



# SUCCESSION PLANNING

**By**

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# Succession Planning

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- By way of Will
- As per Hindu Succession Act, 1956 -  
Applicable to all Hindus (including Sikhs, Jains, Buddhists)
- As per Indian Succession Act, 1925 -  
Applicable to all other than Hindus & Muslims
- For Muslims as per Shariyat law



# Hindu Succession Act, 1956



# Hindu Succession Act, 1956

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## Male Succession

- Firstly, upon his class I heirs
- Secondly, if there is no class I heir, then upon his class II heirs
- Thirdly, if there is no class II heirs, then upon his Agnates
- Fourthly, if there is no Agnate, then to his Cognates
- If none – to Government as escheat



# Hindu Succession Act, 1956

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## Class I Heirs

- Son
- Daughter
- Widow
- Mother
- Son/daughter of a pre deceased son/  
daughter
- Widow of a pre deceased son
- Son/daughter/widow of a pre deceased son's  
son



# Hindu Succession Act, 1956

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## Points to note

- One share to each branch
- One share to all widows put together
- Widow and mother entitled when surviving
- Widow to receive share even if she re-marries after amendment w.e.f. 09.10.2005
- Divorcee wife not entitled for any share
- Does not matter daughter is married or unmarried
- In case of pre deceased daughter - only her surviving sons and daughters get share
- Son and daughter include both natural or adopted or illegitimate but step child not included
- Children from divorcee wife also eligible irrespective of custody of children
- Father is not class I heir but he is a class II heir
- Daughter in law or grand children not separately entitled, when son is surviving

# Hindu Succession Act, 1956

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## Class II Heirs

- Father
- Son's daughter's children, brothers, sisters
- Daughter's grand children
- Children of siblings
- Father's parents
- Father's widow (step mother), brother's widow
- Father's siblings
- Mother's parents
- Mother's siblings



Points to note (a) Each category to take in above order in exclusion to the subsequent category; (b) In the present context category-2 needs to be amended



# Hindu Succession Act, 1956

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## Agnates

- Related (by blood or by adoption) wholly through males
- Agnates could be males or females
- For example Father's brother's son/daughter

## Cognates

- Related (by blood or by adoption) but not wholly through males
- Cognates could be males or females
- For example-Mother's brother's daughter
- Father's sister's son





# Hindu Succession Act, 1956

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## Female Succession

- Firstly, upon her sons and daughters (including the children of any pre deceased children) and husband
- Secondly, upon the heirs of her husband
- Thirdly, upon her parents
- Fourthly, upon the heirs of her father
- Fifthly, upon the heirs of her mother



Points to note (a) Each category in the above order; (b) If no legal heir existing in any category only then to move to next category

# Interest in HUF Property

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- As per will, only to his/her share in HUF
- In case no will, then to all other surviving members except in case deceased has left behind female relative specified in class I or a son of a pre deceased daughter then his share to devolve upon them
- Female member also to have same rights after amendment in Act in 2005

## Others

- Rights of unborn child
- Relinquishment by some member - others to get



# Succession by Will



# Succession by Will

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- It supersedes succession by operation of law
- Last will to prevail
- Legal declaration of the intention of the testator to distribute his property after his death
- No validity of the Will till he is alive
- Will can be revoked, cancelled, amended or re-written any number of times in his lifetime
- A will can never be irrevocable
- Codicil (Supplement to Will) can be attached to the Will during his lifetime





# Why to make a Will

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- Disposal of property as per his wish not as per law
- To avoid succession disputes for various movable/immovable properties, business interests
- To reward other than legal heirs
- No duty/ tax on transmission



# Disputes in Will

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- More than one Will existing, which is the last Will
- Will not prepared as per legal provisions contained under Indian Succession Act, 1925
- Will obtained by fraud, forgery, influence, coercion or duress



# Characteristics of a Legal Will

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- No legal format for preparing a Will
- May be on plain paper but it should be in writing for other than Muslims
- Registration of a Will not mandatory
- Subsequent unregistered Will would supersede earlier registered Will
- A registered Will remains safe and authentic
- No duty/tax to be paid on registration
- Clearly mention names, age and relationship of beneficiaries/legatees
- Two witnesses are required, preferably persons other than beneficiary
- Disputes may be minimized if all class/category I heirs are witnesses
- Specify reasons to preclude certain family member and make him witness, if possible
- To be signed, marked, dated and attestation by two witnesses. Better to sign each page
- Appoint a person as executor to receive, manage and distribute assets to the legates. Better to take his consent. An executor may also be witness



# Who can make a Will

- Any major person who is of sound mind
- A Will made by insane person or a person in the state of heavy intoxication, not a valid will
- Deaf/ dumb/ blind/ illiterate person can make a Will
- Female has equal rights to make Will of her properties. Unmarried females can also make Will in Hindus
- Witness by a doctor/ advocate may be good evidence of person making Will has sound mind
- Along with signature, thumb impression may also be taken
- By non resident Indian
- By a minor



# What can be bequeathed

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- Any and every property, immovable or movable in nature
- Including – Intangible assets
  - Any rights;
  - Assets to be received from others;
  - HUF share
- Properties belonging to the testator and transferable in nature
- Life interest in property can be created
- It may be property held overseas subject to law of that country
- Provide residual clause for all remaining properties if any



# What can be bequeathed

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- Any natural person- relative, friend, employee, minor
- Any artificial person-deity, NGO, Trust, HUF
- If legatee dies before testator- property to be treated intestate
- Properties not mentioned in the Will to be treated as intestate
- Legal heirs of deceased legatee may be entitled only when such legatee is child/ or any other lineal descendant of the testator and there is no contrary intention of the testator
- If alternate legatee mentioned, he would be entitled



# Executor of Will

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- Executor is the person who manages, executes and disposes properties as per wish of the testator
- Executor may not accept appointment in that case some other person may be appointed as executor with the consent of all the legatees or by court as administrator
- Prior consent of the executor should be taken by the testator
- Any beneficiary can also be appointed as executor
- Debts/ liabilities of the deceased to be paid out of his estate
- All the property of the deceased vests in the executor after his death



# Void Bequeaths

- For accumulation of income more than 18 years
- Bequest made to a person not in existence subject to exception as given
- Bequest made for charitable/ religious uses unless
  - The will is made at least 12 months prior to death
  - To be deposited within 6 months from its execution in some place as per law for safe custody of the Wills



# Succession Certificate vs. Probate

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## Succession certificate

- It is issued by a court when a person dies intestate, i.e. without making a Will

## Probate

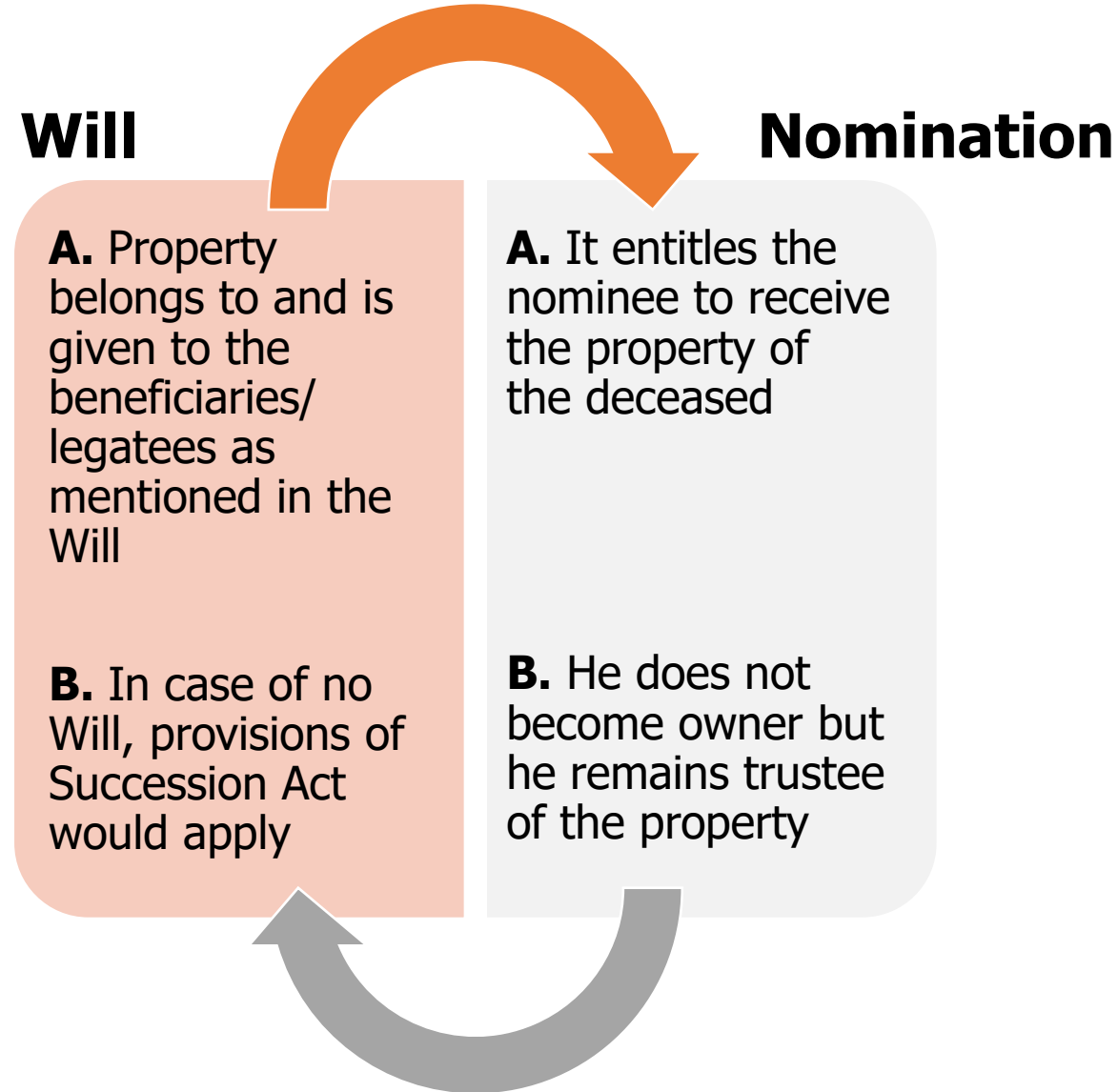
- It means the copy of the Will certified by the seal of a court
- It conclusively proves the validity or genuineness of the Will

## Need of a Probate

- To prove validity and genuineness of the Will
- For transmission of immovable property and shares in certain cases

# Will vs. Nomination

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# Different manners of Legacy

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**Vested interest**

**Contingent interest**

**Conditional interest**

**Specific legacy**

**General legacy**

**Ademption of legacy**

# Revocation of Will

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- **By making new Will**
- **By destroying the will by testator**
- **By marriage of the testator being Non-Hindu**



# Income Tax Issues



# Income Tax Issues

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- Any transfer of capital asset under a Will is not treated as a transfer u/s 47 of the Income Tax Act
- No duty or tax on transmission of assets to relative or any person under Will
- In case assets inherited under Will, cost of acquisition to previous owner to be considered a FMV as on 01.04.2001
- Period of holding shall include the period for which the asset was held by the deceased person
- In the year of death, two income tax returns to be filed
  - From 1st April till date of death by any of the legal representative
  - From the date of death till 31st March, by the executor of Will/legal representative
- An executor would have two assessments, one in representative capacity and other in his own capacity

# Planning for Succession



# Planning for Succession

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- Prepare list of all assets
- Keep financial assets in joint names but operate separately
- Appoint a nominee also
- Write a will, get registered/ notarized
- Communicate to the executor/ beneficiaries about Will and its custody
- In case of business interests in partnership firms, LLPs specify the legal heir to be inducted
- May create private trust
- May create corpus for HUF



# Wealth Management & Succession Planning

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- Wealth in different assets class
  - Bank deposits/PPF/ FDs/ Post office deposits
  - Shares/ Mutual funds/ debentures/ Debt bonds
  - Insurance policies
  - Immovable properties-Self use/ on rent/ others
  - Gold/Jewellery
  - Movable Items of personal effects – paintings, art items, vehicles, furniture, etc
- Holding financial/ immovable properties in LLP structure / Corporate entity/ Private Trust
- Distribution of assets during lifetime
- Claim of daughter - How to manage
- Keeping liquidity for old age





# Merits/ Demerits of LLP



# Merits & Demerits of LLP

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## Merits

- Artificial legal person
- May hold assets in its own name
- Limited liability of partners
- May keep perpetual status by inducting legal heir/new partner
- LLP better structure than partnership firms
- No hassle of transmission of assets
- No Income tax on withdrawals
- No Income tax in case of re adjustment of partnership ratio
- No Income tax in case of payment of premium to outgoing partner



# Merits & Demerits of LLP

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## Demerits

- Rate of income tax higher than company entity but surcharge lower than individual in higher income bracket
- In case of disputes between partners, even minor partner may halt the operations of LLP
- Assets may be attached by authorities



# Merits/ Demerits of Corporate Structure



# Merits & Demerits of Corporate Structure

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- Artificial legal person, may hold assets in its own name
- Limited liability of shareholders
- Perpetual status- No hustle of transmission
- Lower rate of income tax, but tax on withdrawals as dividend
- Regular withdrawals/loans by directors/shareholders may not be possible
- Easy to transfer ownership/shares
- Majority to rule, minor shareholder can not halt the operations





# Merits & Demerits of Corporate Structure

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- Assets of the company can not be attached, only shares can be attached for personal liabilities
- Restructuring easy by way of merger, demerger etc.
- Income tax applicable on transfer of shares at FMV
- Concessional rate of Income tax on transfer of listed securities
- Ownership may be in small percentage and easy to transfer shares/ ownership



# Proprietorship Firm





# Proprietorship Firm

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- Treated as personal asset of the individual
- No separate taxability but income tax return is filed clubbed with the individual
- May be used in case of non taxable, small businesses or for professional activities of lower scale
- No perpetual status. It dissolves with the demise of the individual



# Partnership Firm



# Partnership Firm

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- Firm is not a separate legal entity
- Liability of partners is unlimited
- Tax structure same as that of LLP
- Partnership firm is considered as joint ownership of partners
- May create disputes in case of restructuring of partners, transmissions etc.
- LLP better structure than partnership firms which has all advantages but no disadvantages of partnership firms



# Merits/Demerits of Private Trust Structure



# Merits/ Demerits of Private Trust Structure

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- Assets are held in and managed by the trustees
- Beneficiaries are the owners of properties, get benefits, regular income but can not use/ dispose the properties as per their wish
- Income tax is applicable in the like manner and to the same extent as applicable to the beneficiaries
- Assets in the Trust can not be attached against liabilities of the settler/ trustees but may be attached against liabilities of the beneficiaries
- Beneficiaries may demand dissolution and partition of Trust properties unless otherwise mentioned in the trust deed
- Stamp duty applicable on transfer of assets to trustees
- Income tax applicable on transfer of assets if beneficiaries are other than relative
- Presently, no inheritance tax in India

# Merits/ Demerits of HUF





# Merits/ Demerits of HUF

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- Separate taxable entity, benefit of income tax slab rate
- Cumbersome structure for transmission
- Difficulty in case of claim for partial partition by any coparcener
- Uncertainty in division/ share of assets
- No facility of loan by banks
- Perpetual succession may be cause of disputes
- Female share may be cause of dispute



# Holding Assets in which Structure



# Holding Assets in which Structure

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## Personal assets

- Assets required for personal needs, gifts, donation
- One residential house
- Jewellery

## LLPs

- Rented immovable properties, farm house, extra properties
- Equity shares/ derivative trading
- Small businesses

## Corporate Entity

- Surplus assets
- Big businesses
- Immovable properties held for sale
- Surplus rental properties, if funds not required to be withdrawn



# Holding Assets in which Structure

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## Private Trust

- Fear of attachment of properties
- To protect assets of less competent, minor, handicapped, NRI beneficiaries
- To protect interests of other stakeholders and not to keep entire assets at the sole discretion of beneficiaries

## HUF

- To maintain spirit of joint Hindu family
- To take slab benefit of income tax rates
- May be planned for creating some interest income



# THANK YOU

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