

B.A.LL.B. VIII SEMESTER
DRAFTING OF PLEADING & CONVEYANCING
CIDE: BL-805
TOPIC: WILL DEED

What is Will:-

A Will is a declaration. A Will is by which a living person (called testator) declares his desires or intentions. A Will is never an agreement or contract or settlement. It is for this reason that the beneficiaries of a Will should not be parties to the Will.

Will is defined under section 2(h) of Indian Succession Act, 1925 as follows:

(h) "Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. It is also worthwhile to look at the definition of a codicil under Indian Succession Act, 1925.

(b) "Codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will;

Clearly, a codicil is a document that is prepared in relation to an existing will to either modify or explain or add to the provisions of the will. The codicil becomes part of the will to which it relates and has no independent existence.

Another term that is relevant to the discussion about wills is "Probate," which is defined as follows by Indian Succession Act, 1925.

(f) "Probate" means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator.

Application for probate needs to be made to the appropriate court after the death of the testator. Application for probate can be moved either by the executor of the will or by the beneficiary/beneficiaries . If a court

grants probate in relation to a will , all those acting on the basis of the will have no ground to doubt the genuineness of the will.

Ingredients of Will are as follows :-

Legal declaration

Intention of testator

With respect to his/her property

Desires to be carried into effect after his/her death

Sec. 59 Persons capable of making wills

Every person of sound mind not being a minor may dispose of his property by will.

Explanation 1 A married woman may dispose by will of any property which she could acquire by the "own act during her" life.

Explanation 2 Person who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3 A person who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4 No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

There are only two considerations to determine capacity for making a Will. The first is that the person should be of sound mind and the second is that he/she should not be minor.

Drafting a Will:- There is no particular format of a will. The most important requirement for a Will is that the intentions of the testator should be known clearly and unambiguously from a will. Sec. 74 of Indian Succession Act states the same in clear terms. Relevant Section reads as follows.

Section 74:- Wording of Will

It is not necessary that any technical words or terms of art be used in a will, but only that the wording be such that the intentions of the testator can be known there from.

A will should be written in a manner that is easy to read and understand. As far as possible, the will should avoid legalese and be worded in simple language. It should be specific and clear with respect to the intentions of the testator.

Any will is concerned with the following:- Testator, properties and beneficiaries. It is absolutely necessary that there be no confusion about either to the three in any way. Description of the three ought to take the following care:

- Testator description
- Description of Property
- Description of Beneficiaries

Some points that may be kept in mind while drafting a Will are summed up as follows:

A Date: - Strictly legally speaking, date is not an essential requirement in a Will. An undated will shall not be invalid. However, it is not only customary to a date will, it is also an important piece of information as and when the will has to be confirmed by a Court, A date is the reference point for a court to determine the mental capacity of the testator. Other documents and witnesses may be brought before the court to prove that the testator was in good health on the date specified in the Will. In case of an undated Will, this become difficult. Hence, we recommend that a will ought to always be dated, The date may appear either at the top or the bottom, but not at both places. Putting date at more than one place opens up the possibility of two different dates on the same document leading to unnecessary questioning when presented before a court.

B Numbering of Paragraphs :- This is again not a legal requirement . However, it is recommended to make the will clear and avoid confusions.

Initial descriptive paragraphs are not numbered. The paragraphs describing the bequest are generally numbered.

C Revocation of previous wills :- If the testator has made any will(s) in the past, the same should be mentioned in the Will. It is advisable that all previous wills are revoked and the will being made is a comprehensive document. A statement declaring that all previous Wills are revoked is sufficient to revoke previous wills.

D Bequest to minor children and unborn children :- A testator can bequeath properties to minor and also to unborn children. The following sections of Indian Successions Act are relevant for bequest to children and unborn children.

Modification/ Revocation of Will :-

A will can be revoked or modified at any time during the lifetime of the testator who made the original will. Revocation as well as modification process is the same as that for making a will. As in making of the will, in case of revocation or modification the key considerations are **(a)** sound mind of the testator **(b)** Testator to sign in front of the witness and **(c)** the witness to sign in front of the witness. Revocation can either be by writing or by burning, tearing or otherwise destroying of the will by the testator or by some other person under the directions of the testator in the presence of two or more witnesses. Relevant sections on Indian Succession Act read as follows.

Section 70 Revocation of unprivileged will or codicil

No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage. Or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Illustrations:- A has made an unprivileged will, A makes another unprivileged will which purports to revoke the first. This is a revocation.

WILL-DEED

I Sri, ----- S/o----- residing at ----- aged about ---
----- years-----by religion, occupation-----do make
this my last will and testament.

1 I have not make any will or other testamentary document, but if any
made, I hereby revoke all previous wills and codicils, If any and declare
this to be my last wil and testament.

2 I appoint **(1)** Sri. ----- S/o----- residing at ----- aged
about ----- years-----by religion, occupation----

(2) Sri. ----- S/o----- residing at ----- aged
about ----- years-----by religion, occupation----

(3) Sri. ----- S/o----- residing at ----- aged
about ----- years-----by religion, occupation----
----- as the executor of this will and trustees of my
estate.

3 My family consists of -----

4 My property consists of

(a)

(b)

(c) etc.

5 I bequeath all my property in whatever form existing at the time of my
death to the said executor and trustees to hold the same on trust for the
benefit of my Wife Smt. ----- for her life time and till her death as
herein after provided.

6 My executors and trustees shall, after spending the necessary money
for the management of the said property out of the income thereof, pay
the net income to my wife and the same will belong to her absolutely
without liability to account for the same. My executor and trustees will

also spend out of the corpus of estate such amounts as may be required by the wife for medical expenses or for pilgrimage. But my executor and trustees will not be entitled to sell my immovable property above mentioned or mortgage the same.

7 On the death of my and if she predeceases me then on my death all my estate then existing whether mentioned in this will or not. Will belongs to my children.

(a)-----

(b)-----

(c)----- absolutely in equal shares and the trustees for the time being of the said estate under this will transfer the same among said children by executing proper document or documents.

8 Provided that, if at the time of death my wife or myself as the case may be any of the said children is a minor, the trustees shall hold the said property on trust until the youngest attains the age of majority and till then the net income of the said property will given or spend for maintenance and education of the said children.

9 My executor and trustees shall obtain probate of this will form a competent court, if required in law and shall pay all the probate duty and other expenses required for such probate and also pay as first charge all my other liabilities by way of taxes or otherwise howsoever.

10 I have made this will out of my free will and when I am in sound health and in good understanding and in witness thereof I have put my signature hereunder in the presence of witness on this ----- day of ----- month of ----- year.

Signed by the within named testator }

Sri, ----- }

1. Opposite in the presence of witness,}
2. Who in presence and at his request and }
3. In the presence of each other have put}
4. The signature as witness hereunder}

For further queries you may reach us via..

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