

Will (MrutuPatra)

1.0	Introduction:
1.1	This subject is very complex. This article is not intended to give any expert legal advice in respect of drafting will. The purpose is to give bird's eye view of this complex and very important topic.
1.2	Death is the only certainty in LIFE. People are generally reluctant to talk about death. They are also afraid of their old age and hence can not decide clearly as to whom the property should be given after death. Most of the people though accept this concept of will, do not take prompt action.
1.3	Every person has a right to acquire, hold and dispose the property in any manner after his death. Property can be disposed off by making a 'WILL'.
1.4	In case the will has not been made, the property will pass by inheritance as per personal law of the diseased.
1.5	Your attention is drawn to Indian Succession Act 1925 for various provisions applicable in case of Mohammedans.

2.0	Definitions /Terms used in Will:
2.1	Testator is a person making a Will.
2.2	Distribution of property as per will is called 'Testamentary' succession.
2.3	Distribution of property without will is called 'Intestate' succession.
2.4	S. 2(h) of the Indian Succession Act defines a 'Will' as a legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. A Will made during the lifetime of a person becomes effective only on his death. A Will can be revoked any time during the life of the person making a Will – i.e. a testator.
2.5	Legatee or beneficiary is a person to whom property is given under the Will.
2.6	Legacy is a benefit under the Will.
2.7	Executor is a person appointed by the testator to execute the Will as per the provisions of the Will.
2.8	Attestation is an act of witnessing the execution of the Will.
2.9	Administrator is a person appointed by a competent authority to administer the estate when no executor is appointed or an executor appointed refuses to act as an executor.
2.10	Probate is a copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate.
2.11	Codicil is a document which modifies or alters the provisions of the original Will.
2.12	Letter of Administration is letter of the court appointing an administrator to

	the estate.
2.13	Succession Certificate is issued by a Civil Court of competent jurisdiction in respect of the property of a person who has died intestate, that is without making a Will.

3.0	Who can make Will? Sec. 59 of Indian Succession Act 1925.
3.1	Every person of sound mind.
3.2	He should not be minor.

4.0	Whether any form has been prescribed for making Will?
4.1	A will has to be in writing. Oral dispositions are not recognized. (Not applicable to Mohammedans)
4.2	Indian Succession Act has neither prescribed any specific form nor any specific language.
4.3	A Will can be handwritten or typed.
4.4	A Will can be made on a plain paper.
4.5	Though no form is prescribed, Will should have the following clauses.
❖	Name, age, address, religion
❖	Revocation of earlier Will
❖	List of relatives
❖	Appointment of executor
❖	Discharge of obligations
❖	Legacies and bequests to persons
❖	Residual estate
❖	Testimonium
❖	Execution
❖	Witness
❖	Safe custody

5.0	Execution of a Will:
5.1	The Testator should sign or put his mark on a will to make his intention clear.
5.2	Execution of will by testator should be witnessed by at least two persons. These persons should also sign in presence of testator.
5.3	Signature should be placed at end of the will.
5.4	Preferably a Will should also be signed by a family doctor.

6.0	To whom property can be given under the will?
6.1	To any person born or unborn (subject to rule against perpetuity where ultimate legatee is preceded by a vesting in a living person) of Testator's choice.
6.2	Estate can be given under a Will to trusts, organizations, etc.
6.3	An executor appointed for administration can also be a beneficiary under a Will.
6.4	Property can not be given to a non-existent person.
6.5	If the beneficiary / legatee under the will are dead at the time of the death of the testator, property will be given to the legal heirs of the dead person. However Testator can give guidelines in such as situation.

7.0	Which property can be disposed off by the Testator?
7.1	Self acquired Properties.
7.2	Properties acquired by inheritance or gift, etc. and held exclusively.
7.3	Tenancy rights can not be a matter of will.
7.4	Member of a HUF can transfer his share in the properties of HUF under Will.

8.0	Executors:
8.1	His duty is to carry out instructions of the Testator.
8.2	He has a power to collect, realize and distribute the estate of the deceased.
8.3	Number of executors should not exceed four as per court practice.
8.4	On refusal of the appointed person to act as an executor, the competent court is authorized to appoint an appropriate person.

9.0	Whether Will can be revoked or altered?
9.1	The Testator during his life can revoke the will.
9.2	Will can be altered by Codocil. (Codicil is a document which modifies or alters the provisions of the original Will.)

10.0	Whether any Stamp duty is payable on execution of a will?
10.1	No stamp duty is payable on execution of a will.

11.0	Whether Will needs to be registered?
11.1	Registration of will is not compulsory. It is optional.
11.2	However 'Will' can be registered with the Sub-Registrar of Assurance's office as per the provisions of S. 40 of the Indian Registration Act.
11.3	A revocation of a registered Will should be registered.

12.0	With whom Will should be kept?
12.1	The Testator can deposit the will with any person of his choice.
12.2	The testator can deposit the will with Sub-Registrar of Assurances as per the provisions of S. 42 of Indian Registration Act.

13.0	Probate:
13.1	A probate is the grant of administration of the estate by the court of competent jurisdiction on the basis of Will.
13.2	It can be granted only to an executor.
13.3	A probate provides the conclusive evidence (i) of the execution of a Will (ii) of the legacies and (iii) of the legal character of legatees by confirming validity of a Will.
13.4	No time limit is prescribed for filing an application for probate. However, delay is required to be explained where filed beyond a period of three years of death.
13.5	Obtaining a probate is not compulsory in cases of a Hindu and a Mohammedan unless : – 1) The estate consists of an immovable property situated in the cities of Mumbai and Chennai and Kolkata. 2) Will is executed in the cities of Mumbai and/or Chennai and/or Kolkata and deals with an immovable property wherever located.

14.0	General:
14.1	A Will can be prepared with the help of Bank of Maharashtra Trustee Company.
14.2	Your close friends and family members should be informed about the Will so that executor can be informed on death.

