THE GATEWAY

Rotary Club of Bombay

DISTRICT 3141

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UPCOMING EVENTS

June 27th, 2024:
Save the date for President Manoj Patodia's Shukriya Nite, and the last meeting of the Rotary Year 2023-24.
Details inside

July 2nd, 2024:
Installation ceremony of incoming President Rtn. Satyan Israni and his team (2024-25).
Details inside

1930: Cyber helpline
1090: ElderLine for senior citizens
103: Mumbai helpline for crime against women

Rtn. Anil Harish, partner, D.M. Harish & Company, speaks about Wills and Succession

Benjamin Franklin famously stated in 1789 that nothing is as certain as death and taxes. While many people plan for taxes, it's equally important to plan for our eventual demise. This involves considering our assets, which can range from immovable property to digital assets.

Now what does it mean to make a Will? And what happens if you don't? Is it necessary to make a Will at all?

In India, the law is codified for the most part, and other parts of the law are customary.

In India, the Indian Succession Act, 1925 governs testamentary succession, when you do want to make a Will and provide for how the assets will get passed on, while the Hindu Succession Act, 1956 addresses intestate succession which is succession if you don't leave a Will.

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And then, there are different communities in India: Hindus, Muslims, Jews, Christians, Parsis. Article 44 of the Constitution of India says the State Will endeavour to secure for its citizens a uniform civil code, which will be applicable throughout the territory of India. But that's not happened. Even though the Constitution was promulgated 74 years ago, we don't have a uniform civil code. Therefore, we have to look at our religious laws.

A Will, as defined in section 2(h) of the Indian Succession Act, 1925, is more than a mere desire or wish. It represents a legal declaration of a testator's intentions regarding his property. This document ensures that his assets are distributed according to his wishes after his demise.

If a person doesn't make a Will, personal laws will apply. For example, the Hindu Succession Act, 1956 applies, or the Mohammedan law. For Parsis, it is sections 50 to 56 of the Indian Succession Act, 1925. Other communities follow sections 31 to 49. While most people in India can create a Will, there are exceptions. For instance, some Muslim communities can only make a Will for part of their assets (e.g., one-third), while the remaining portion cannot be bequeathed and goes by the Muslim Law. This can lead to unique situations.

I recall a case where a widow wanted to give her flat to a young girl she had been caring for. However, since the girl wasn't in her direct line (not her own child or brother's daughter but her cousin's), making a Will would have been complicated. Instead, we advised her to gift the flat to the girl during her lifetime, while reserving the right to reside there for life. It's been 25 years, and the daughter hasn't contacted me, so I assume she's happy with the arrangement!

If a Hindu male dies intestate (without making a Will), his property is divided equally among his mother, wife, and children. For instance, if he has two children, each of the four would receive one-fourth. And if a Hindu female dies intestate, her property is shared equally between her husband and children.

Recently, a young Hindu man visited me with his wife. They have been married for a few years and have a little baby. His wife wanted to create a Will, but he felt it wasn't necessary. I advised him to consider the implications. He owned a flat and investments. If he didn't make a Will, everything would be divided equally among his mother, wife, and young son (one-third each). If his mother then made a Will in favour of her daughter – his sister – the sister would have a one-third interest and after her it could go to her husband and children. Even if his mother didn't make a Will, his family and his sister's would get one-sixth each. I emphasised that he had the right to provide for his mother and sister, but to do it on a considered and well thought out basis.

Upon realising that his sister would have an interest in his American assets, the man, who resides in America, was taken aback. Considering the potential complications, he swiftly decided to create a Will. He and his wife will return shortly to address this matter.

Section 2(h) of The Indian Succession Act,1925 defines "Will"

- '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.

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Intestate Succession

In such a case, the personal law will apply.

For example,

- the Hindu Succession Act , 1956
- The Mohammedan Law
- Parsis – Sections 50-56 of The Indian Succession Act, 1925
- Other Communities – Sections 31 to 49 of The Indian Succession Act, 1925

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Intestacy under Hindu Law

(i) If a Hindu male dies intestate, his property goes in equal shares to his mother, wife and his children.

(ii) If a Hindu female dies intestate, then her property goes in equal shares to her husband and children.

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Bequests under Muslim Law

- Under the Sharia law, some sects of Muslims cannot Will away more than 1/3rd of their estate *i.e.* 2/3rd must be divided amongst the family members.
- Generally this will be in proportion of 1 part to a female and 2 parts to a male.
- However – The Special Marriage Act, 1954

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Under Sharia law, some Muslim sects cannot bequeath more than one-third of their estate. The remaining two-thirds must be divided among family members, typically with one part for females and two parts for males. However, variations exist among Muslim communities, so it's essential to understand the specific laws.

There was a Muslim gentleman who had four sons and two daughters. He actually wanted to provide for all of them equally but couldn't create a Will covering all his assets due to the two-thirds rule. The sons would receive double of what daughters would get. I advised allocating more to daughters within the one-third share such that it becomes equal or as close to equal as it can possibly get.

The sons would have received eight parts, while the daughters would get two parts in the two-thirds share, i.e. the sons each had two out of ten. To balance this, the father allocated more to the daughters within the one-third portion. He had the Will properly witnessed and even had his children sign it. Although they weren't official witnesses, their acceptance was clear. Since his passing a few years ago, there have been no challenges — all have acknowledged that both males and females received equal shares under the Will.

There are many people who want to give equally but sometimes they cannot, because of the law. However, one has to try and find a way. It appears that there is one way in which a Muslim can make a Will covering all his assets even if he is married. An elderly couple approached me — they had been married for 35-40 years. Under the Special Marriage Act, which applies to people from different communities, they re-registered their marriage after several decades. As a result, the Muslim succession laws no longer applied to them, allowing them to create Wills for their assets.

When navigating such situations, it's crucial to understand the relevant laws. Muslims face these specific restrictions, while Hindus encounter concepts like the Hindu Undivided Family (HUF), which has its own rules and regulations.

Section 59 of the Indian Succession Act addresses a person's capability to create a Will. To qualify, the individual must be of sound mind and not a minor. According to the Majority Act of 1872 (a 150-year-old law), the age of majority for this purpose is 18.

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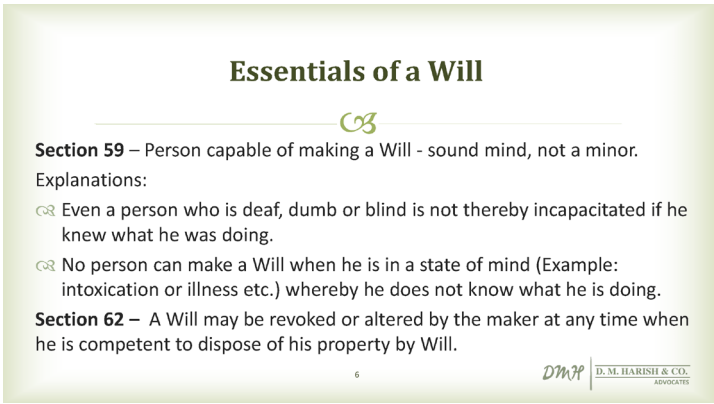
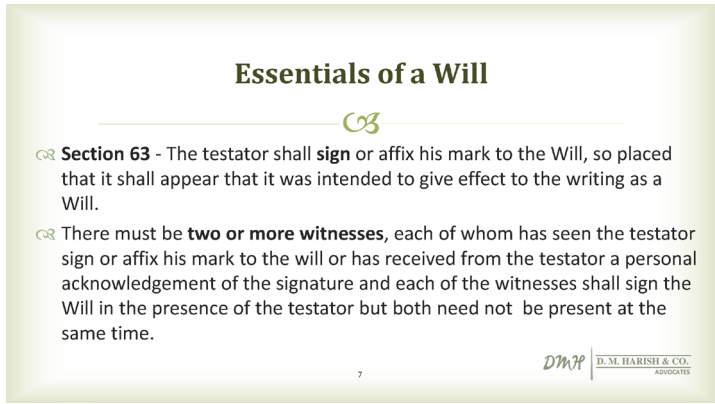
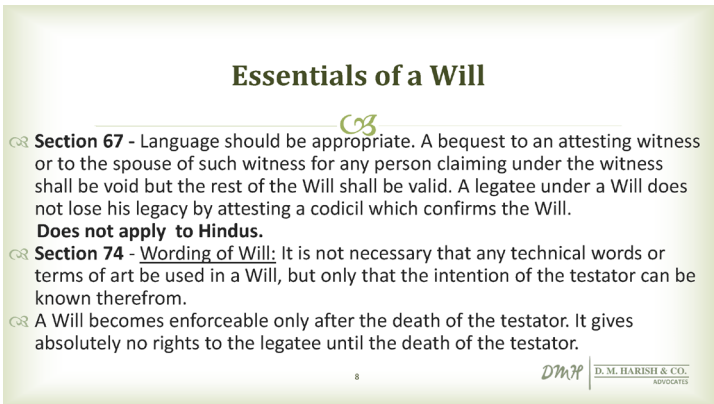
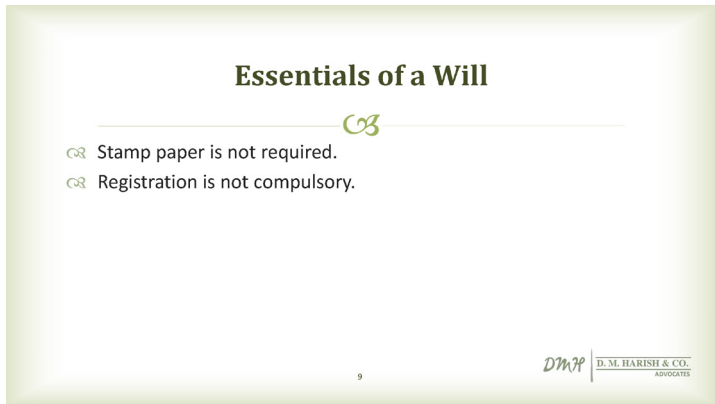








Therefore, anyone who is 18 years old and mentally sound can make a Will. Even a person who is deaf, dumb or blind is not thereby incapacitated if he knew what he was doing. If they understand what they are doing, they can still create a valid Will. For instance, a blind person can use a thumb impression or another mark to signify intent, provided credible witnesses are present. In my own experience, I had a blind professor in law college who delivered lectures entirely from memory and later became the college principal. Being blind doesn't hinder one's ability to think or make a Will — it's essential to recognise this.

Now, a person cannot create a valid Will when they are in a state of intoxication or illness, where they don't fully understand what they are doing. So, if you've had a good time at the Harbour Bar downstairs, it's best not to make a Will right after that!

A Will can be revoked or altered by the maker at any time when he is competent to dispose of the property through a Will. You're not limited to just one Will — you can create as many as you like, today, tomorrow, or even a hundred Wills.

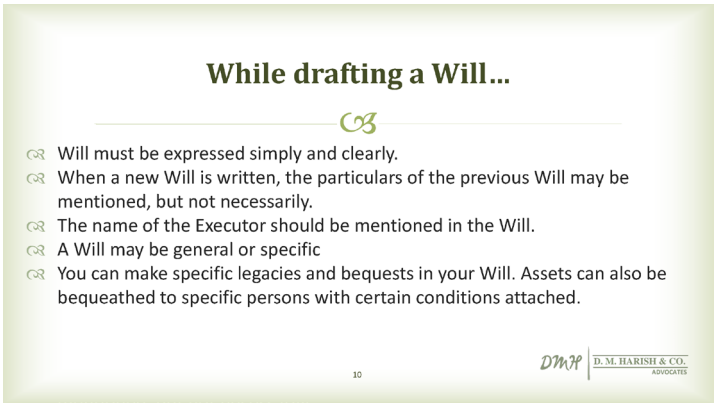
People often update their Wills when circumstances change. Births, deaths, marriages, property acquisitions, or business dealings — all these events prompt reconsideration.

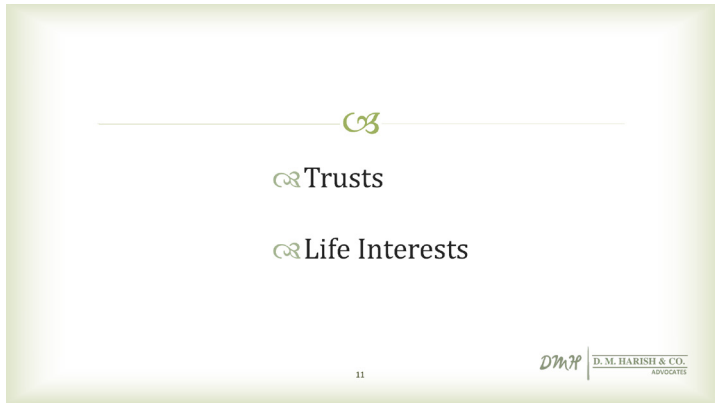
Sometimes, individuals cancel an earlier Will without immediately replacing it. They might create a separate document stating the cancellation while they decide on their next steps. If they die without a fresh Will having been made, they would have died intestate, and the estate would be distributed according to the Hindu Succession Act, for example.

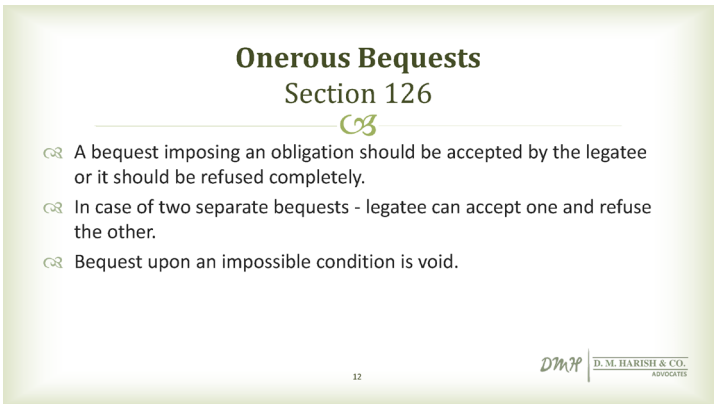
A lady approached me with an important decision: she wanted to create a Will. She wasn't married and had no children. Her intention was to leave the bulk of her assets — her flat and money — to a friend. She planned to inform her friend about it.

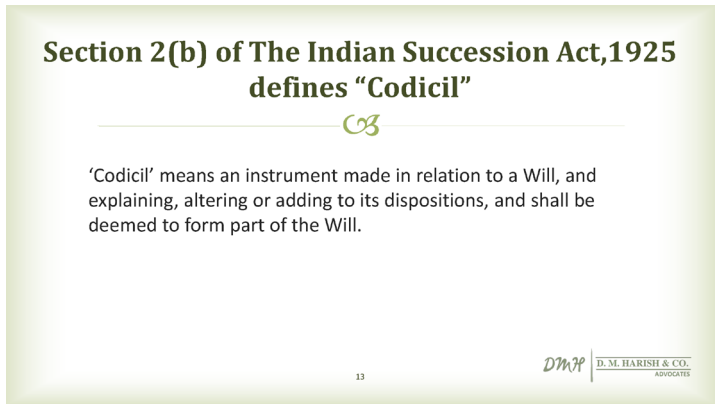
I advised her on the matter. While she had the freedom to do as she pleased, I suggested not revealing her intentions to the friend. Why? Because sometimes people do share details with legatees, but more often than not, they keep their Wills confidential — even from family members. In this case, the friend was not a family member, so I recommended discretion.

She came back to me two years later and thanked









me for the advice to not tell her friend; it seemed they had had a fight and she now wanted to give her assets to someone else!

A man faced a decision regarding his two children — a son and a daughter. At that time, the daughter was unmarried, while the son was already married. The man owned two adjacent flats, and he wanted to provide for both children. In the son's presence, he declared his intention: one flat for the son and one for the daughter. Although the son appeared upset, this decision was appropriate because the daughter needed support.

However, circumstances changed. The daughter later got married. As a result, the man revised his Will, allocating the entire large flat to his son and he provided for his daughter separately. So, discretion plays a crucial role — sometimes sharing intentions is necessary, while other times it's best not to do so.

Another aspect that arises is, how do you go about making a Will?

According to Section 63, a testator (the person making the Will) must sign the document or affix their mark. Importantly, this means that even if someone cannot physically sign (due to reasons like illness or disability), they can still create a valid Will using an alternative mark, such as a thumb impression.

The placement of the signature or mark is equally significant. Sometimes people leave blank papers and sign them later. While this isn't always the case, it does happen. Family members may discover these blank papers and wonder about their purpose. To avoid confusion, the placement of the signature matters. If the signature is right at the bottom of the page, and if the writing on the Will ends — for instance, in the centre — it might suggest that the person signed a blank paper rather than the actual Will. Typically, a person signs immediately after the writing, and witnesses sign below the testator's signature — not above it.

Sometimes Wills are changed or are not done properly and it's very important to ensure correct procedure because the matter may go to court and then the judges will examine everything very carefully.

The requirement is for two or more witnesses, each of whom must have seen the testator sign

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Grounds of Challenge

- Lack of due execution.
- Lack of testamentary intention.
- Lack of testamentary capacity.
- Lack of knowledge and approval.
- Undue influence.
- Fraud or Forgery.
- Revocation.

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And finally, to my nephew, Sid, who never laughed at my jokes, "HA HA HA!"

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Can a tenancy right be bequeathed by a Will?

Bhavarlal Labchand Shah *v.* Kaniyalal Nathlal Intwala
AIR 1986 SC 600

Zahid Ahmedali Mazgaonwalla and Anr. *v.* Smt. Gulshan Pyarali Mazgaonwalla
2006(5) MHLJ 522

16

Digital Assets

"Who cares about where he buried the gold? It's his passwords and other digital assets we need!"

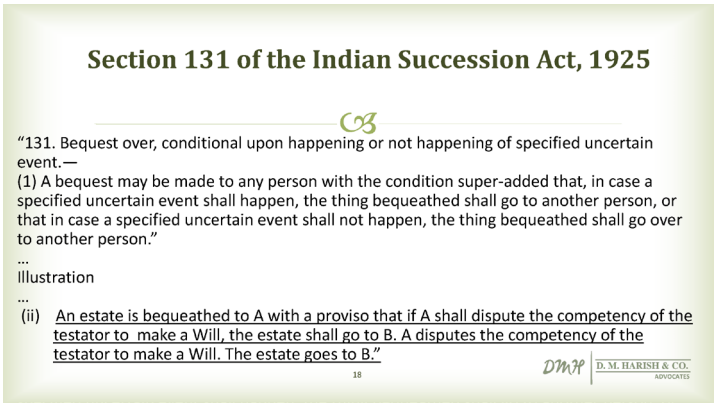
the Will or acknowledge the signature in person. While tradition often involves all parties be present simultaneously, it's not a legal necessity. Instead, the testator can sign, then inform one witness, who signs in acknowledgment, followed by the second witness. Though termed "witnesses," their role is more about attesting the signature rather than witnessing the act. According to the law, both witnesses must sign the Will in the presence of the testator. While the testator needn't sign in front of the witnesses, they must sign in the presence of the testator. Though legal, it's preferable to minimise potential disputes by ensuring all steps are taken correctly and promptly.

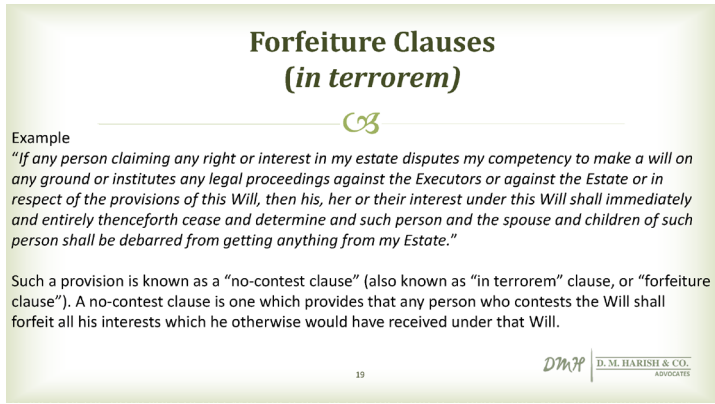
In some instances, when someone anticipates family disputes, simply making a Will with two witnesses may not suffice. Additional steps can be taken to mitigate potential conflicts. While the law does not require you to register the Will, you are all aware of the Sub-Registrar of Assurances in South Mumbai, which has two locations: Old Customs House and one at Prabhadevi. Registering involves the witnesses (not necessarily the same as the ones who witness the actual signing) accompanying, and confirming the Will with the Registrar.

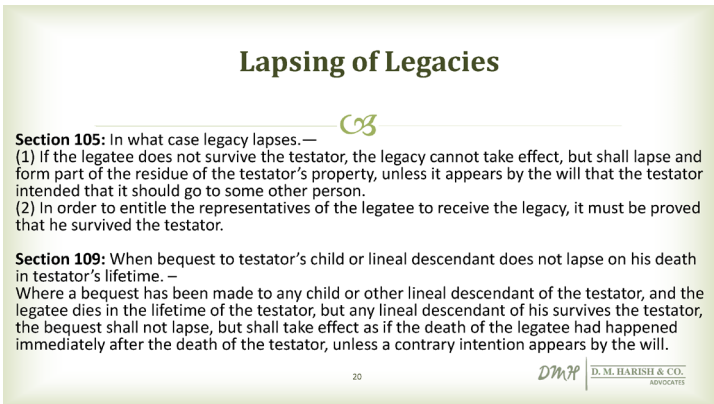
One case, about 20-25 years ago, involved a lady from a royal family who wanted to prevent disputes similar to those in her mother's and grandmother's cases. To address this, we prepared her Will and arranged for a videographer to document the process. The lady read the Will aloud from start to finish while being filmed, with each page of the Will also captured on video. Additionally, we included shots of the calendar and clock to verify the date and time. Afterward, she confirmed the Will before the Registrar, ensuring both registration and a comprehensive video record of the entire process. That has also worked out fine.

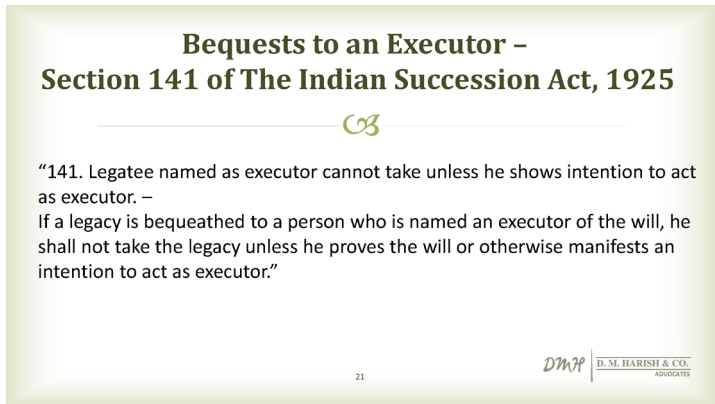
We encountered similar situations after that. For instance, a man approached me regarding his sons: the elder one frequently took money from him while the other helped him in the family business. Unfortunately, the elder son passed away. The father wished to provide for his deceased son's family but not to the same extent because he had already given them so much. Despite living in the same building, they would turn away from him and walk off. Anticipating litigation, we decided to videotape the Will.

Before signing the Will, I interviewed him, and









the entire conversation was recorded. I asked if he wanted to create a Will, which he confirmed. I then inquired why, and he explained the situation. I asked if he was sure. I did not ask any leading questions, just general ones; I wanted him to say the whole thing. He explained everything beautifully and that was recorded on video. He died a few months later and the matter has gone into litigation. His daughter-in-law has filed a claim, but I hope that the recorded testimony will support his younger son's case.

The language used in the Will must be clear and appropriate. It's crucial to avoid making bequests to witnesses or their spouses, as such bequests would be deemed void, while the remainder of the Will remains valid. For example, asking someone to witness your Will while also leaving them a gift is not advisable, as the gift would be invalidated. It's better to have separate individuals as witnesses rather than beneficiaries.

So, the Will should also be very clear, the language should be appropriate. For instance, in a case from North Carolina, USA, a person left all her assets to God, leading to legal complications. The court ordered the Sheriff to locate the legatee, but after a few days, the Sheriff give a report, " After due and diligent search, God cannot be found in this County" ! So, identify the person clearly.

These days, I make it a point to include the email addresses, telephone numbers and addresses of many of the legatees and executors in the Will for clarity. This is particularly helpful when individuals wish to leave bequests to their staff or others who may not be easily identifiable by the Executors. By providing contact information, it becomes simpler to locate and communicate with them in the future.

Certain provisions of the law apply differently to different religious communities, such as Hindus, Parsis, and others. It's important to go into these details whenever required. Clarity in the wording of the Will is essential.

The Will only becomes legally binding upon the death of the person making it (the testator); it gives no rights to the legatee before that. That is why you can keep on making new Wills and the old ones get ignored. Some people tear up the old Will when they make a new one; then they tear up the second when they make the third one and so on.

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- Probate: Under section 2(f) probate has been defined as 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.
- Letters of Administration
- Succession Certificate

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Difference between a 'Gift' and a 'Will'

- Gift is in one's lifetime. Will takes effect after one's demise.
- There is no Inheritance Tax/Estate Duty (removed w.e.f. 17-03-1985). There is no Gift Tax on Gifts to close relatives but a Stamp Duty of 1% on gifts within the family and 6% on other gifts. There is no Stamp Duty on Wills.

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The Maharashtra Co-operative Societies Act, 1960
Section 30

Transfer of interest on the death of member:

On the death of a member, the society shall transfer the share or interest of the deceased member to a person(s) nominated in accordance with the rules. If no person has been nominated, then to such person as may appear to the committee to be the heir or legal representative of the deceased member.

Provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society.

Provided that, nothing in this sub-section or in section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society.

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The Maharashtra Co-operative Societies Act, 1960
Section 154 B-13

- With effect from 9th March, 2019
- Section 154 B-13
- Transfer of interest on death of a Member
  - on the basis of
  - testamentary documents or succession certificate or legal heirship certificate or document of family arrangement or nomination

D.M.H. | D. M. HARISH & CO. ADVOCATES

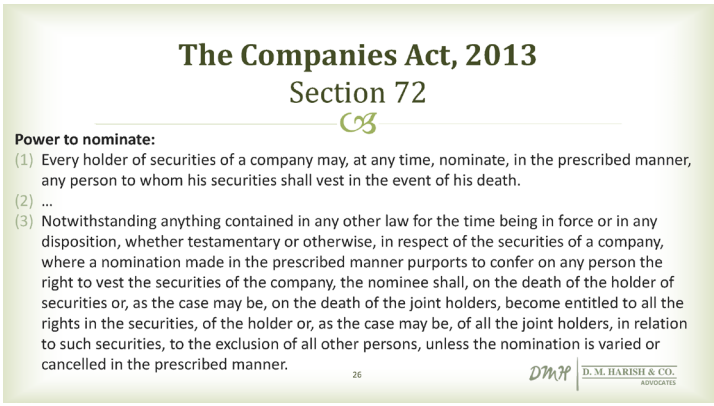
I generally don't prefer to do that; I generally like to keep all the Wills so that it shows the testator's thinking. But sometimes one may decide that the situation has changed very much, that one is no longer friends with a particular person or whatever, and then it might be worthwhile to destroy the previous Will. These are issues people do think about.

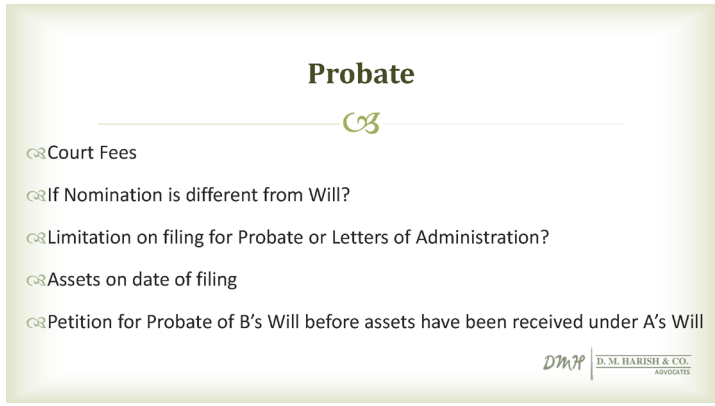
Neither stamp paper nor registration are required to create a Will. However, registration can provide added evidentiary value. When drafting a new Will, it's not necessary to mention the particulars of the previous Will, although it can be done if desired. A Will may be either general or specific.

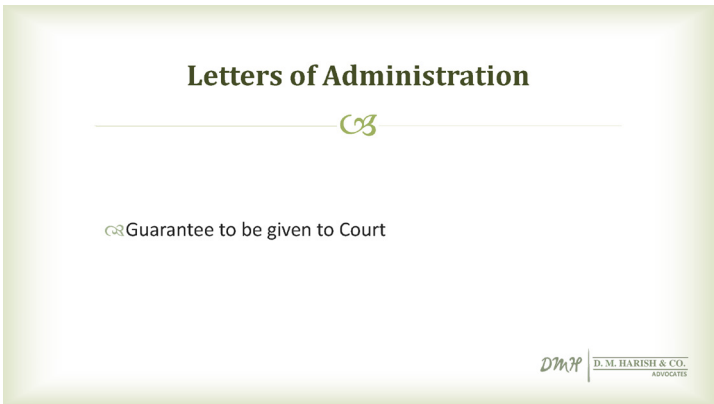
In a general Will, a person may leave everything to their spouse, for example, without specifying each asset. A specific Will itemises assets and specifies recipients for each, either individually or in combination. For example, one might leave specific assets to certain individuals and the remainder to others.

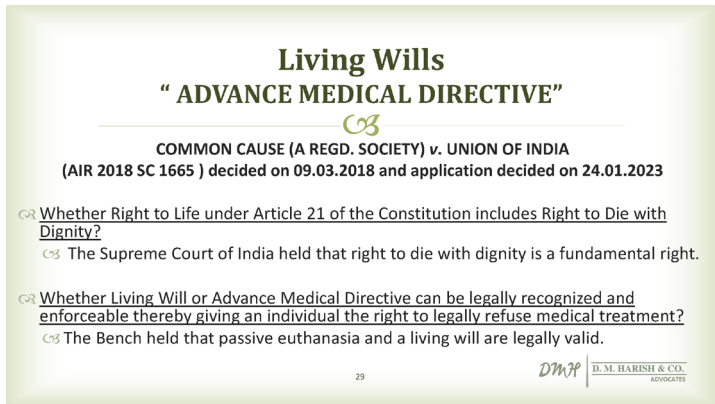
Additionally, there's a residuary clause in Wills because it's impractical to list every asset. Since a Will pertains to the future, your assets can change even by tomorrow. One cheque received and your assets have changed, and you do not know exactly what you will have at the time of your passing away. Therefore, a residuary clause addresses this uncertainty by stating that anything not specifically mentioned in the Will should go to a designated residuary legatee. This is very important, can be done and is usually done.

In some cases, it's necessary to establish a Trust within a Will. This is often done for minors or individuals who can't look after themselves. Sometimes, Trusts are created for tax purposes. Fortunately, estate duty no longer exists in India. It was abolished on March 16, 1985. At that time, if an estate was worth more than Rs 20 lakh, the marginal rate of estate duty was 85%. We are very lucky it was abolished 39 years ago. This contrasts with countries like the US, the UK, and Europe, where estate duties can be as high as 40% or 50%. Recently, a person from the US approached me









about making a Will. His father attended the meeting with him and said that he wanted to divide his assets equally between his son and daughter. However, the son suggested that as he was doing well for himself, the father create a Trust for him and his children instead. He reasoned that if the assets were in his name, there would be an estate duty on them when he died. He would rather have the assets skip a generation. So that when he died, it would go to his children without paying that tax.

Another important concept is "life interest" which is very useful and important. A person may wish to leave something to the children but wants the spouse to have the use of the assets or income for their lifetime to ensure their comfort. For instance, they may state in the Will that a property is bequeathed to the son and daughter, but the wife has the right to reside in the property and use the income for her lifetime. This right cannot be revoked, and the property can only be sold with the written consent of the wife. Sometimes, a nomination in favour of the spouse's life interest may also be made with the society or relevant authorities. This clarifies that the spouse has a life interest while the children have the ultimate or residual interest. Life interest can be a crucial and practical aspect of estate planning.

Sometimes, a Will may contain onerous bequests, meaning one that comes with obligations and so can be refused completely. For example, if someone leaves both their profitable and unprofitable businesses to one child, that child cannot choose to accept only the profitable one. But if there are two separate clauses, if they are clearly distinct in the Will, stating, for instance, that one business goes to child A and another asset to child B, and then the loss making asset to A, then they are considered distinct bequests. In this case, A could choose to accept one and refuse the other.

There are amusing anecdotes about onerous bequests, such as this case in Australia.

A person left a bequest to his wife. He stated, "I hereby bequeath to my wife one shilling so that she can take a one-way ticket on the tram to the nearest seashore and drown herself." Understandably, she refused the bequest!

Another unusual case involved a man who loved smoking cigars, but his wife disapproved. In his Will, he left her £330,000 on the condition that

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she smokes five cigars a day.

Then there's the story of Heinrich Heine, a German author who died around 1856. In his Will, he left everything to his wife on the condition that she remarries. He told his friends that he hoped that at least that one person would mourn his passing because he was now forced to live with Heinrich's wife!

But then there are other very nice ones too. For instance, Jack Benny, an American entertainer, left a touching bequest in his Will. He asked that every day, for the rest of his wife's life, a long-stemmed red rose be delivered to her. So that was very romantic. Perhaps some of you might consider including a similar clause in your own Wills!

A codicil is a supplement to a Will. It's used when you only need to make a small change or addition without altering the entire document. Typically, I prefer not to use codicils because I prefer a single comprehensive document. However, there was one situation where a codicil proved to be useful. My sister, Shobha, suggested it for a lady who had bequeathed her flat to her son in her Will. She anticipated objections from her other children, but wanted to make a change unrelated to the flat.

We decided to follow Shobha's suggestion and create a codicil specifically for the minor change, ensuring the original Will remains valid. The Will was drafted about five years earlier, and this codicil only addressed this particular alteration. If we had incorporated everything into a new Will, the other children could, for instance, have said that the mother is now much older, about 85 or so at that time, and not in a proper frame of mind. Therefore, it was important in this case that the sanctity of the Will should remain, and the codicil should make only a minor change.

Sometimes, challenges arise regarding a Will, leading to litigation that claim the Will wasn't properly signed or witnessed, the person wasn't of sound mind, there was fraud or forgery, or the Will had been revoked. Another common issue is when there's an older Will and a newer one. Once the litigation begins, it's awful, so you have to try and prevent that at all costs.

For example, in one case, a person made a Will in 1991, passed away around 2000, and his son filed for probate in 2006. However, the daughter challenged the Will, and the matter wasn't heard until 2017 — 26 years after the Will was made! During the court proceedings, a witness was called to testify. I was present in court at the time. Luckily, she remembered everything including who was present in the room, which is quite something to remember after 26 years, but she did, and she gave her testimony very well.

But there can be problems because of passage of time, between the making of the Will and the death and then the matter coming up in court. You have to try and aid the persons involved to try and remember what happened. Now, while we do videography in some cases – we don't do a video of every Will – but in almost every case I try to take a photograph of the testator signing and of the witnesses and attach it to the Will. So, even after many years, at least the witness can remember that they were in that house or office or wherever and what was done. It enables you to picture the scene correctly. I find that these precautions should be taken.

In Mumbai, many premises are rented. Can a tenancy right be bequeathed by a Will? There's a ruling from both the Supreme Court and High Court stating that tenancies cannot be bequeathed. If you attempt to do so, it's considered a transfer, giving the landlord the right to get it back. Since you can't transfer a tenancy, you cannot bequeath it through a Will either. Instead of explicitly bequeathing the tenancy in the Will, one can express a wish for it to pass to specific heirs. Therefore, in the case of a tenancy, a Will would merely express a wish, not a binding bequest.

Digital assets are increasingly significant today. So, this cartoon is about who cares about where he buried the gold, it's his passwords and other digital assets we need. But that is relevant only if you have lots of your personal designs or creative material under your password or you're writing a book or something. Normal things don't have to be there, but something like this can be a problem.

Suppose all your financial information is password

Who can execute the Advance Medical Directive and how ?

(a) The Advance Medical Directive can be executed only by an adult who is of a sound and healthy state of mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document.
(b) It must be voluntarily executed and without any coercion or inducement or compulsion and after having full knowledge or information.
(c) It should have characteristics of an informed consent given without any undue influence or constraint.
(d) It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering and further put him/her in a state of indignity.

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What should it contain ?

(a) It should clearly indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to.
(b) It should be in specific terms and the instructions must be absolutely clear and unambiguous.
(c) It should mention that the maker may revoke the instructions/authority at any time.
(d) It should disclose that the maker has understood the consequences of executing such a document.
(e) It should specify the name of a guardian or close relative who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorized to give consent to refuse or withdraw medical treatment in a manner consistent with Advance Medical Directive.
(f) In the event that there is more than one valid Advance Medical Directive, none of which have been revoked, the most recently signed Advance Medical Directive will be considered as the last expression of the patient's wishes and will be given effect to.

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How should it be recorded and preserved ?

(a) The document should be signed by the maker in the presence of two attesting witnesses, and attested by a Notary/Gazetted Officer.
(b) The witnesses and the Notary/Gazetted Officer shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.
(c) The maker shall submit a copy to the designated Government Official and to the family physician.

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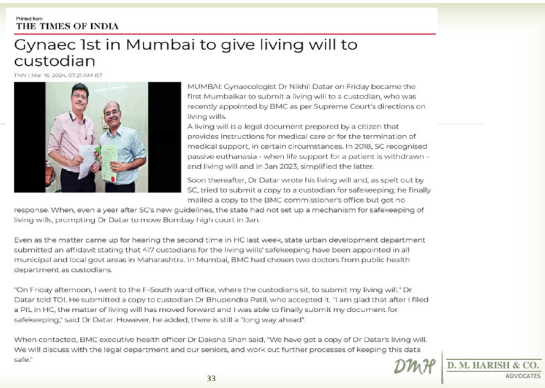

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THE TIMES OF INDIA

Gynaec 1st in Mumbai to give living will to custodian

TNN | Mar 16, 2024, 07:21 AM IST

MUMBAI: Gynaecologist Dr Nikhil Datar on Friday became the first Mumbaikar to submit a living will to a custodian, who was recently appointed by BMC as per Supreme Court's directions on living wills.
A living will is a legal document prepared by a citizen that provides instructions for medical care or for the termination of medical support, in certain circumstances. In 2018, SC recognised passive euthanasia - when life support for a patient is withdrawn - and living will and in Jan 2023, simplified the latter.
Soon thereafter, Dr Datar wrote his living will and, as spelt out by SC, tried to submit a copy to a custodian for safekeeping; he finally mailed a copy to the BMC commissioner's office but got no response. When, even a year after SC's new guidelines, the state had not set up a mechanism for safekeeping of living wills, prompting Dr Datar to move Bombay high court in Jan.

Even as the matter came up for hearing the second time in HC last week, state urban development department submitted an affidavit stating that 4/7 custodians for the living wills' safekeeping have been appointed in all municipal and local govt areas in Maharashtra. In Mumbai, BMC had chosen two doctors from public health department as custodians.

"On Friday afternoon, I went to the F-South ward office, where the custodians sit, to submit my living will," Dr Datar told TOI. He submitted a copy to custodian Dr Bhupendra Patil, who accepted it. "I am glad that after I filed a PIL in HC, the matter of living will has moved forward and I was able to finally submit my document for safekeeping," said Dr Datar. However, he added, there is still a "long way ahead".

When contacted, BMC executive health officer Dr Daksha Shah said, "We have got a copy of Dr Datar's living will. We will discuss with the legal department and our seniors, and work out further processes of keeping this data safe."

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protected and then you die and the family doesn't know how to access it. They call a computer expert to unlock it. He sees it but suppose he doesn't give the information of the passwords to the family but uses it to syphon off the money from the bank account instead? So, if you have your own passwords, put a clause in the Will or make a codicil separately, keep it well protected so that no one accesses it during the lifetime, but it should be available after you.

Section 131 of the Indian Succession Act is highly significant. It addresses concerns about potential challenges to a Will. Section 131 enables individuals to include a clause in their Will stating that if anyone contests the Will, they forfeit their right to any inheritance. The Act even provides an example to illustrate this provision. For instance, if an estate is bequeathed to A but with a condition that if A challenges the validity of the Will, the estate passes to B. If A does indeed contest the Will, the estate transfers to B as per the provision. I find this very useful and I have put it in a number of Wills where people expect these problems in the family.

A man approached me a few weeks ago. He has several children. One of them is a daughter who had taken a lot of money from him and behaved very badly, and he wanted to leave her out of the Will entirely. He sought advice on how to proceed because he was very well off. I suggested two approaches. Firstly, he could include a clause in his Will stating that any beneficiary who contests the Will forfeits their share. Secondly, I recommended he leave a portion of his estate to the daughter in question before implementing the clause. By offering her a substantial sum, such as three to five crores of rupees, and then incorporating the contestation clause, we mitigate the risk of her challenging the Will. She would have a choice: accept the inheritance and refrain from contesting, or contest and potentially lose even the allocated amount. The man found this strategy appealing, and we are doing it that way.

Here's the type of clause I would include in Wills. "If any person claiming any right to interest in my estate disputes my competency to make a Will on any ground or institutes any legal proceedings against the executors or against the estate or in respect of the provisions of this Will, then his or

Article continues on Page 12

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The material contained herein is not exhaustive and contains certain generalizations.

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her interests shall immediately cease and determine and the spouse and children shall also be debarred from getting anything from the estate". So, this has been very useful in some cases.

After a person passes away, the next steps depend on whether they left a Will. If there's a Will, let's say the deceased had lent a crore of rupees to someone, and now the son wants to claim it, citing the Will. However, the borrower may hesitate, fearing potential claims from other family members. In such cases, one needs to obtain a probate from the Court. A probate serves as legal proof that the Will is valid and genuine. With the probate, one gains access to the deceased person's assets. Letters of Administration and Succession Certificates are similar legal documents that serve the same purpose as a probate, namely, obtaining a court order to administer the deceased's estate.

There's also the matter of nominations, typically for co-operative societies or shares, which can be quite intricate, so we won't delve into that here.

Lastly, I'd like to touch on Living Wills or Advance Medical Directives. A Will in relation to assets will come into effect after your lifetime but if you want to provide for your health and medical treatment during your lifetime when you're not well in the last few years etc., the law provides for an Advance Medical Directive.

Common Cause, an NGO, advocated for this in the Supreme Court, leading to the Court permitting Advanced Medical Directives. They established a procedure for creating these directives. Recently, a gynaecologist in Mumbai became the first to issue a living Will to the appointed custodian, Dr. Bhupendra Patil, based at the BMC office in Parel.

Sometimes, people just don't want to make a Will. They feel afraid. They think that by making a Will they are inviting death, or the afterlife. I tell them that if you want to make a Will, go ahead and do so. Just the fact that your thoughts turn to making a Will doesn't mean that you're over the hill!

TUESDAYS WITH THE ROTARY CLUB OF BOMBAY