

Succession, Wills & HUFs

- Dr. Anup P. Shah

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Mulund CPESC of WIRC

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Hindu Succession Act

Succession Law

**Hindu
Succession
Act**

**Indian
Succession
Act**

Muslim Law

**Indian
Succession
Act**

Muslim Law

HSA

- **Application**

- ❧ Hindus, Jains, Sikhs, Buddhists

- ❧ Not to Muslims, Christians, Parsis, Jews

- ❧ Overrides all Customs, Traditions, etc.

- **Applies when a Hindu dies intestate**

- ❧ Without making a valid will

- ❧ Succession to property then fixed by HSA and not by his wish / will

- ❧ Therefore, advisable to make a Will

Intestate Male



Order of Succession

Intestate Male - Examples

} Heirs left ~ mother, father, wife, son, daughter-in-law, daughter, son-in-law.

- Mother, wife, son and daughter?
- Does it matter if daughter is married or unmarried?
- Daughter-in-law would get a share?
- Father would get a share?

} Heirs left ~ wife, brother, sister, son's widow, predeceased daughter's son.

- Wife, son's widow and predeceased daughter's son?

gs ?

Intestate Male - Examples

- } Heirs left ~ 2 brothers, 3 sisters and his mother's parents.
 - Siblings or his Grand Parents?
- } Heirs left ~ Father's Brother Daughter and Mother's Brother's Son
 - Father's Brother's Daughter or Mother's Brother's son?

Female Intestate

☞ Property which is absolute property of Hindu Female

☞ Inheritance

☞ Partition

☞ In lieu of maintenance

☞ By gift

☞ Own skill

☞ By purchase

☞ She can deal with this property as she likes – S.14(1)

☞ Can will it away to whomever she likes

Female Intestate

Property which is absolute property of Hindu Female

Property is of widest import

Includes all property owned by her although she may not be in actual, physical or constructive possession of that property – **SC**

But if a female Hindu is in illegal possession of any property, then she cannot validate the same by taking shelter under this section – **SC**

Female Intestate

- ❧ S.14(1) –Any property possessed is her Absolute Property
- ❧ **Exception:** NA to Property received by Gift / Will / if Instrument or Decree provides Restricted Right of Enjoyment
- ❧ Any acquisition of property by a female does not automatically become absolute. It depends upon the nature of the right acquired by her.
- ❧ If while getting possession under a gift, etc., any restriction was placed, it will apply. Nothing prevents a male Hindu to dispose of his property by providing a life / limited estate for his widow.
- ❧ When he disposes his property by providing for a limited estate for his widow, she has to take it on as is where is basis.

Female Intestate

❧Jupudy (SC)

- ❧Life Interest to Widow under Will of Husband not absolute property and covered by exception u/s. 14(2)
- ❧But if property received in lieu of maintenance then it becomes her absolute property u/s. 14(1)
- ❧Even though the express words maintenance were not mentioned in the Will of deceased husband
- ❧S.14(1) must be used as a Shield not a Sword

Female Intestate



Order of Succession

Female Intestate

☞ Exception – s.15(2)

☞ If property inherited from her parents &

She dies w/o any children

Property reverts to Father's Heirs

☞ Only Property inherited from Parents

☞ What if Gifted ?

☞ Reverts to Father or Father's Heirs?

☞ What if Father is alive?

☞ Goes to Father's heirs only or to Father?

Female Intestate

☞ Exception – s.15(2)

☞ If property inherited from her Husband / FIL &

She dies w/o any children

Property reverts to Husband's Heirs

☞ However, if she leaves behind children then normal succession pattern continues

Female Intestate - Examples

- } A Hindu female dies intestate and leaves behind her husband, two sons and parents.
 - Husband and two sons?
 - What about her parents?

- } A Hindu female dies intestate. She was divorced from her husband and her only other relatives are her parents.
 - Divorced husband entitled to her property?
 - Her parents?

Female Intestate - Examples

- } A Hindu female dies intestate and leaves behind heirs of her predeceased husband, his brother and his sister's son.
 - The property devolves on her husband's heirs as if it was his property and he died intestate in respect of the same. Since her husband's brother is a Class II heir who is in preference to his sister's son, the brother would take the property entirely.
- } A Hindu female inherits a house from her father. She dies intestate and without a child leaving behind her husband, father's brother and father's sister and husband's sister.
 - Her husband and husband's sister would not be entitled to this since it is inherited from her father and she died without leaving any children. Hence, it would devolve equally upon her father's heirs, i.e., his brother and sister.

Female Intestate - Examples

- } A Hindu female inherits certain property each from her father-in-law, husband and parents. She dies intestate leaving behind her son, brother, sister and her father-in-law's nephew and niece.
 - o All her estate including the property inherited by her from her father-in-law, husband and parents would devolve upon her son. The exception only applies if the Hindu female does not have any child. In this case, since she has a son and so all her property would go to him.

HUF

- Consists of lineal male descendants from a common ancestor + their wives
 - Now even Daughters are included
- A Son is not a must for an HUF – SC
- A male, his wife and daughter also create HUF – SC
- HUF is created when a male marries – husband and wife create an HUF

HUF - Coparceners

- **HUF consists of:**

- ☞ Karta

- ☞ Coparceners – common descendants from a male ancestor

- ☞ HUF always started by a male – **yet cannot be started by a female**

- ☞ Acquire right only by Birth – Never by Marriage

- ☞ Earlier Only Sons could be Coparceners – Not Daughters

- ☞ Others- Wife of Coparcener

- ☞ Can Daughter-in-law be a Coparcener?

HUF Membership

- **HUF consists of:**

- ☞ Once a coparcener always a coparcener

- ☞ Interest only ceases by Death

- ☞ Even if parents divorce children would remain coparceners but Wife would cease to be a part of Husband's and Father-in-law's HUF

- } **Marriage registered under Special Marriage Act**

- HSA application ceases - ISA Takes over

- If Hindu / Jain marries non-Hindu / Jain – ceases to be HUF's Member

- Automatic

- ☞

HSA Amendment Act

- **Amendment in 2005 – 9th Sept 2005**

- ❧ Amdt. Introduced in Central Act

- ❧ Daughter of a co-parcener shall:

- ❧ by birth become a co-parcener in her own right as a son;

- ❧ have same rights in HUF as a son;

- ❧ be subject to same liabilities in respect of HUF property

- ❧ have a share equal to a Son

- ❧ Thus, Daughter can Now Become a Coparcener in her Father's HUF!!

HSA Amendment Act

☞ Does 2005 amended section apply to:

☞ Daughters born after 9.9.2005?

☞ Daughters married after this date?

☞ All daughters, married or unmarried, but living as on this date?

☞ Is Act Prospective or Retrospective?

☞

☞ Do daughter's children automatically become coparceners in her father's HUF?

HSA – Amendment Repealed?

☞ Effect of Repeal & Amending Act 2015?

☞ HSA Amendment Act of 2005 repealed

☞ Part of Ease of Doing Business drive

☞ Does this mean that Daughters no longer have a right in Father's HUF

☞ Is there a need for Amendment Act

☞ **Kar HC** in **Lokmani v Smt Mahadevamma** – Amdt applies with retrospective effect from 1956

☞ Is this correct?

Karta

- **Karta manages the HUF property**

- ❧ Senior most member

- ❧ Junior member can be made Karta if:

- ❧ Senior member gives up his right of management

- ❧ Senior Member not available

- ❧ Extra-ordinary cases

- **Narendrakumar J. Modi (SC) / Nopany Invst (SC)**

- ❧ Only Coparcener can be a Karta

- ❧ Earlier Karta always a Male

Females as Karta?

❧ Can Daughter now become Coparcener / Karta in Husband's HUF?

❧ Seth Govindram Sugar Mills (SC) – coparcenery a must for Kartaship

❧ Delhi HC

❧ Can Wife Now be a Karta in Husband's HUF?

❧ What if family of 3, Father, mother and son

❧ Father dies and son is minor

❧ Who would then be Karta?

HSA

- **Share in HUF**

- ❧ Can be willed away

- ❧ By male or female Hindu

- ❧ Else devolves on heirs of deceased as Intestate Succession

- ❧ Notional partition of property

- ❧ Daughter given a share equal to son

- ❧ Mother would also get equal to son

- ❧ Share of Pre-deceased Son / Daughter given to their children

- ❧ Share computed irrespective of whether he can claim partition or not

HUF Partition

- ☞ Defining of the shares of coparceners in Joint Property
- ☞ Division of Joint Family by a definite + unequivocal indication to separate
- **Hindu Law recognises Total & Partial Partition**
 - ☞ IT / WT recognises only Total Partition
 - ☞ **Partial Partition** defn. (IT) : Partial as regards HUF **property** or **Members of** the HUF or **both**
- If Tax not an issue, can have Partial Partition

HUF Partition - Modes

- **Manner of Partition:**

- ❧ Oral Partition

- ❧ By a Suit in a Court

- ❧ By an Agreement or Deed of partition

- ❧ By an Arbitration Award

- ❧ Usually amicable Partitions done by Deed

- ❧ Disputes settled normally by Award

- **Unequal Partition - Permissible if all coparceners agree**

- ❧ Else Litigation

Who Can Demand Partition?

- **Partition demands**

- ❧ Any coparcener can demand Partition

- ❧ Can Daughter demand a Partition?

- ❧ **Minors / Unborn Children**

- ❧ Minority of coparcener no bar to partition

- ❧ If partition not for Minor's benefit – Court would set aside

- ❧ If partition unfair / prejudicial – he can have it set aside on attaining majority

- ❧ Son in mother's womb at time of partition – entitled to share as if he was in existence

Who Can Demand Partition?

Can a Wife demand Partition

- Is wife a coparcener or a member of the HUF?
- Does she have a share/ right / interest in husband's HUF?
- Can she claim Partition during her husband's lifetime?
- Even after HSA Amendment – any changes qua a Wife?
- How much share allotted to Wife on Partition?
 - What if step-mother?

Who Can Demand Partition?

❧ **Can Widow claim partition of her deceased husband's HUF?**

❧ Difference between Wife and Widow?

❧ Judicial Controversy

❧ Better View is that Widow entitled to claim partition of HUF of her deceased husband's HUF

Partition - Tax

- **Property received by member on HUF Partition**
 - ☞ No Capital Gains Tax on HUF – Not a Transfer u/s. 47
 - ☞ No Tax u/s. 56(2) on Member receiving property
 - ☞ Now expressly provided
- **Assessment after Partition**
 - ☞ AO must Inquire & Record finding of Partition u/s. 171
 - ☞ Only then would HUF cease to be assessed as a taxable entity
 - ☞ Physical division of property a must before AO can give Order

Partition – SD

} Instrument – Art 46

- **Co-owners separate of property divide it**
- **Includes Arbitration Award ordering Partition**
- **HUF dissolution ~ Partition Deed**
 - ❧ Could be Partial or Total Partition
 - ❧ Tax Neutral but Not SD Neutral

Partition - SD

- 2% of the MV of **Separated Shares** of property
- “**Separated Share**” meaning:
 - ☞ Largest share remaining after partition is that from which other shares are separated
 - 4 Members: $\frac{3}{4}$ th to Father and balance $\frac{1}{4}$ th split between 3 members - **Duty on $\frac{3}{4}$ th or $\frac{1}{4}$ th**
 - ☞ If all are equal shares = subtract any one share & SD on balance
 - ☞ Practical Reality

HUF & Tax

- **Gift by HUF to its Members**

- ☞ Possible – No Tax on HUF or members

- **Gift by Members to HUF**

- ☞ No Tax on Member

- ☞ Can try to claim no tax on HUF u/s. 56 – ITAT Cases

- ☞ Clubbing of Income with member – s.64

- **HUF's Status under US Tax?**

- ☞ Is it recognised?

- ☞ How taxed / treated? Disclosures under FBAR?

Estate Planning Options

Wills

Wills-Definition

- A wish, desire, choice, etc of a person as regards disposition of his property after his death
- **ISA, 1925:** Legal declaration of testator's intention with respect to his property which he desires to be carried into effect after his death
- **General Clauses Act:** A codicil and every writing making a voluntary posthumous disposition of property

Characteristics

- **Legal declaration of Testator's Intention**
- **As regards his property**
- **Manifests only after the testator's death**
 - ☞ Will not valid till testator is alive
 - ☞ Speaks from the Grave
- **Can be revoked at any time and end number of times by the testator in his lifetime**

Why make a Will?

- Have complete discretion on distribution of property after death to persons of your choice
- Reduces succession disputes
- Good way to reward someone by willing a part of your wealth to him post your death
- Better to make a will at an early age due to uncertainty of life- **No limit on number of revisions to a will**

Wills - Terms

- **Testator**
- **Beneficiary/Legatee**
- **Estate**
- **Executor/Executrix**
- **Bequest**
- **Bequeath**
- **Witnesses**
- **Life-interest beneficiary**
- **Codicil**
- **Probate**

Who can Make?

- Major person- of sound mind

♂ Male

♀ Female

- An intoxicated person / one who does not understand what he is doing? Cannot
- Deaf / Dumb / Blind? Can provided he knows what he is doing
- Ordinarily Insane? Can during intervals of Sanity

Who can Make a Will?

❧ Illiterate

❧ Very old person

❧ Terminally Ill

❧ Lunatic

❧ Married Woman

❧ Person with Alzheimer's disease

❧ Person with Parkinsons' disease

How to Make?

- **Write / type**
 - ☞ Stamp paper?
- **Signature / thumb mark of Testator**
- **2 Witnesses to signature of Testator**
 - ☞ Need to know contents of the Will?
 - ☞ Whom to appoint?
- **Appoint Executors**
 - ☞ Whom to appoint?
- **Date the will**
- **Respect the wishes of testator / beneficiaries**

What can be Bequeathed?

- Any Property- land, bldg., flats, shares, bonds, money, personal effects, cars, prized possessions etc.
- Must be legally transferable
- Tenanted Premises? Not heritable?
 - ✎ Bequeathed to family member residing with testator. Cannot bequeath by Will
- Property must be owned by Testator
- Share in HUF property? Can be bequeathed Now

Who can be a Beneficiary / Legatee?

- Any one?
 - ☞ Relative/ Friend/ Employee/ Servant?
 - ☞ CA / Lawyer ?
- Minor/lunatic?
 - ☞ Yes but consider a Trust Under Will
- Co. can be made a Beneficiary under a Will?
- Pets can be made a Legatee under a Will?

Executors

- **Selection Criteria:**

- ☞ Someone close to testator
- ☞ Should be willing to be an executor
- ☞ Better to check with him beforehand
- ☞ Advisable that he is younger

- **Duties**

- ☞ Provide for all funeral expenses of the testator
- ☞ Pay off all debts
- ☞ Cannot refuse to act once accepted

Witness

- Will should be attested by 2 or more witnesses
- Witness should have seen the testator sign/affix mark
- Must receive a personal acknowledgement of the testator's signature
- WHO?-
- Need not know contents of will
- **If testamentary capacity doubtful?**

Wills - FAQs

- } Is a person legally required to make a Will?
- } What happens if a person dies without a Will?
- } Is a Will final forever?
- } What is the Legal Format for a Will?
- } Can one distribute everything in his lifetime?
- } Can one Will away everything to Charity?
- } Can one exclude close family and select distant relatives / friends?

Tips for Preparing a Will

- ☞ All assets be mentioned in the Will?
- ☞ Who to select as Executors?
- ☞ Check with them beforehand?
- ☞ Initialing each page
- ☞ Decide upon Witnesses and their credibility / reputation
- ☞ Consider Notarising / Registration
- ☞ Dating of the Will

Wills – Top 10 Myths Busted

No.	Myth	Realty
1.	Will must be on a Stamp Paper	It can be handwritten on a Plain Paper
2.	There is a Legal Format for a Will	There is No Format
3.	Will once made cannot be changed or altered	Will can be changed end number of times
4.	Is a Will effective during a person's Lifetime	Will takes effect only after a Person's death
5.	Will cannot exclude Near Relatives	Will can leave everything to Charity / Servants / Friends

Wills – Top 10 Myths Busted

No.	Myth	Realty
6.	Will need not be Dated	Last Will Prevails. Hence, a Date is a Must
7.	Nomination prevails over Will	Will prevails in all cases other than Shares
8.	Women cannot make Wills	Women can make Wills
9.	No Witnesses are Required	Two Witnesses are a Must
10.	Registration / Notarisation is a Must	This is Optional but advisable

Wills - Probate

- Copy of the will certified by Court seal
- Establishes authenticity/finality and validates all acts of executors
- Once probate granted, no claim about genuineness of the will can be raised
- An application needs to be made to a Court along with payment of fees.
- Is it Compulsory?

✧ Ss.213 & 57 of Indian Succession Act

✧ Probate is compulsory in case of:

✧ Wills by Hindus executed within areas under the jurisdiction of Bombay, Madras & Calcutta HCs

✧ Wills by Hindus outside these areas if they relate to Immovable within the above 3 areas

Wills & Tax

- ☞ Transfer of capital asset under will = No CGT – s.47
- ☞ Property received on Will – No s.56(2)(x)
- ☞ Cost of Acqn. of Legatee = COA of PO (s.49) + COI
- ☞ Legatee can substitute FMV of 1-4-1981 if asset acqd. by deceased prior to that date – s.55(2)(b)
- ☞ Period of holding inc'd period of deceased -s.2(42A)
- ☞ Indexation = from PO's date of Acqn.
 - ☞ **Arun Shungloo Trust (Del)**
 - ☞ **Manjula Shah (Bom)**

New Developments

- Video Will

 - ☞ Testator is videographed reading the contents of his entire Will

 - ☞ Helps prove that he was mentally competent

 - ☞ Can explain Exclusions for close relatives

- Digital Will

 - ☞ Will bequeathing Passwords to Emails, Social Media, Online Accounts / E-records / Digital Data

 - ☞ www.securesafe.com

- Organ Donation

- Social Customs Will

Living Will

- ☞ Takes effect when a person is alive
 - ☞ Medical Power of Attorney
 - ☞ Guides doctors / family of how a person wants to be treated in case he is comatose / mentally unfit / in a vegetative state
 - ☞ When should life support be turned off
 - ☞ Passive Euthanasia as opposed to Active E.g., lethal injection to person with terminal cancer
 - ☞ Widely popular in Western World
 - ☞ Illegal in India – **Aruna Shanbaug (SC)**

Living Will

Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016

- Persons of 16 yrs+ can decide on discontinuing medical treatment
- Decision binding on Doctors treating such patient
- But Dr must satisfy whether it is by free will ~ How is it possible?
- Else relatives must obtain High Court's permission
 - Court appointed Panel of Experts will decide within 1 month
- Living Will void and not binding on any Doctor
- Recent Q. raised ~ On similar lines
- Nevertheless make one – Never know when allowed

Nomination / Joint Holder

Jt Holder v Nominee

✧ **Joint Holder Concept** for Bank Accounts, FD, Demat, Shares, MF, PPF

✧ Jt Holder can be

✧ Either or Survivor – Can transact along with 1st Holder

✧ Former or Survivor – Can transact only after 1st Holder dies

✧ Either case becomes owner on Death of 1st Holder

✧ However, Jt Holder is **NOT** the Beneficial owner

✧ Like Nomination Ownership remains with Beneficiaries under Will or Legal heirs under the Act

Nomination

- **What is a Nomination?**

- ✧ Nominee entitled to receive assets on death of Person
- ✧ Nominee only a stop-gap arrangement till Estate executed & bequests made
- ✧ Nomination can be in favour of a Minor also
- ✧ Plugs gap between Death and Bequest to Beneficiary
- ✧ Puts the Nominee in deceased's shoes & clothes him exclusive right to asset ~ But by no stretch makes him the absolute owner of the asset
- ✧ It is a means to avoid delays and wasteful expenditure

Nomination

- **Wills v Nomination ~ What Prevails?**

- ☞ Always Wills or Intestate Succession

- ☞ Nominee

- ☞ Only a stop-gap arrangement till Estate executed & bequests made

- ☞ Plugs gap between Death of a Person and Bequest to a person

- ☞ Once Will executed, nomination automatically ends

- ☞ Bank FD-

- ☞ Insurance Policy-

- ☞ NSC

Nomination-Flat

☞ Society bound to transfer flat to Nominee without enquiring into legal heirs / relation of nominee with deceased

☞ **Om Siddharaj Co-op v State (Bom)**

☞ Provides for person with whom Society can deal. Doesn't create a new rule of succession

☞ **Gopal Ghatnekar v Madhukar Ghatnekar (Bom)**

☞ Nominee has no right to dispose off flat. He is not necessarily the absolute owner. Not a Special Succession Law

☞ **Ramdas Sattur v Ramesh P Shah (Bom)**

Nomination-Flat

Indrani Wahi v Registrar of Co-op(SC)

- ✧ A valid nomination does not ipso facto transfer title in the flat in favour of the nominee
- ✧ But the nominee would be entitled to possession of the flat.
- ✧ Nomination is binding on Co-op Society
- ✧ Society has no option but to accept Nomination
- ✧ Society cannot question why one person nominated over others
- ✧ Nomination has no relevance to issue of title between the inheritors / successors to the property of the deceased

Nomination in a Company

- **Nomination in case of Shares / Demat Account**

- ✧ Shares vest in Nominee overriding any other Law or any Will made by deceased

- ✧ Changes in Nomination allowed

- ✧ Can be in favour of Minor

- ✧ Only Individuals can nominate

- ✧ Nominee can become Regd. Owner or Transfer the Shares without transmitting shares in his name

- ✧ **Demat Shares ~ Nomination with DP A/c & not with Co.**

- ✧ Co. will not recognise Legal Heirs of Deceased

- ✧ Nomination vests Demat shares in a nominee

Nomination in a Company

☞ Judicial Conflict of 2 Single Judge Decisions of Bom HC

☞ 1st View

☞ Nomination prevails over Will for shares in a Co. / DP

☞ Cos. Act & DP Act provide for vesting of shares

☞ Nomination in Other Cases distinguished

☞ 2nd View

☞ Neither Companies Act / Depositories Act deal with Succession Law

☞ Nomination is not a Super Will which overrides the Indian Succession Act / valid Will

☞ a fiduciary till securities are given to successor

Nomination in a Company

Division Bench Decision of Bom HC

Upheld 2nd View

Neither Companies Act / Depositories Act deal with Succession Law

Nomination is not a Super Will which overrides the Indian Succession Act / valid Will

Nominee is only a fiduciary till securities are given to successor

Places position of nomination in shares at par with all other classes

Nomination How?

- 1 • Nomination can be changed as many times as desired.
- 2 • If after making a Nomination, relation dynamics have changed, then change the Nomination.
- 3 • For some assets, Split Nominations can be made but for some not possible
- 4 • You need a Witness for making a Nomination
- 5 • Better that Will and Nomination are to same Person

Why Nomination?

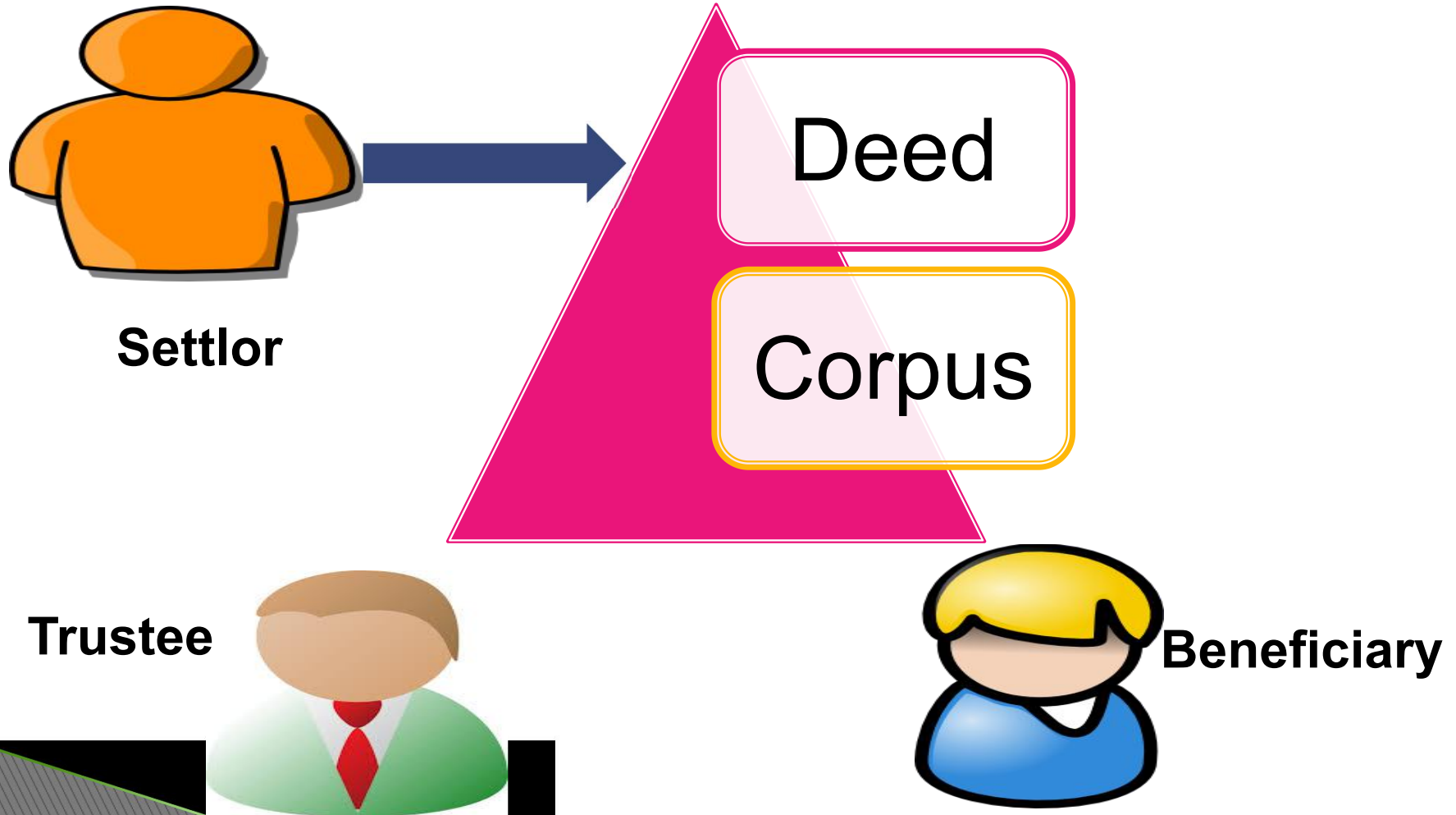
Jt Holder v Nominee

❧ Hierarchy

- ❧ Jt Holder – Nominee
- ❧ If 100% sure that wealth goes to X then make him a Jt Holder
- ❧ Nominee can get only after all Jt Holders pass away
- ❧ Nominee a must for Sole Accounts
- ❧ Make ultimate Beneficiary a Jt Holder and Alternate B a Nominee
- ❧ Ultimately Both should be in sync with Will else Problem

Trusts

Trust - Features



Why Trusts?

Trusts

- **Property settled on Trust**

- ❧ No Capital Gains Tax on Settlor / Donor

- ❧ No s.56(2)(x) on Trust

- ❧ Provided Trust is for the benefit of relative of the Settlor / Donor

- ❧ Q. What if it is not for a Relative?

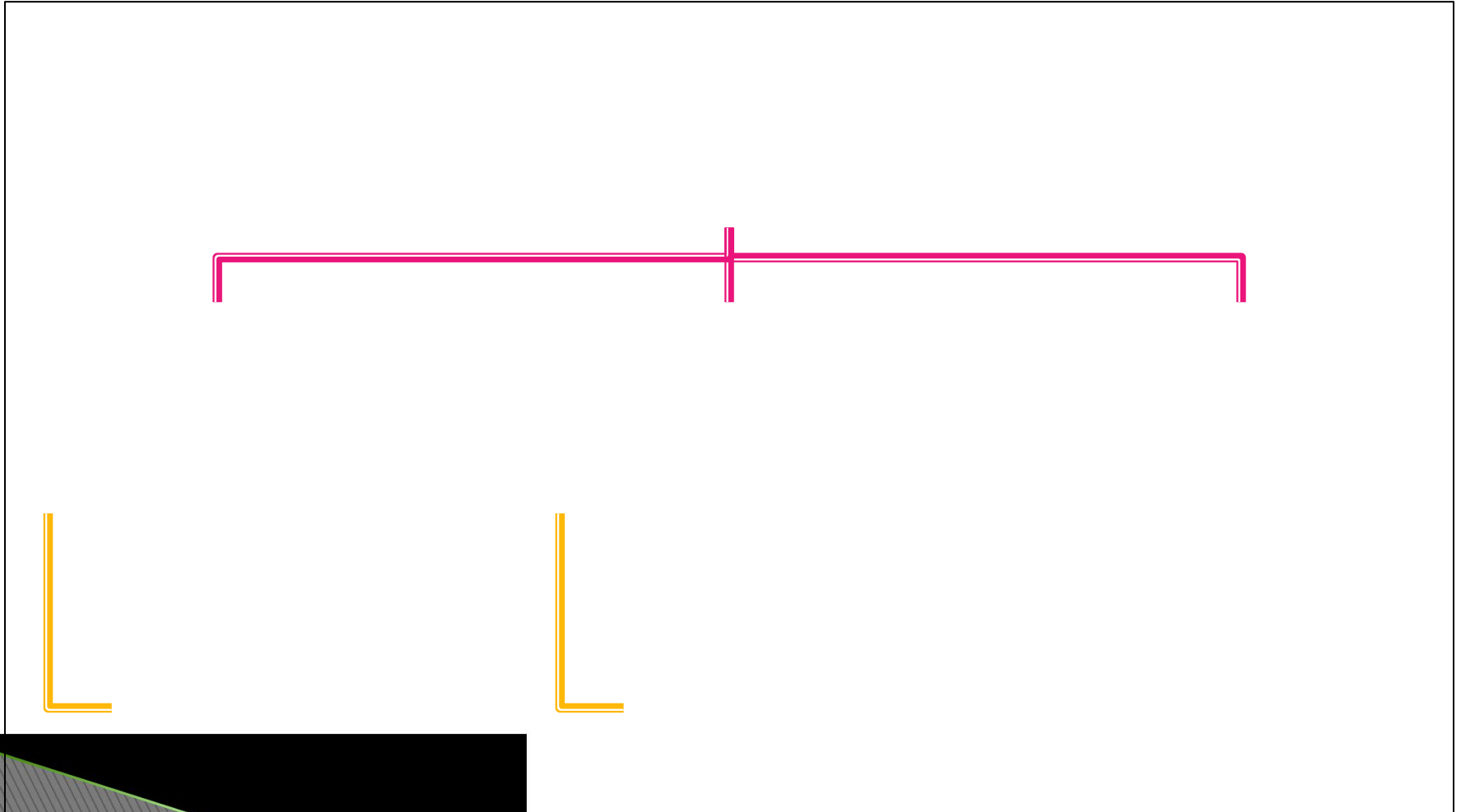
- ❧ Stamp Duty on Property Settled

- ❧ Immovable

- ❧ Movable

Others

Succession Documents



Release

} Meaning

- In restructuring of family owned and run businesses execution of a Release Deed is a popular mode
- One co-owner gives up his share in favour of another co-owner
- Consideration may or may not be paid for the Release

} Income-tax

- Release for consideration – Capital Gains payable by transferor
- Release without consideration – Income in hands of Transferee if not a

Release – Stamp Duty

SD @ 5% on MV of property released

If release of **ancestral property** to siblings / parents / spouse / children / grand-children / their legal heirs – SD of Rs. 200 only

Must be to defined relatives only – different than Gift relatives

Q. What is “**ancestral property**”?

Property received from sons –ancestral property?

Property inherited by male from father / grandfather /great grand father – ancestral property?

Gift

- Transfer of existing movable or immovable property
- Made voluntarily & without consideration
- From Donor (Transferor) to Donee (Transferee)
- **How made?**
 - ❧ Gift Deed a must for Immovable Property
 - ❧ Deed not a must for Movable Property
 - ❧ Can be by Delivery and Possession + Receipt

Gifts & Income-tax

} **No Gift tax on Donor**

- Cost of Asset to Donee is cost to Donor
- Period of holding of Donee includes period of Donor
- Indexation from Date of Period of Holding of Donor

} **Tax on Donee**

- Exempt if from specified Relatives by an Ind.
- Exempt if on marriage
- Exempt if Gifts Under Will
- Exempt up to aggregate of Rs. 50,000 in a PY

Gifts & SD

- **All Gifts : SD as on a Conveyance – 3% OR 5%**
- ✧ Gifts to Family : **2% of FMV of the property gifted**
- ✧ **Family**: Spouse, Sibling, Lineal Ascendant/Descendant of Donor –
Not as wide as s.56 of the Income Tax Act
- ✧ Definition given in MSA is a restrictive definition
- ✧ When definition is restricted to certain relations only, then same cannot be extended to cover those not specified, e.g., cousins.
- ✧ Gift of Res. Prop. / Agr. Prop to Spouse, Child, Grandchild: **Rs. 200 SD**

Gifts & SD

- **Lineal Ascendant / Descendant : Not defined**

- ☞ Relatives in a straight line

- ☞ Grandfather, Father, Son & Downwards

- ☞ Q. Grandmother, Mother & Daughter

- Grandmother, Mother & Son

- Are they Lineal Ascendants / Descendants?

- ☞ What about adopted children?

- ☞ No clarity

Guardianship of Hindu Minors

- **Hindu Minority & Guardianship Act**
 - ☞ Applies to Hindus
- **Deals with powers & duties of Guardians:**
 - ☞ Natural Guardians
 - ☞ Guardian appointed by Court
 - ☞ Appointed under a Will of minor's parents
- **Who can be a Natural Guardian?**

Powers of Natural Guardian

- **Can do all acts necessary / reasonable for minor's benefit**
- **Can't bind minor by a personal covenant**
- **Transactions of Imm. Prop. of Minor**
 - ✎ Any Permission needed?

Hindu Adoption Act

- **Hindu Adoptions and Maintenance Act, 1956**

- ☞ Valid Adoption ~ considered natural child of Adoptive Family

- ☞ Hindu male can adopt only with his wife's consent

- ☞ **Kashibai v Parwatibai (SC)** – without consent is void

- ☞ Can adopt son or daughter – Under earlier custom only son could be adopted in certain parts of India

- ☞ Hindu female can adopt only if widow or unmarried or divorced

- Very strange position that she cannot adopt even with her husband's consent – **Dashrath v Pandu Khairnar (Bom)**

Hindu Adoption Act

- ❧ Adoptee must be **below 15 years of age**
- ❧ On adoption all ties severed with natural family of birth
 - ❧ Adopted child not deprived of estate of natural parents vested in him prior to his adoption
 - ❧ He is entitled to inherit properties of Adoptive Parents
- ❧ **Chandan Bilasini v Aftabuddin Khan (SC)**
 - ❧ Adopted child deemed to be the child of his adoptive parents from date of the adoption and from such date all his ties in the family of his birth are deemed to be severed and replaced by those created by the adoption in the adoptive family

Hindu Adoption Act

❧ Pawan Kumar Pathak (SC)

- ❧ Adopted son becomes son of adoptive parents
- ❧ Law recognises right of adopted son to inherit properties of his adoptive father
- ❧ General Clauses Act ~ son includes an adopted son
- ❧ Decision would be useful even u/s. 56(2)(vii) / concessional stamp duty for gift of residential property
- ❧ Valid adoption once made cannot be cancelled

Stay in Parents' Home

} Right of Adult Son to reside in Parents' home

- If house is self acquired by parents, does son have a legal right to live in that house
- If parents have allowed him to live in the house in the past, does that mean that the parents have to bear his burden throughout his life?
- Does he have a vested right which cannot be taken away even by his parents?

Thank You !!

anup@ppsco.in

www.ppsco.in