or creditor. He is liable to the extent of the assets which may have come to his hands.

Leading Cases:

(a) Padg'et Vs. Priest

(b) Robson Vs. Administrator General.

Ch. 2.3 'Donatio Martis Causa' (Sn. 181).

This is the gift made in 'contemplation of death'. It provides that a person may dispose of any movable property by gift when he is in contemplation of death.

The person is in contemplation of death if he is ill and expects to die shortly of his illness. Such a person may deliver possession of any movable property as a gift. The gift will not take effect if the donor recovers from illness during which it was made. It will also not take effect if he dies prior to the donor.

E.g.: (a) A being seriously ill, and on expectation of death delivers to B. (1) A wrist watch (2) A promissory note, (3) Government bonds, and (4) Cash Rs. 2,000. The gift is valid.

(b) A makes a Donatio Mortis Causa and delivers B, the key of a trunk to give him the properties therein. A dies of illness. The gift is valid.

Leading Cases are (!) Gardner Vs. Parker, (2) Ward Vs. Turner.

Only movables must be given, and not immovables. Delivery must be made. Then only the gift is valid.

A gift made *In* contemplation of suicide is not 'Donation Mortis Causa.'

Ch. 2.3 Onerous Bequest:

Sn. 122 I.S.A, deals with Onerous.(burdensome) bequest. Under a will, the legatee B must- take both the bequests, one onerous and the other, not onerous otherwise he gets nothing.

However, if the will contains two separate and independent bequests, the legatee is at liberty to accept the one and reject the other. Here, one may be beneficial and the other onerous. But because the transactions are different he is entitled to the option.

Leading Cases are: (I) Syer Vs. Gladstone (ii) Warren Vs. Rudall¹

Illustration

(i) A is having shares in X and Co. a prosperous company and also in Y and Co. which is in difficulties. A bequests all his shares in both companies, to B. if B refuses to accept the shares of Y and Co., he forfeits X and Co. shares.

(ii) If a testator bequeaths two separate and independent bequests to the same person, the legatee is at liberty to accept one and refuse the other.

A is living in a rented house for which he is paying heavy rent than usual. A bequeaths to B this lease and also Rs. 10,000. B may refuse the lease but opt for cash. •

CHAPTER 3

DOMICILE

Ch. 3.1 Domicile

Domicile means 'permanent home.' It is a place where a person has voluntarily fixed the habitation of himself and of his family with the present intention of making it his permanent home. (Cheshire: Private International Law), .

Domicile is of two kinds: Domicile of origin and domicile of choice.

Domicile of origin is communicated at birth by operation of law. But, domicile of choice could be acquired by any person (who is not a minor), by changing his place to a new place with the animus (intention) to acquire the domicile of that place. Long residence alone will not suffice. He must have the intention to acquire new domicile.

The leading cases are : (i) Winans Vs. A.G.

(ii) Ramsay Vs. Live,t Pool Royal Infirmary. .(iii)
Jopp Vs. Wood, (iv) Bell Vs. Kennedy, (v) White
Vs. Tennant. (vi) Udney Vs. Udney.

(i) Winans Vs. A. G. :

Winans was born in the United States. For sometime he did his father's business then for 9 years he served in Russia, then for some years he was visiting Engiaud Scotland and Russia. He then lived in a rented house in London, and then he died.

Held, though he had stayed for 37 years in England, he had no intention to have it as his permanent home. Hence, it was held that Winans had his U.S. domicile.

(ii) In Ramsay's case: one Bowie had left a will. The will was valid if the testators domicile was Scottish, and invalid if the domicile was English.

B was born in Glasgow and therefore had domicile of origin as Scottish. Has went to England when he was 27, and stayed there for 36 years and died.

Held, B had died with Scottish domicile, as there was no animus to acquire English domicile.

(iii) In White Vs. Tennant, 'A' abandoned his place 'X' and moved to State 'Y' with his family with intention to live there permanently. A returned to his place 'X' for a day's stay but died. Question

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was about the domicile of A, Held, A died with the domicile at 'YV There was animus and change of permanent home to place Y,

Ch. 3.2 Domicile of Choice and of Origin Distinguished.-

Domicile of Origin is acquired at birth by operation of law. It is tenacious and cannot be easily shaken off (Add Winan's case, Ramsay's case).

When a person after attaining majority acquires domicile of choice, the Domicile of origin will be in abeyance; as soon as the person abandons his domicile of choice, the domicile of origin revives and fastens the person (Udny Vs. Udny). Domicile of choice is acquired voluntarily by a person who has attained majority, If he abandons this, he immediately gets his domicile of origin. He may acquire some other domicile of choice, if he so desires.

Domicile determines the 'Status' of an individual. Validity of marriage, divorce, legitimacy, testate (under a will) and intestate (without a will) succession are determined according to domicile. *No person can have two domiciles simultaneously.*

Application of domicile: (i) In India, succession to immovable property of a deceased person is governed by the law of India: (Lex situs).

(ii) Succession to movable property is governed by the person's domicile at the time of his death.

E.g. A an Englishman domiciled in France, dies in India leaving movables and immovable in India. His movables are governed by French Law, but his immovable are governed by the Law of India (Indian Succession Act).

Major Exceptions : The *rules relating to domicile* contained in the Indian Succession Act are not applicable to Hindus, Muslims, Buddhists, Jains and Sikhs.

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CHAPTER 4

LEGACIES

Ch. 4.1 Legacy:

A gift under a will is *a* legacy.

A legacy may be generator specific.

Specific Legacy :

(1) If testator bequeaths to any person a specified part of his property as distinguished from all other properties, the legacy is specific (Sn. 142) E.g.: (i) A bequeaths properties to B mentioning :

- (a) My diamond ring given to me by C
 - (b) The golden chain I am wearing
 - (c) Rs. 5,000 which I have kept in my safe No. 1
 - (d) My furniture kept in my house at Calcutta (address mentioned)
 - (e) My shares in Canara Bank, branch address specified.
- All these are specific legacies. ,They are easily identifiable.

E.g. (ii) A bequeaths properties to B mentioning :

- (a) Golden ring
- (b) Horse
- (c) So much money as is necessary to buy 50, Government . bonds.

These are not specific legacies.

The legacy will not become specific merely because certain stocks, funds or securities are described in terms of money *to* be given as legacy.

A bequeaths to B Rs. 10,000 of his property. This is not specific.

If a bequest is made in general terms of a certain sum of money equal to any kind of stock, it is not a specific legacy because the testator had much of the stocks in the companies.

A bequeaths to B 5% Government securities. A has various Govt. securities for Rs. 5,000. The legacy is not specific, as no reference is made to the particular Government Bond.

if the will contains a bequest of the residue of the testator's property along with some mentioned items, the articles so mentioned are not specifically bequeathed.

Specific legacy can be made to two or more persons in succession though the value of the property may be decreasing. 7

Ch, 4,2 Demonstrative Legacies

Where a testator bequeaths a certain sum of money or a certain quantity in any other commodity and refers to a particular fund or stock so as to constitute the same, the primary fund or stock, of which payment is to be made, the legacy is demonstrative.

In specific legacy a specified named property is given to the legatee, In demonstrative legacy it is directed to be paid out of a specified fund or property.

(i) A bequeaths to B Rs. 1000 due from W to A. He also bequeaths to Rs, 5000 to be paid from the various amounts due from 'O'. Legacy to B is specific whereas to C it is demonstrative.

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(ii) A bequeaths to C Rs. 25,000 out of estate at Ramanagaram. This is demonstrative,

(iii) A bequeaths to B 'Rs. 10,000 from my 5% bonds; 1000 chests of tel from my tea estate—These are demonstrative.

Regarding ademption a demonstrative legacy is to be paid from the general assets of the testator. Hence, it is not adeemed. But, a specific legacy is adeemed if it does not exist on testator's death.

Ch. 4.3 Residuary Legatee :

A Residuary Legatee may be constituted with any words that¹ show an intention of the testator that the person so named takes the surplus or residue of his property.

No particular mode is prescribed by law but it is necessary that the intention should be clear to constitute a legatee who gets the residue after all the other bequests are attended to.

E.g.: A makes a will mentioning 'I think there will be something left after all the funeral expenses etc., and legacies are met. That shall be given to B who is studying in the college to equip him to any study he chooses.' B here is a residuary legatee.

The residuary legatee is entitled to ail the property of the testator at the time of his death. That is, the property which has not been given to any person under the will.'

"Any other property not mentioned above is to be given to S₅ my youngest son." S₅ is a residuary legatee.

CHAPTER 5

EXECUTOR AND ADMINISTRATOR

Ch. 5.1 Executor and Administrator :

(1) Who is Executor or Administrator ?

Provisions are made in the Indian Succession Act relating to the protection of the property of the testator on his death. If the testator has named a person he is called a executor. If not so appointed, the court may appoint a person called an Administrator who gets the powers from the date of appointment by the court. Such an Executor or Administrator is the legal representative of deceased testator and all the property of the deceased vests in him.

Ch. 5.2 Rights:

(i) The executor gets the right to act as an executor, when the competent court, grants a probate of the will mentioning the rights of the executor.

(ii) In case of administrator the court grants letters of Administration empowering the Administrator to exercise his powers,

Ch. 5.3 Representative title:

The executor gets power to sue in a court under the probate (in respect of Administrator, he gets under the letter of administration). Nothing prevents the Executor from suing the debtors of the testator, before taking out the probate. But the court will not pass a decree against a debtor for payment of money to the Executor unless the probate has been taken out by the Executor, (In the case of administrator he must have taken letters of administration).

Ch, 5.4 Petition: For Probate

The executor should file a petition to the competent court, with the will, praying for grant of a probate (i.e., authority). A probate shall be granted only to an executor appointed by the will (the appointment may be express or implied). It is not granted to any person who is a minor or who is of unsound mind. Several persons may be appointed as executors. Probate may be given to them simultaneously or at different times. The probate is granted, in the prescribed proforma, with the seal of the court. It is valid retrospectively dating back to the date of death of the testator and all acts, done by the executor become valid.

An executor may renounce his job orally in the presence of the judge or by writing, duly signed. If he fails to take charge within a reasonable time, an administrator may be appointed.

Ch. 5,5 Administrator Appointment;

The procedure to the issue of probate is applicable for the issue of "Settlers of administration" to an Administrator i.e., petition should be filed to the District court. He may be appointed in case of a testate or intestate succession.

Qualifications are in case of intestate succession a person connected with the testator by marriage or by consanguinity (blood relationship) is entitled to be appointed. If the testator has not appointed an executor or if appointed he renounces or dies or refuses to act, or if there is no executor and no residuary legatee at all, a person who is entitled under intestate succession may be appointed. In his absence, a legatee or in his absence a creditor may be appointed as administrator.

The person must have attained majority and must be of sound mind. Letter of administration is granted with a copy of the will. The court shall take a bond (with or without securities) from the administrator.

No letters of administration are to be issued within fourteen days of the death of the testator.

Ch, 5.6 Powers and Duties of Exacutor or Administrator :

An executor is a person appointed by the testator under the will. He accepts to act, and takes out probate from the court, The probate gives him the Representative title to act as executor.

An administrator is a person duly appointed by the court and to whom 'letters of administration' have been granted. The letter gives him the Representative title to exercise his powers as Administrator,

The Indian Succession Act has provided for the various powers, duties and functions of the Executor and Administrator.

(i.) *Legal Actions:*

The executor or administrator has the power to sue in all causes of action that have survived -the testator. He may take all measures to recover the debts in the same manner as the testator. All demands and all rights to prosecute or to defend come to the executor or administrator. However such causes of action as defamation, assault, etc., do not survive as they die with the testator.

E.g.: A sues to divorce his wife W, A dies. This does not survive to executor of A,

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He has the power to dispose of the property of the testator vested in him in a manner which he thinks fit and proper. If the testator was a Hindu or Mohammadan, the permission of court must be taken to mart-

gage, to sell, to* charge, to gift away or to lease out--any immovable property. Otherwise it becomes voidable.

(iii) *General Powers'*.

He is entitled to incur expenditure for the care of the property and for its proper management. He may also incur expenditure for religious, charitable and other objects as may be reasonable and proper. But, he must take the sanction of the court.

(iv) *Commission:*

He is not entitled to any commission or agency charges higher than what is prescribed by. law.

If he buys any property of the deceased, the transaction is voidable.

(v) Duties:

Executor is bound to carry .out the directions given under the will. He should not try to act much wiser and better, than the pious, old fashioned and ignorant testator. He can vary the directions as perCypres Doctrine (i.e., for similar use or to approximate.to testator's intentions). The Administrator should act as per the directions of the court.

(vi) Funeral Expenses :

It is the duty of the executor to provide funds for the performance of the various funeral ceremonies, befitting the status and dignity of the person and subject to the property left by testator.

(vii) Inventory: - Executor or administrator shall within six months from the date of the probate or letters of administration produce to the court an Inventory containing a full and true account of all the property and also all the credits and the debts of the testator. Further within one year he must produce an account of the latest position thereof.

The High Court has prescribed the method of doing the inventory. If he does not make the Inventory he is guilty and punishable under I.P.C. Sn. 176. He should not prepare a false inventory. If made he becomes punishable under I.P.C. Sn. 193.

(viii) Collections :He shall collect and put together with reasonable diligence all the property and also all the amounts due from the debtors.

(xi) Payments:He shall pay, first, reasonable funeral expenses, and death-bed expenses including medical expenses and boarding and lodging if any.

Next he shall pay towards the cost incurred, in obtaining probate or letters of administration and judicial expenses if any. He shall pay wages in respect of services rendered to the deceased i.e., expenses to any labourer, artisan or domestic servant. Next he shall pay the creditors. Hence no creditor has a right of priority. Hence the principle of reteable distribution i.e., distributing the assets *pari pssu* (that extent possible to pay) applies.

Only after paying the debts, the legacies may be first paid up. If the assets are not sufficient to pay all the general legacies there may be an abatement of such legacies or reduced ratably.

(x) *Liabilities* : **Devastavit:**

In regard to liabilities the law of Devastavit applies. Executor or administrator is liable to make good the loss or damage caused to the assets due to his misapplication. Similarly, he is liable for his negligent act towards the assets.

1. A an executor compromises with a debtor for 5000 Rupees in respect of a promote of Rs. 10,000 when the debtor is in a sound position to pay. This is Devastavit.

2. An administrator leases out a building for Rs. 2000 when it can really fetch Rs. 4500 per month.

3. Deliberately executor does not keep huge monies in Fixed Deposits. These are examples Executor is liable for loss.

Ch. 5.7 Citation

Means "a reference to prior title." Letters of administration should be granted to the residuary legatee in the absence of executor or persons related by marriage or blood to the testator.

Hence if a prior title is cited and proved, the letters of administration cannot be issued to the Residuary legatee. This is called Citation. The principle is that if a prior party has a title to the grant of probate or letters, that person must be cited, before the letters of administration are granted to the next person.

The order mentioned in the Indian Succession Act is :

(i) Executor

(ii) Persons related by marriage or blood (iii) Residuary legatee (iv) Specific legatee

(y) Legatee

(vi) Creditor

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Absence of Citation:

Citation is essential before the letters of Administration are granted to the petitioner. If there is no citation and letters are issued to some other person, then the letters may be set aside as the proceedings are defective.

Citations must be issued and published as required by the Indian Succession Act.

CHAPTER 6

SUCCESSION CERTIFICATE -

Ch. 6. Succession Certificate:

1. *Petition:*

District Judge is empowered under the I. S. Act to grant a certificate called Succession Certificate.

An application—by way of a petition signed and verified by the applicant shall be filed before the District Judge. The petition *inter alia*, shall contain the following particulars:

- (a) The time of the death of the deceased.
- (b) The ordinary residence of the deceased at that time (or lodging) if any.
- (c) The application should contain details of family and the other near relatives of the deceased and their respective addresses.
- (d) The right of the petitioner to claim.
- (e) The debts and securities (to be recovered to be named) etc., in respect of which such certificate is applied for.
- (f) The fact that there is no impediment for the grant of such certificate.

There should be no Fraud 'Suggestio Faisi', 'Supressio Veri' in the petition.

No period of limitation is prescribed to make the application.

2. *Procedure:*

if the District Judge is satisfied that there are valid grounds to entertain the application, he shall fix a day for the hearing. Notice shall be given to the parties. He decides in a summary manner 'as to whom the succession certificate is to be issued. If he finds that the petitioner has a right, he issues an order for the grant of the certificate to him. If he cannot decide because of the intricate or difficult questions of law or fact, he may grant it to the applicant if he has *priorra facie* the best title.

3. *Contents;*

The District Judge shall specify the debts and securities as per the petition. He may empower the petitioner:

- (a) To receive interests or dividends
- (b) Both to receive interest and dividends and to negotiate or transfer, the securities or any of them,

4. *Security Bond:*

The judge may require the petitioner to make security bond with or without sureties. This is done as a caution.

5. *Scope •'*

The holder of the succession certificate may make an application requesting the judge to extend the certificate to any other debt or security. The judge may make orders suitably and a security bond may be demanded.

6. *Amendment:*

Amendments may be made to the certificate by the judge. The certificate is effective throughout India. Such a certificate is conclusive and the certificate holder may give a valid and complete discharge of the debts etc.

7. *Revocation:*

A certificate may be revoked by a decree or order of the court on the ground:

- (i) That the procedure was defective
- (ii) It was obtained fraudulently,
- (iii) It was obtained by making untrue allegations or,
- (iv) It has become useless or inoperative.

8. *Appeal:*

Allowed to the High Court if the District Judge has refused to grant or has revoked a certificate. The High Court may direct suitably and grant a certificate.»

9. *Restrictions:*

A certificate shall not be issued if there is already a probate or letters of administration duly issued.

1.0. *Surrender of Certificate:*

If the certificate becomes invalid or is superseded, the holder shall surrender it to the District Court. If not, he is punishable with fine (Rs. 1,000) or imprisonment for three months or both.

CHAPTER 7

MISCELLANEOUS TOPICS

6h, 7,1 **Contingent Bequest:** (*Sns.* 124 and 125)

(i) In a will, the testator may make a bequest subject to a contingent event. If a legacy is given subject to the happening of a specific uncertain event, without mentioning the time, the legacy takes effect only when that event happens, before the fund bequeathed becomes payable.

(a) A legacy is given by testator T to A, stating that in case of A's death it should go to B. If A survives T, the legacy to B does not take effect, and A gets the legacy on the death of T.

(b) T makes a bequest to A when A attains 18, and in case of his death it should go to B. A attains the age of 18. The bequest to B does not take effect.

In Kamala Prasad Vs. Murali the facts were:

T wrote a will, bequeathed property to his wife W and two daughters-in law ; if all die, then to T's brother's son S, All three women were alive, when T died. Held, the bequest to S fails.

(ii) If a bequest is made subject to a certain number of persons surviving at some unspecified period, the legacy goes to such of them as are alive when it becomes payable.

T bequeaths property to A and B equally or to the survivor. If A dies before T dies, and B survives, the bequest goes to B.

Ch. 7.2 Ademption of Legacies (Sn. 152):

A legacy becomes adeemed when it does not take effect. That means it fails. Two such specific circumstances are provided.

(i) If a specific legacy bequeathed does not exist at the time of the death of the testator or it has been converted into a property of a different kind, the legacy is adeemed. That is, it cannot take effect, as the subject matter has been withdrawn by the testator.

(a) A gives a legacy under a will Rs. 20,000 kept in a particular bank's safely vault and also his two horses in his stable. At the death of A there was no money in the safety vault and no horses in the stable. The legacies are adeemed (Here, the testator had withdrawn the money and sold the horses).

(b) A gives a legacy—Diamond ring given by my brothers; my golden chain/all old utensils in my house to be given to D.

On death of A there was no diamond ring, no chain or utensils. The legacy is adeemed.

2. Demonstrative legacies,

In case of demonstrative legacies, there is no ademption. The legacy is to be paid from the general assets of the testator,

In Bhagawan Das Vs. Ramdas. the legacy was to be paid from a fund, but testator was under the belief that he had a right in the fund. Actually he had no right. Held it should be paid from Assets,

(ii) Ademption in respect of claims.

if a thing specifically bequeathed is the right to receive something of value from a third party and the testator himself receives it, the bequest is adeemed.

A bequeaths to B, Rs. 5,000 which K owes to A". A himself receives this amount. The legacy to B is adeemed.

(Hi) There is also ademption *pro tanto* i.e., receiving a part from the total bequeathed fund.

A given B, legacy of Rs. 50,000 to, be recovered from C. A collects Rs. 15,000. C is entitled to Rs. 35,000 only.

(iv) Stocks bequeathed, but these are not existing as on the date of death of the testator, the legacy is adeemed.

A bequeaths 1000 shares in X and Co. to B. There were no such shares. The legacy is adeemed.

(v) Shifting an item from one place to another will not adeem a bequest. Similarly, if there is any change in the legacy, which is not known to testator, there is no ademption. If change is due to law, there is no ademption.

A gives his 5% Govt. Bond as legacy to B. This had been changed to 6% Bonds. There is no ademption.

Ch. 7.3 Bequests of Annuities: (Sns, 173-176)

1. A testator may create an annuity by a will and the legatee is entitled to receive it for his life only. For this purpose the testator may have directed payment from a fund or from the general assets of the testator.

A bequeaths an annuity of Rs. 5,000 to B for life. B is entitled to receive Rs. 5,000 annually.

2. If the assets of the testator, are not sufficient to pay the legacies given by the will, the annuity is *pro rata* reduced.

3. If the will provides that annuity should be provided from the property generally, (or money is bequeathed to bring an annuity), the legacy vests in the person. He may opt for purchase of annuity or for money.

A directs by will to provide out of property an annuity of Rs.

10,000 to B, B may opt for this annuity, or for money sufficient to buy such an annuity.

4. When there is a gift of annuity and also gift to residuary legatee' the annuity should be satisfied first.

Ch. 7 4 Void Bequests :

A testator has a right to bequest but that should be according to the provision of the Indian Succession Act. ,

A bequest becomes "void" in some circumstances :

(i) When a testator makes a bequest to a person, with particular description, but there is no person of that description, the bequest is void.

A bequeaths Rs. 10,000 to B's son, But when the testator died, B had no son. The bequest is void,

A bequeaths to B an annuity of Rs. 15,000 for his life and then to B's son. When A died, B had no sons. C was born to him when B dies, annuity comes to C.

(ii) *Unborn Person:*

If a testator makes a bequest to a person, who is not in existence at the time of the testator's death, the later bequest is void. However, it will not be void, if it comprises *the whole* of the remaining interest of the testator in it., (subject the prior bequest contained in the will)-

E.g: A given a bequest to B for his life, then to his first son, and on his death to his first son. When A died, B had no sons. Bequest is not for whole interest in the bequest. Hence it is void.

(ii) A bequests a fund to B for his life, then to his daughters, When A died B had daughters. Some were not born yet. Here, full interest is given. Hence valid.

(iii) *Perpetual* :

The question is whether a testator may create bequests for generations ? As the tendency of such bequests is to tie-up the property, law has imposed certain restrictions. One such restriction is the rule against perpetuity :

(a) Vesting of bequest may be made to one or more persons living,

at the time of testator's death,

And, at the end of that period to the lives of all those persons,

plus the minority of a person in existence. But the property

should vest in him absolutely.

b.. One or more living persons plus minority of person in existence is the total period, !f vesting in beyond this, it is void as beyond the period of perpetuity.

E.g: T bequeaths a fund to 'A' for life then to B for his life and then to sons of B who attain 25 years of age,

Hera B dies during A's life time 8 had a son of 10 years. He attains majority in 8 years time. This is within period allowed. Hence, valid.

Ch. 7.5 Conditional Bequests S-ns 126-137

A testator may impose any condition to his bequests, but it should not be against the provisions i.e., Sns.126-137 of the Indian Succession Act,

(1) If it is subject loan impossible condition, the bequest becomes void.

(a) "If A walks 100 miles per hour, I bequeath one lakh rupees to him,"

(b) B bequeaths his house to A: if A marries 'C's daughter 'D'.
On the death of B, 0 was dead.
—These are void.

(2) If the conditions are illegal or immoral the bequest in void,
"A bequeaths Rs, 50,000 to B, if B kills D."

"A bequeaths Rs. 30,000 to B, if B divorces his wife." —These are void.

(3) Conditions precedent:

- (i) If there is a condition precedent substantial compliance will suffice.

T bequeaths Rs. 50,000 Bonds to A, if A marries with the consent of B, C. And £. To A's marriage, B gives consent, C sends marriage gift, D raises no objections, E attends the marriage. There is compliance.

- (ii) "Bequest to A, on failure to B."--in such a case, the second takes effect on failure of the first. The failure may not be the same as thought of my testator.

A bequeaths to "my children"~if they die before attaining 18, it shall go to B. A dies without children. B gets the property, if the testator has specified the manner of failure of the first then it should be in that manner only:

(4) Conditions subsequent:

A bequest may be made with a condition super added that in case a specific mentioned event shall happen the bequeathed thing shall go to another person, if it does not happen, to some other person,

Ms bequeathed money to B to be paid to him at the age of 18, and, if he shall die before 18 to C, Here B takes a vested interest, subject to be divested and to go to C in case B dies before 18,

In Sankar Vs. Manjiinath, testator T had stated in his will "if my son returns to good ways of living and resides with my other son M then one half of my property shall go to him,"

V turns to good ways, lives with M. V is entitled.

Conditions subsequent should be fully complied with. If time-limit is there, it should be followed.

Ch. 7.6 Refund of Legacies Sns 356-367

The question that arises is when the executor or administrator has paid the legacy, can he ask for "Refund", and if so under what circumstances. Sns. 356-367 answer this question.

(1) *Court order* :

If legacy is paid under court order, the legatee may be asked to refund if the assets are insufficient to pay all legacies.

(2) *Voluntary payments*:

When the administrator or executor makes payment *Voluntarily* he cannot ask for refund. But, there is one exception. If, the executor or administrator, has without fraud, extended time for performance of a condition and the condition is performed accordingly, refund may be claimed.

- (3) Unpaid creditors to the testator, may claim for refund of legacies.

- (4) The person making the refund need not pay interest on the legacy—amount received,

Ch. 7,7-Consanguinity Sns 24-27

Sn. 24 of the Indian Succession Act, defines "Consanguinity," According to it: "Kindred or Consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

This definition is made for a limited purpose under the Act. it does not apply to any Hindu, Muslim, Buddhist Jain, Sikh or Parsi,

Divisions: There are two divisions,

1, Lineal Consanguinity and 2, Collaterals

1. *Lineal Consanguinity*: Here, one is related to the other in direct ascending line Father, grand father, great grand father etc. Similarly in direct descending line son, grand son, great grand son etc.

Every generation is calculated as a degree. E.g. propositus to his father (First degree), grand father (Second degree and so on).

2, *Collateral*:

This subsists between two persons who are descendents from the same stock or ancestor, but there is no direct line.

Scope:

This definition of consanguinity is applicable to Europeans, Armenians, Indian Christians and Christians.

Ch. 7.8 Caveat Sn. 284

"A Caveat is a notice in writing that no grant to be sealed in the estate of the deceased named, without notice to the caveator"-
-Williams.

The main purpose is to give time to the caveator to make enquiries, and to obtain information to enable him to oppose the grant of probate or letters of administration.

*

Lodging :

Caveat in the prescribed form, should be filed with the District.

Judge, with a request to provide an opportunity of being heard before

issuing probate. The court will not take any proceedings with the petition for issue of probate or letters of administration, until notice is

given to the caveator, The caveator should have some right or interest

in the issue of probate etc. The life of the caveat is only three

months.
Subsequent caveats may be filed,

CHAPTER 8

GENERAL

8.1 Curator (Sns. 192-210)

Provisions are made in the Indian Succession Act to protect the property of the deceased against misappropriation waste or neglect

The property may be movable or immovable. Curator is the person appointed by the court to protect the estate of the deceased.

Application :

A person who has a right by succession to the deceased, may make an application to the District Court, when actual possession has been taken by another person or when forcible means of seizing possession are apprehended.

[On behalf of minor, a relative or next friend may file the application] It should be filed within 6 months of the death of the proprietor

whose property is claimed by right by succession (Sn. 205).

2. *Inquiry:*

The District Judge examines the applicant on oath, to find out whether there are sufficient grounds to entertain and whether application is made bona fide and whether regular suit would be prejudicial.

If satisfied, he summonses the opposite party, hears him, and determines summarily who is having the right to possession.

The judge in suitable cases may appoint an officer of the court to make an inventory of the properties of the deceased.

3. *Appointment of Curator:*

If the judge apprehends misappropriation, or waste of property, before the proceedings are completed and if delay is risky, he may proceed to appoint a *curator* on terms fixed by him, and, in consequence property is handed over to him. The appointment is duly published.

4. *Powers and functions:*

(i) As per the terms of his appointment by the District Judge he takes possession of the property and exercises his powers.

(ii) If probate, letters of administration, or Succession Certificate had been issued, the curator has no powers.

(iii) Curator should give security as per the orders of the District Judge.

(iv) Curator should prepare an inventory also expenses, income etc.

and submit to the court. He should file quarterly statement of accounts (v) He may be paid compensation for his services, (vi) To sue, to defend, taking action etc. by him should be as per

the directions of the court.

(vii) The appointment is only for a limited purpose. What the court determines is only the right to possession. This is not about title etc. Hence there is no appeal. (Sn, 209),

5, **Punishment:** The curator is punishable by the District Judge, for violation of his powers or dereliction of duties,

Ch. 8,2 Parsi Succession (Sns, SO-S6)

Specie! Provisions are made in the Indian Succession Act to Parsis in India for intestate succession (Sns. 50-56).

If a Parsi dies intestate i.e., (without writing a will) or if he has written a will that fails, succession is governed as per the Act (Sns 50-56)

The rules relating to such succession may be summarised as follows :

(1) *Gene rat Principles:*

(i) There is no distinction between those who are born during the lifetime of the intestate, and those who were en ventre sa mere (i.e., in womb), but born alive after the death of intestate.

(ii) During the lifetime of the intestate if his lineal descendant, has died, such person is not included for division. But, if he has left a widow, children Sn 53 is to be followed.

(iii) If any relative of the intestate who is a widow, remarries, she has no rights/share in intestate's property.

(2) *Division:*

(i) If intestate had died leaving his widow and children : Shares are
Widows : Two, Sons: Two, Daughter: One.

(ii) If he had died leaving children only shares are . Sons : Two,
Daughter: One.

(iii) If he had died leaving his parents, widow, sons, daughters, grandfather gets | of grandsons share, grandmother gets \ of granddaughters share.

(3) *Intestate Female:*

(i) If she has left widower and children widower and each child equal shares (ii) If no widower, children take equally (sons or daughters)

(4) *Intestate leaving lineal descendant •'*

(i) If a son of the intestate had died (during lifetime of the intestate), his widow and children shall take, as though the son had died, after the death of the intestate, (as in 2(1) above)

(ii) If a daughter had died, her share shall be divided equally among the children, (see 2 above)

(5) If intestate in his lineal descendants, had left widow or widower only •'

(i) Widow get i

(ii) Widow (widower) and if his lineal descendant was widow or widower, that person gets •J the property divided as per schedule (Father, mother, brothers, sisters etc.)

6, If intestate has no direct descendants, the division will be as in the schedule, on priority basis.

Ch 8.3 Non Parsi Succession (Sns, 31-48)

1. "Non Parsis" means Europeans and Indian Christians, Hence, these rules are applicable only to them. Hindus, Muslims etc. have their own law of Succession. Parsis have special provisions.

2. In case of intestate non Parsis, the Indian Succession Act has provided for Succession in Sns. 31-48. They are summarised:

(i) *Devolution:*

The property of the intestate devolves on wife or husband. It may devolve on kindred, according to these rules. According to English law, if the widow before her wedding had entered into a contract accepting no share, then she is not entitled to property. ,

(ii) *Widow:*

If there are lineal descendants, widow one third, others two thirds. No lineal descendants, entire property goes to widow. No lineal descendants, but has kindred, widow half, kindred half. 'No widow, no lineal descendants, no kindred—property goes by escheat to Government,

(hi) *Widower:* Like the widow, he has the same share if no lineal descendants, i.e., he gets full share.

(iv) *Children:* Only child : Full share 9

Children; Equal share (illegitimate child not included)

(v) *Grand Children.*; If no children, grand children get equally.

(vi) *Father and no others:* Father gets full share.

(vii) *Mother, Sisters, Brothers :* Equal share.

Ch, 8,4 Construction of Wills (Interpretation)

"Interpretation" of laws in the domain of the courts, Over the centuries, the courts have evolved certain rules for interpretation of statutes and of wills.

In regard to interpretation of wills the Indian Succession Act has provided for certain basic principles of construction in Sns. 77-111. Of course, these rules are the distilled wisdom of the judges in interpreting wills and testaments. The essential rules are as follows :

(1) One essential feature of the will is that it comes into operation on the death of the testator and hence, the "intention of the author" is to be ascertained by the courts by applying some general rules of interpretation contained in these sections. Sns. 77-111.

(2) A will may be written in any language. There is no prescribed form. Only some basic procedures are prescribed which should be followed by the testator. Particular technical language or words etc., are not necessary. The intention of the author may be express or implied. Simple and natural meaning is given to the words by the courts. If technical words are used by the testator, the technical meaning is given to them.

(3) If it is to ascertain what persons and what property are denoted by words in the will, the court may examine the circumstances of the testator and his family which may throw light on these aspects.

(4) If there is a misnomer or a mis description, the error in name or description, will not prevent the legacy from taking effect. The name may be corrected, A bequeaths a fund to "my second brother's son Sri Murthy." His name was Sri Rama Murthy. This may be corrected.

(5) If a word material to the full meaning is omitted in the will, the court may supply -the omission.

A gives "five thousand" to my daughter D, Rupees may be supplied to this.
will should be rejected as meaningless

(6) The meaning of any clause in a will is to be collected from the entire will, and, all its parts *are* to be intergreted with reference to each other.

(7) If there are latent ambiguities, then evidence may be allowed to know what the testator intended.

(8) No part of the will should be rejected as meaningless.

(9) If there are two clauses in a will say, bequest, one negating the other, the *last* one will prevail.

e.g., A bequests a fund to K in first page, but in last page he has written the fund to go to M, M gets it.

The general rule is that the intention of the Testator is to be gathered from his own words used, no pedantic or specialists 'approach should be made.

THE END