



Life is Uncertain, So Plan Today!

Succession Planning

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Lecture Meet BCAS

Scope of Succession Planning

No Planning

Law Decides who gets what
Very Simple ~ Just Kick the Bucket or Drop Dead!

Estate Planning

Jt. Holding / Nomination

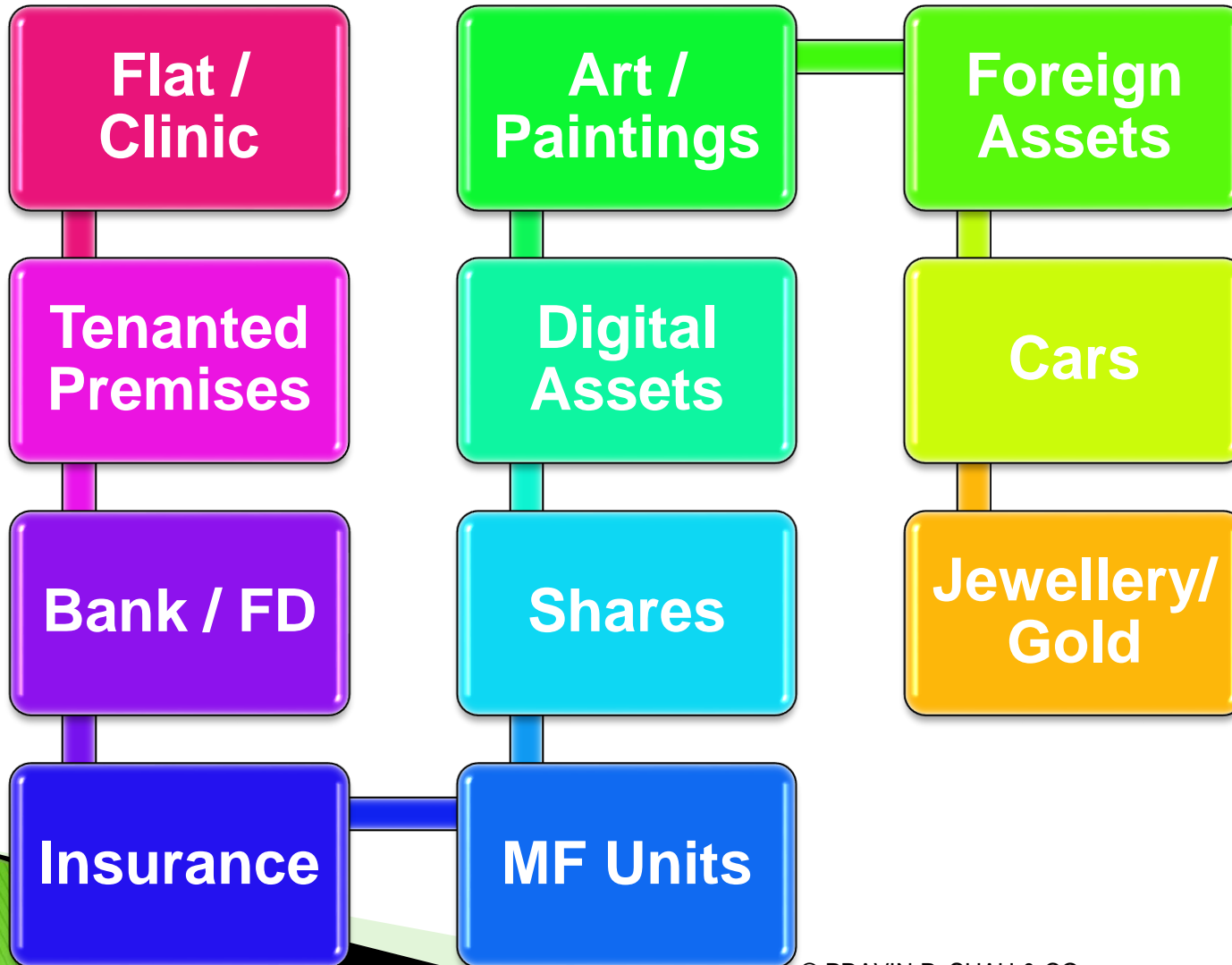
HUF Partition

Wills

Gifts

Family Trusts

Assets to Consider



What Happens if No Estate Planning?

Succession Law

Person Dies

No Will
– Intestate

Makes
a Will
-Testate

Hindu, Jain,
Sikh

Christian,
Parsi, Jew

Muslim

Hindu, Christian
Parsi, Jew
Sikh, Jain

Muslim

Hindu
Succession
Act

Indian
Succession
Act

Muslim Law

Indian
Succession
Act

Muslim Law

Hindu Succession Act

What if No Will?

- **Hindu Succession Law applies**
 - 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 Hindu Male



Intestate Male

- **Firstly – Class I Heirs**

- Son, Daughter, Mother, Widow, Child of pre-deceased Child, Widowed DIL,
- Mother, Widow and Children get 1 Share each

- **Secondly** – if no Class I, then upon **Class II Heirs**

- Father, Siblings, Grandparents, Parents' siblings, etc.

- **Thirdly** – if no Class II, then **Agnates**

- Related wholly through males
 - E.g., Father's brother's daughter

- **Lastly** – upon **Cognates**

- Related not wholly through males
 - E.g., Mother's brother's daughter

Intestate Male - Examples

- ▶ Heirs left ~ mother, father, wife, son, daughter-in-law, daughter, son-in-law.
 - Mother, wife, Son and Daughter each are Class I heirs and each takes an equal 25% share in his estate. Doesn't matter if daughter is married or not.
 - Daughter-in-law would get a share only if her husband (i.e., the son has expired prior to the male who died).
 - Father, though alive, would not get a share because he's a Class II heir.
- ▶ Heirs left ~ 2 brothers, 3 sisters and his mother's parents.
 - Each of his siblings would get a $1/5^{\text{th}}$ share to the exclusion of his maternal grandparents.

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

- Any property possessed is her Absolute Property
 - **Exception:** NA to Property received by Gift / Will / if Instrument or Decree provides Restricted Right of Enjoyment
 - ***Sadhu Singh v Gurudwara Sahib Narike (SC)***
 - Any acquisition of property by a female does not automatically attract s.14(1). 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.

Intestate Hindu Female

Female Hindu without a Will

Son,
Daughter,
Husband

Heirs of
Husband

Parents

Heirs of
Father

Heirs of
Mother

Order of Succession



Female Intestate

- Exception –
 - 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 ? No – normal pattern applies
 - 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.
 - Her husband and her two sons are entitled to an $\frac{1}{3}$ rd share each in preference to her parents.
- ▶ 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.

Is Step-son a Heir?

- **Can Step-son be treated as a Class-I Heir?**

- Income-tax Act Child includes Step & Adopted Child
- **Bombay HC & Other Cases:**
 - HSA different from ITA
 - Son definition under General Clauses Act – only adopted son included but not step son
 - Son must be a natural born son – direct relationship
- Legal Heirs enumerated under the Act do not cover a step-son from previous marriage of Wife / Husband
 - ∴ Step-son cannot succeed as Legal Heir to estate of a male / female

Illegitimate Child?

- **If marriage not valid / is void under Hindu Marriage Act**
 - Child born out of such a marriage is Illegitimate
 - HMA ~ even if marriage is void, any child born out of such marriage who would have been legitimate if the marriage had been valid, is considered to be legitimate
 - **SC** ~ HMA confers legitimacy on otherwise illegitimate kids
 - **SC** ~ even children born out of live-in relationships are considered legitimate
 - **SC** ~ children of Intestate Hindu born out of void marriage were entitled to share in his assets
 - HMA confers No rights in the property of any person other than parents of illegitimate kid ~ ***P.E.K. Kalliani Amma (SC)***
 - SC Controversy over whether they can claim share in father's HUF

Letters of Administration

- **When a Person dies intestate, his Legal Heirs may apply for Letters of Administration from a Court:**
 - Death Certificate as Proof of Death
 - List of Legal Heirs as per HSA depending upon male / female
 - Likely amount of assets / estate of deceased
 - Application Statement through a Lawyer
 - Public Notice inviting claims / opposition
 -

HUF



- Consists of lineal male descendants from a common ancestor + their wives (Wives are members)
 - Now even Daughters are included as Coparceners?
- A Son is not a must for an HUF
 - **Gowli Buddana v CIT (SC)**
- A male, his wife and daughter also create HUF
 - **NV Narendranath v CWT (SC)**
- HUF is created when a male marries under Hindu Law
 - But for it to be taxed as an HUF, 2 Coparceners are needed

Daughter's Rights

○ HSA Amendment in 2005: 9th Sept 20

- 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
- Unanswered Qs
 - Do Daughter's children become coparceners in their Nana's HUF by birth just as Son's children?



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?
 - Does it apply to those Daughters born before HSA 1956 Act?
 - Only those Daughters whose fathers also alive on 9th Sept 2005?

HSA Amendment Act

- **Landmark 3- Judge Decision**

- ***Vineeta Sharma v Rakesh Sharma***

- Daughters have equal rights with sons in Father's HUF
- A daughter's father need not be alive on 09.09.2005 for her to become a coparcener in his HUF
 - Daughter of a **living coparcener** not words used in Amdt
- HUF must exist on date of Amdt to give rights to a daughter
- Her rights are by birth and not by succession from her father
- ***However, she must be alive on date of Amdt***
 - This means if she died before this date – her kids would not become coparceners in her father's HUF
- Exception to Rule – HUFs partitioned by Regd Deed before Date
 - SC held Registration mandatory – Oral Partitions not allowed
 - Would be used to defeat rights of daughters

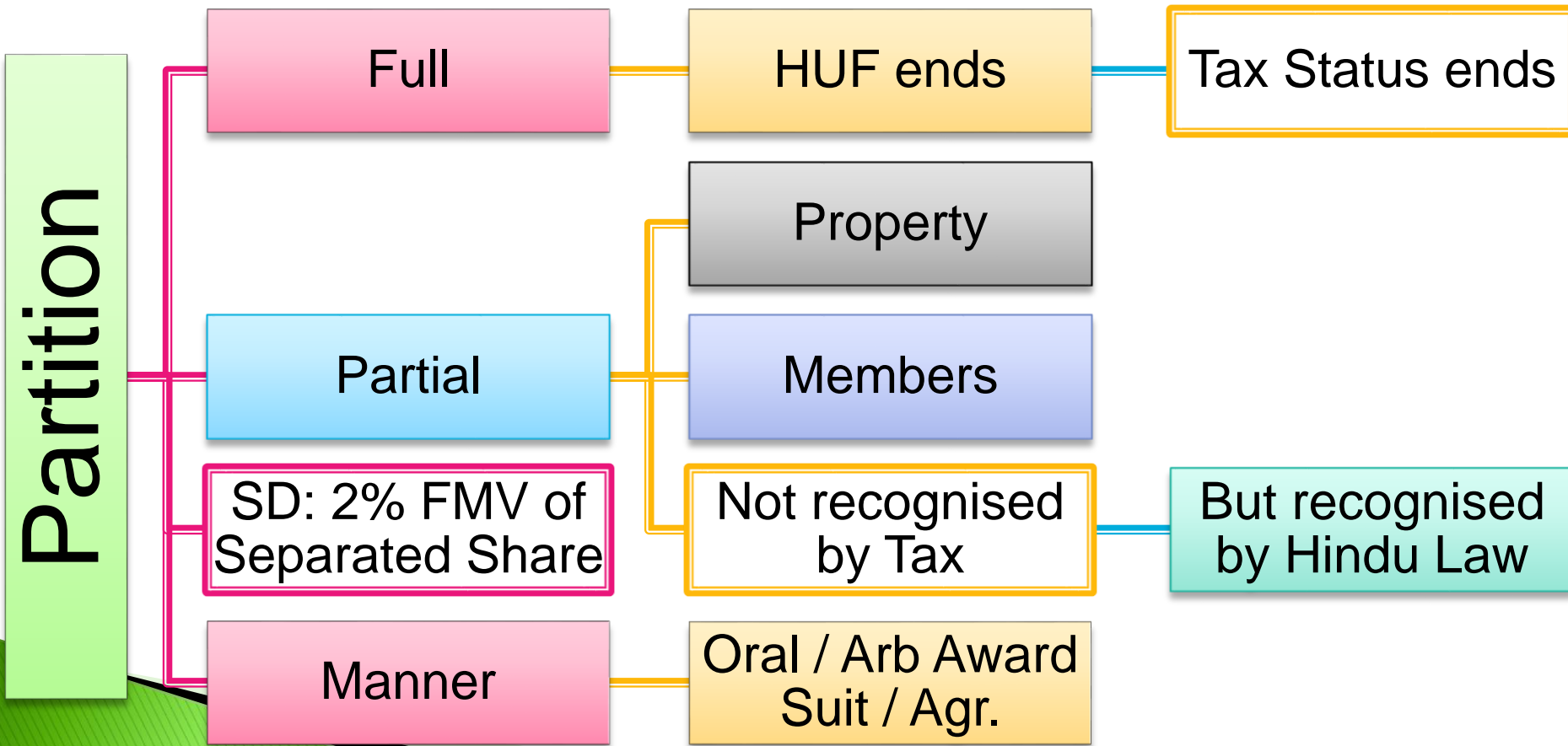
Females as Karta?

- Can Daughter now become Coparcener / Karta in Father's HUF?
 - **Seth Govindram Sugar Mills (SC)** – coparcenery a must for Kartaship
 - **Sujata Sharma v Manu Gupta (Delhi)**
- 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?
 - Difference between Karta and Manager – **Shreya Vidyarthi (SC)**

HUF Partition

Defining of the shares of coparceners in HUF Property

Division of Joint Family by a definite + unequivocal indication to separate



Who Can Demand Partition?

- Any coparcener can demand Partition
- **Can a Wife demand Partition**
 - Is wife a coparcener or a member of the 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?
- **Can Daughter claim Partition of her Father's HUF?**
 - HSA places her on same footing as a son ~ Same Rights as a Son
 - Hence, can she claim Partition? What if she is already married?

Ancestral Property

- Any property inherited from 3 generations above of male lineage ~ father, grandfather, great grandfather.
- Son, grandson and great grandson of a Hindu all have an automatic right in ancestral property ~ deemed to be joint property – **Babu Kishva Nandan (PC)**
- **COMMON** View ~ Ancestral Property **CANNOT** be alienated
 - Person cannot transfer ancestral property otherwise than to his children. He cannot Will it away to any one
 - Passes only by law to son, grandson, etc.

Ancestral Property

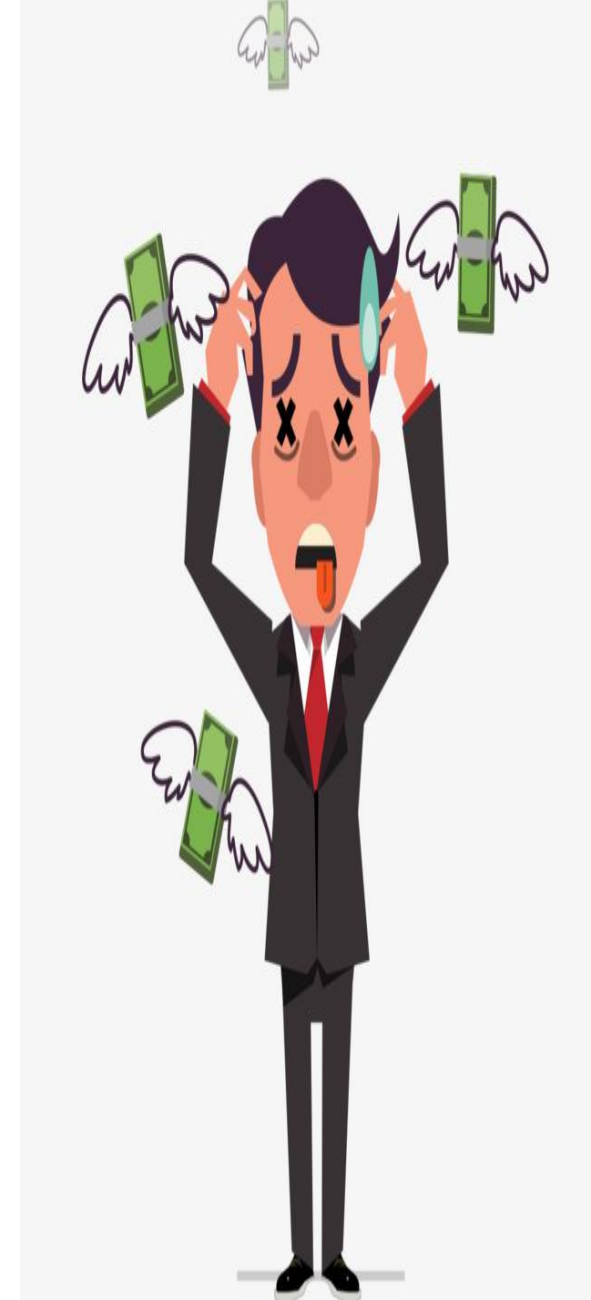
- **CORRECT** View ~ Ancestral Property **CAN** be alienated – various SC Decisions:
 - **S.8 of HSA** has modified Old Customs and Traditions
 - Property devolving on a person on demise of his father would become his self owned
 - Once joint property has been distributed it ceases to be joint and becomes solely held
- **Surender Kumar (Del)** ~ After HSA, for person inheriting property from paternal ancestors, property is not ancestral in his hands but is to be taken as his self-acquired property

Notional Partition

- ***Notional Partition of HUF on demise of coparcener***
 - On death of a coparcener, a notional partition of the HUF takes place just before his death to determine his share in the HUF which is bequeathed by his Will.
 - Accordingly on the date prior to the coparceners' demise, one needs to work out the number of coparceners and determine each one's share on the date.
 - Thus, if there are 10 coparceners just before his death, then each would have a notional $1/10^{\text{th}}$ share. This $1/10^{\text{th}}$ share of the deceased may either be Willed away or succeeded by his heirs on an Intestate basis.

Most Common Q

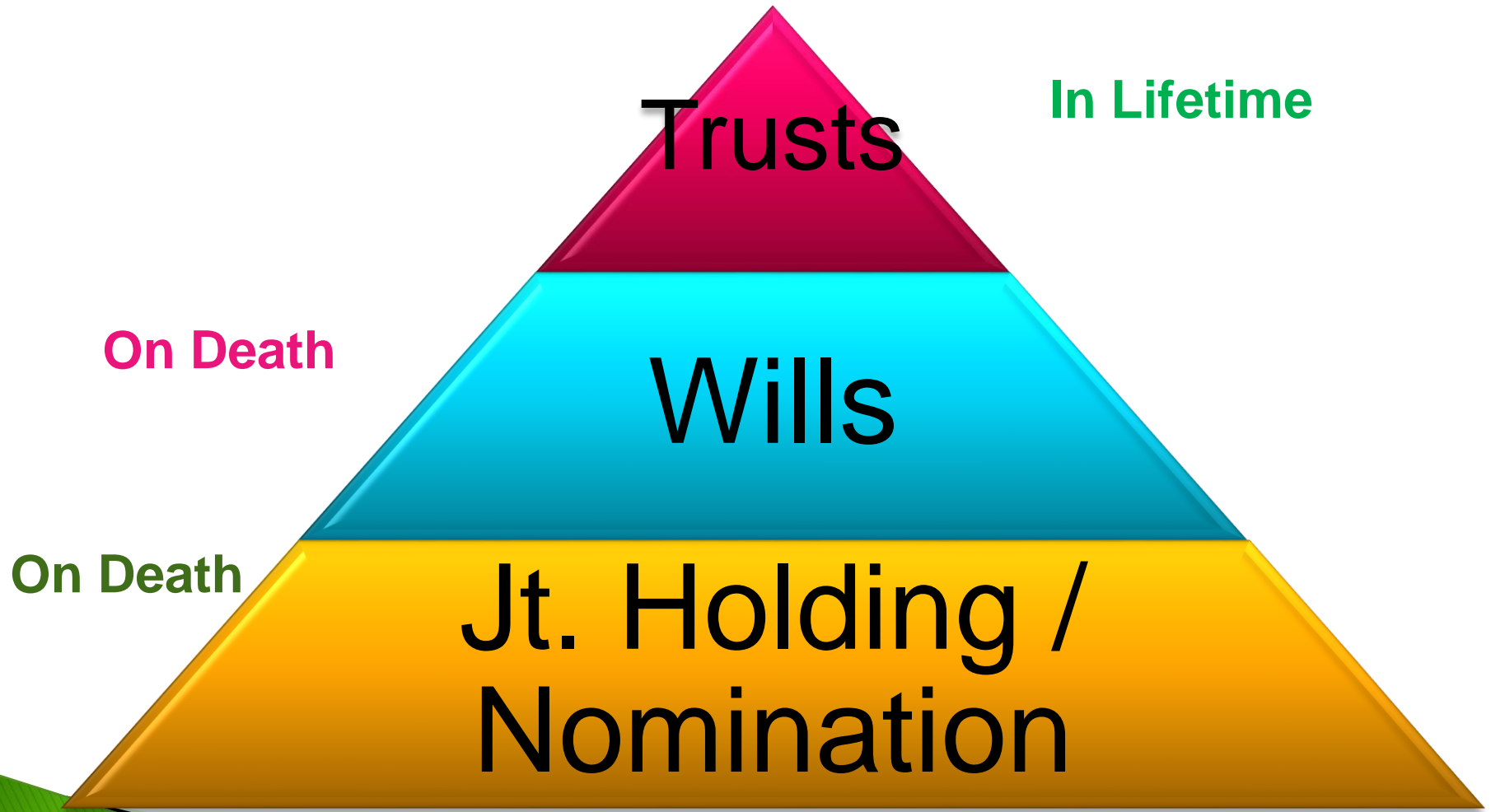
- **Q. I have 2 Children who will inherit everything after me – Everything held Jointly with them - Why make a Will?**
 - Joint Owners are only stop Gap Owners
 - Ultimately Property passes as per Law
 - If no Will – all Class I Heirs would end up owning shares in all assets
 - Cross Ownership of Assets by all Children
 - If they then want to separate & segregate – Tax and Stamp Duty issues + Legal Costs
 - What if they can't amicably resolve Ownership issues – Court battles & bad blood.
- **Q. Do you want to leave behind a Legacy of Problems? Thus, Plan You Must!!**



Estate Planning Options



Estate Planning Pyramid



Joint Holder / Nomination

Jt Holder



- **Joint Holder Concept** for Flat, 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
 - 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 - Plugs gap between Death and Bequest to Beneficiary
- Nomination can be in favour of a Minor also
- Puts 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

◦ **Wills / Intestate Succession v Nomination ~ What Prevails?**

- Always a Will or Intestate Succession
 - Once Will executed, nomination automatically ends
 - Bank FD / Insurance Policy / NSC

Nomination-Flat

- SC

- A valid nomination does not automatically transfer title of the flat in favour of the nominee
- But the nominee would be entitled to possession of the flat.
- Nomination is binding on the Co-op Society
- Society has no option but to accept the 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

- **Companies Act / Depositories Act** ~ Nomination vests Demat shares in a nominee
 - What prevails in case of Shares held in DP A/c.
 - Neither Companies Act / Depositories Act deal with Succession Law
 - Nomination cannot be displaced even by Will
- **Bom HC Division Bench Shakti Yezdani v Jayanand Salgaonkar**
 - Will Prevails over Nomination – Kokate's decision overruled

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

Last Will and Testament

I hereby declare that this is my last will and testament and that I
annul all wills and codicils previously made by me either in
writing or orally and of sound mind and memory and I am
of legal age to make this will and of sound mind and memory
expresses my wishes without undue influence.

I, the undersigned,

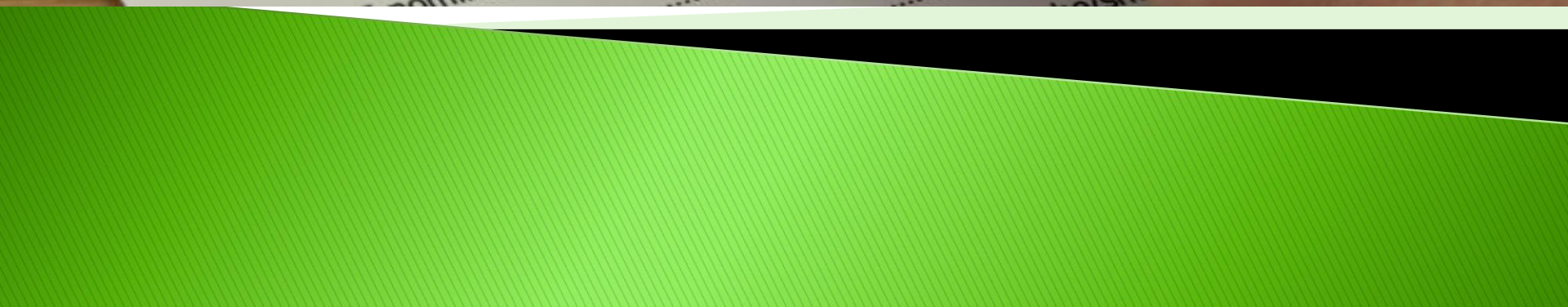
(Full names)

(Identity number)

of (Residential address)

I hereby declare this to be
my last will and testament and of sound
mind and memory and I am of legal age to
make this will and of sound mind and memory
expresses my wishes without undue influence.

(Full name)



What is a Will?

- A Wish / Desire, of a Person as regards disposition of his property after his death
- **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**
- Better to make a will at an early age due to uncertainty of life- **No limit on number of revisions to a will**

Who can Make?

- Major person- of sound mind
- Male / Female
- An intoxicated person / one who doesn't understand what he is doing? Cannot
- Deaf / Dumb / Blind? If he knows what he is doing
- Ordinarily Insane? During intervals of Sanity
- Illiterate
- Very old person
- Terminally Ill
- Lunatic
- Married Woman
- Person with Alzheimer's disease
- Person with Parkinsons' disease

Testator's Capacity

Testator's Capacity

How to Make?

- **Write / type**
 - Stamp paper?
 - Oral – Only for Muslims / Soldiers
- **Signature / thumb mark of Testator**
- **2 Witnesses to signature of Testator**
- **Appoint Executors**
- **Date the will**
- **Designate legatees / beneficiaries**
- **Only assets owned beneficially – Not mere Jt Owner**

Who can be a Beneficiary / Legatee?

- **Any one?**
 - Relative/ Friend/ Employee/ Servant?
 - CA / Lawyer?
 - Can it be a Stranger to the Testator? **Even ME**
- **Can Pets be made a Legatee under a Will?**
 - Consider Pets' Trust
 - Gunther III a Dog was left \$80m in 1993 by his German owner. He is the world's richest dog and has a Netflix Series on him.
 - A Mumbai couple have created a Trust for their 2 Golden Retriever Dogs leaving Rs 5 cr!



Who can be an Executor?

- Puts the Will into action
- **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
 - If not appointed – Who would administer the Will?

Who should be Witnesses?

- Will should be attested by 2 witnesses
 - Witness should have seen the testator sign/affix mark
 - Must receive a personal acknowledgement of the testator's signature
 - Need not know contents of will
- Who Can be
 - Can Witness also be a Beneficiary?
 - Is it advisable?
 - Can Witness also be an Executor?
- **If Testamentary capacity doubtful?**



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	Can bequeath everything to Charity / Servants / Friends excluding spouse, kids, etc.

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
8.	Married Women cannot make Wills	All Women can make Wills
9.	No Witnesses are Required	Two Witnesses are a Must
10.	Marriage revokes a Will	True. However, not so in case of Hindus

Joint Wills & Mutual Wills

◦ Joint Wills

- Will made jointly by 2 persons~ husband & wife
- Couple prepares 1 Will for distribution of both joint & separate properties.
- 2 Wills in 1 – Advisable?

◦ Mutual Will

- Prevents a legatee from taking benefit under the Will in any manner contrary to the Mutual Will, ~ Mutual Will cannot be revoked unilaterally.
 - *By a Mutual Will, husband bequeaths his estate to wife and vice-versa. Both also provide that if any of them were to predecease, they bequeath all their property to X.*
 - Wife dies first and husband revokes his Mutual Will leaving all to Y.
 - This revocation is invalid since it's a breach of trust by the husband who executed the Mutual Will on the understanding that after him and his spouse, the estate would go as they had **mutually agreed** earlier.

Joint Wills & Mutual Wills

- ▶ Preference - Separate Wills for couples rather than Joint / Mutual Wills.
 - Estate planning of a couple could be separate for each partner. Situations, such as, divorce, remarriage, etc.
 - Different interests ~ one may want to bequeath to family while other may want to donate to charity.
 - Lastly, Wills and obtaining their probate could be complicated affair.
- ▶ Separate Will for each partner would be the ideal scenario. Even if they are as *Mirror Wills*.

Special Issues

- **Wills for People with Special Needs**
 - Physically / visually/mentally challenged
 - Autistic / Schizophrenic
 - Mention the exact nature of disability
 - Provide for a Guardian / caretaker for such a Child
 - Trust under the Will for such Relatives
- **Life Interest Beneficiary**
 - E.g., Only right to Spouse to stay in House
 - Spouse can't sell / will / gift – Limited Right of residing
 - Child becomes immediate Owner subject to Life Interest

Succession to Tenanted Premises

- Very imp. In Mumbai where tenanted / pagri premises are very valuable
- If State Rent Laws prohibit then can't be Willed (**SC**)
- **Determined by State Rent Act in that case**
 - Usually goes to **family members** of deceased tenant residing with him at time of death in case of residential property / working with him in case of commercial property
 - Family ~ all those connected by blood relationship or marriage, married / unmarried / widowed daughters, etc
 - HUF not family member of tenant – Bom HC
 - If no family member, then **heirs** of deceased succeed
 - Heirs – as per Intestate Succession Law

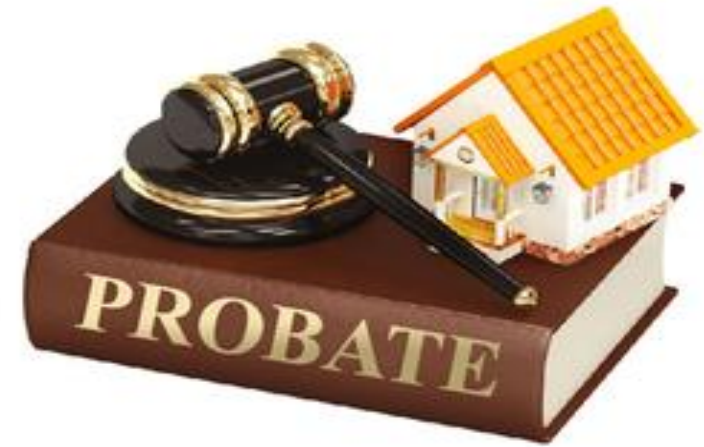
Registration of Wills



- Testator may register Will with Sub-Registrar at any time
 - 4 months from Execution time limit NA
 - Not compulsory to register a will.
- Raises a strong presumption of genuineness of Will
 - Mental capacity / forgery / undue influence
 - Establishes genuineness of identity of Testator + Witnesses
- Regd Will can be superseded /amended by subsequent Unregistered Will?
- Alternatively, can consider Notarisation

Probate

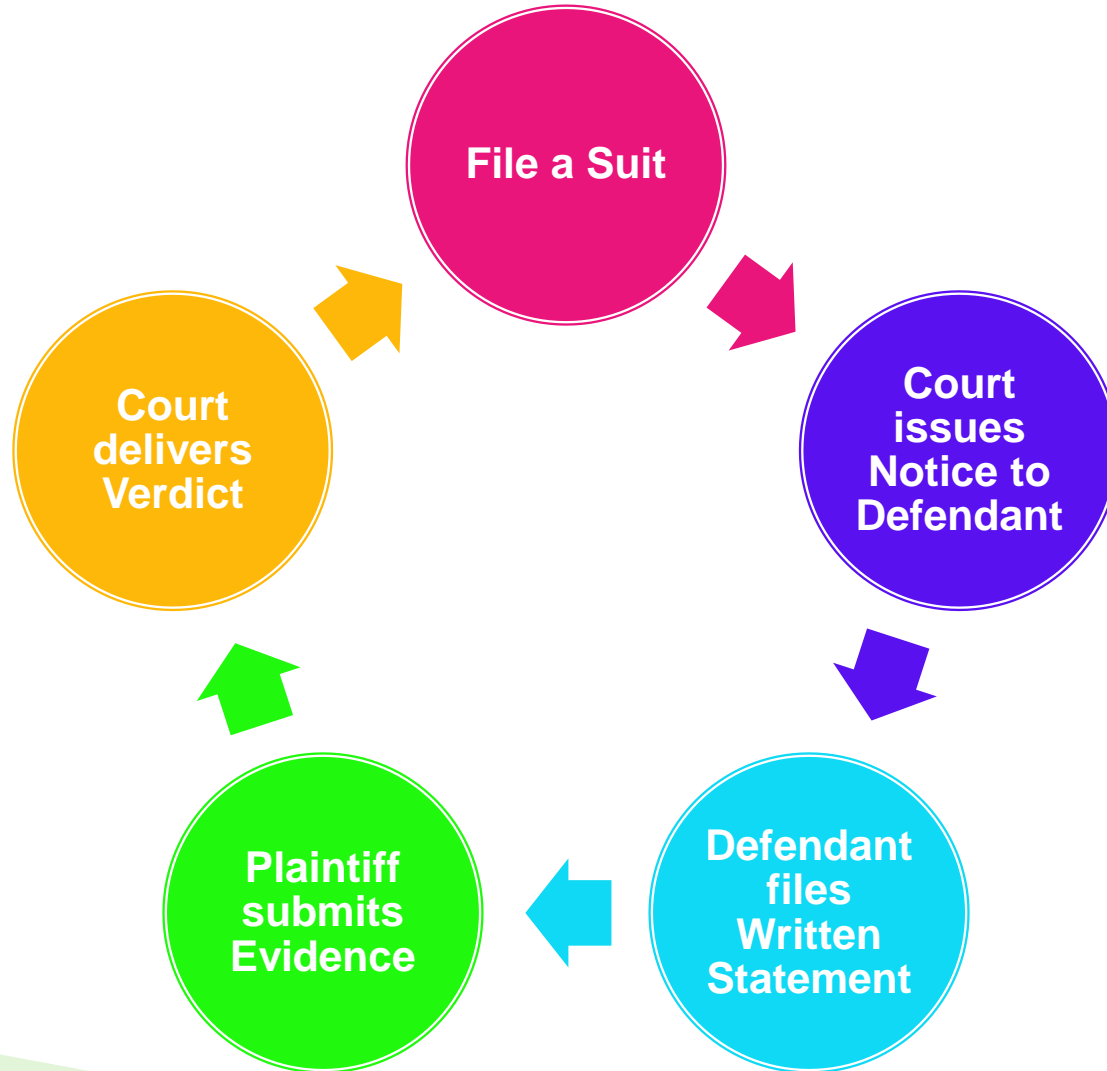
- Copy of Will certified by Court seal
- Establishes authenticity/finality
- Validates all acts of executors
- Thereafter No claim about genuineness of the will can be raised
- Application to be made to High Court + payment of Court fees.
 - 3% of FMV of Estate. Cap on Fees in Mumbai Rs 75,000
 - Executor / Witness to testify in front of Notary / Registrar
 - General Notice to Public to invite objections
 - Provide FMV of Assets of Deceased as on Date of Death
- Is it Compulsory?



Wills – Probate Process

- Prepare Petition
- Give details of Heirs of Deceased
- Executor / Witness to testify in front of Notary / Registrar
- General Notice to Public to invite objections
- Provide FMV of Assets of Deceased as on Date of Death
- Compute Court Fees on the same
- Submit Original Will + scanned copy of Will for Safe Keeping

Challenging a Will



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 – part of Will or Digital Will
 - Google / Facebook / Twitter / Instagram have separate Rules
- Organ Donation
- Social Customs Will

Will v No Will

Factor	No Will	Will
Who gets What	Law decides. No Say	Personal choice
Can stranger get	No	Yes. Any one can get
Can Guardians for Minors be appointed	No	Yes
What if Nomination	Law prevails	Will prevails
Can it be changed	No. Law is final	End number of times
Anything to be done	No	Yes.
Can temporary planning be done for COVID	No	Yes. Can revise the Will later once things better

Tax Issues on Will / Inheritance

- No Tax on Inheritance in India – Whether under Will or Intestate
- Receipt of Asset from Deceased
 - Receipt under a Will not a Transfer u/s. 47 ~ No CG
 - Since Intestate not mentioned is it taxable? **Is it a Transfer to start with?**
 - Cost of CA of Legatee / Legal Heir ~ Same as that of Deceased
 - Period of Holding of Legatee / Legal Heir ~ Same as that of Deceased
 - Q. When should Indexation start- Same as PO or Date of acquisition
 - **Manjula Shah (Bom) / Manoj Vadodaria (Guj) /Mina Deogun (Cal)**
 - Cost of SIT of Legatee ~ Same as that of Testator
 - Actual Cost of Depreciable Asset by Inheritance – Same as that of PO as reduced by Depn allowed to PO

Will / Inheritance & S.56

- **S. 56(2) NA to receipt of money / property under Will / Inheritance**
 - Can be received from anyone –even a Stranger
 - Need not be Relative. Will in favour of CA / Friend
 - Testamentary or Intestate Succession (e.g., Hindu Succession / Indian Succession Act) both covered
 - What if Money / Asset received as a Nominee
 - Not a case of Will / Inheritance
 - But Nominee does not receive at all – he is only a stop gap arrangement – SC in numerous cases
 - Hence, no receipt of property at all. Should not give rise to Tax u/s. 56

Will / Inheritance & S.56

- For s.56 Exemption ~ Not necessary that **Probate / Succession Certificate or Letter of Administration** obtained
 - These are Legal Formalities but have no bearing on the Tax position
- Compensation for agreeing not to contest a Will
 - One of the Claimants agrees to receive a sum in return for not pressing his claim before the Probate Court
 - Consideration has to be understood as per Contract Act, 1872
 - Agreeing not to contest will is consideration - **Purvez Poonawala (Mum)**



Private Trusts

Why Trusts?

*Help Avoid
Estate Duty,
if and when
it comes*

*Reduce
Succession
Disputes
like in Wills*

*No Probate
Required
like in Wills*

*Complete
Control
during
Lifetime &
After Death
also*

*Useful if
Beneficiary
is a Minor*

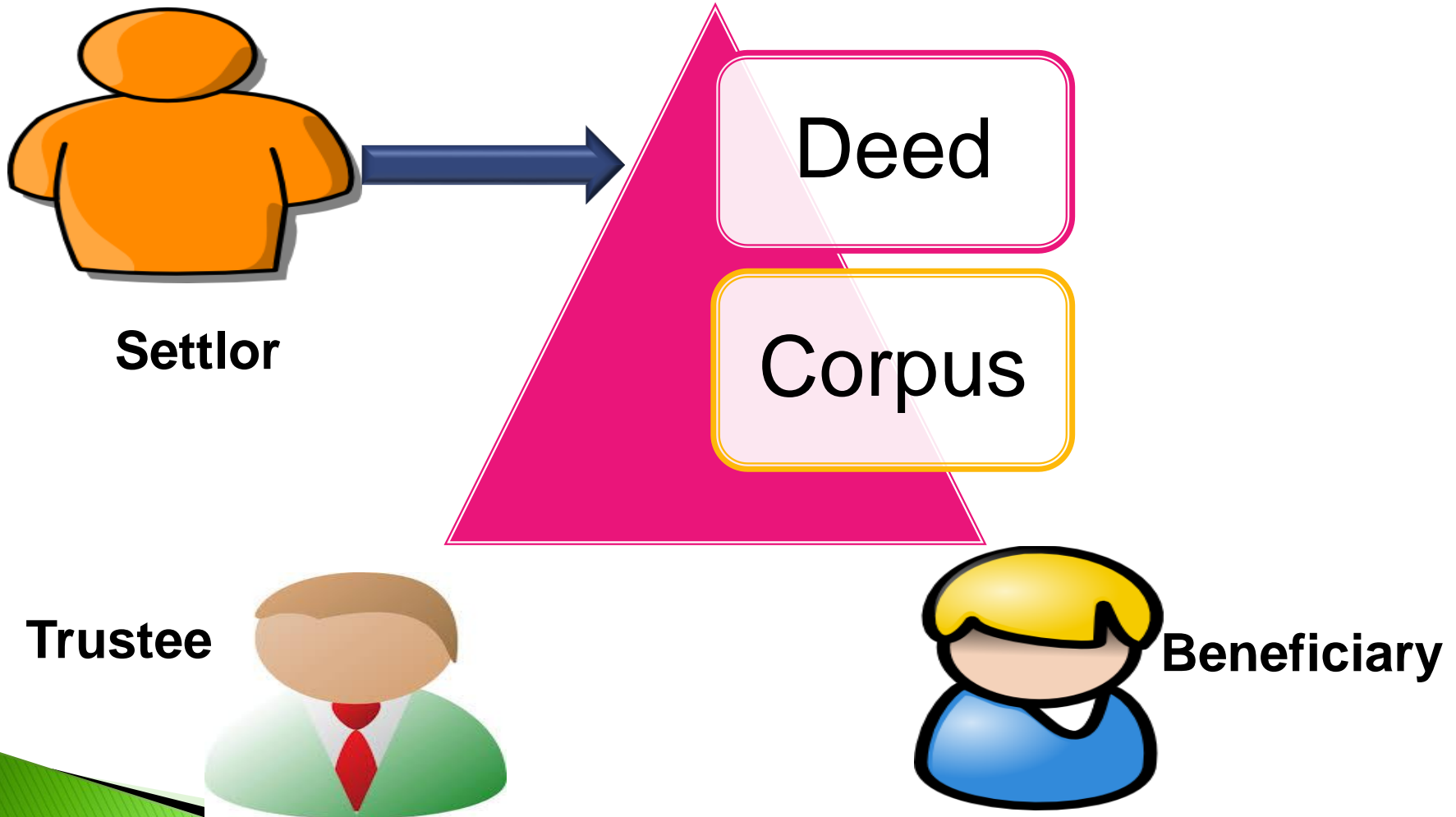
Trust v Will

Factor	Will	Trust
Takes Effect	On death	Immediately or On Death
Probate / Disputes / Litigations	Yes	No
Control after Death also	No	Yes
Possible During Lifetime also?	No	Yes
Estate Duty Saving Possibility	No	Yes in some cases
Wealth Planning for Minor Beneficiary possible?	No	Yes

Trusts – Legal Position

- **Private Trusts under Indian Trusts Act 1882**
 - Different from Public Trusts
 - No registration with Charity Commissioner
 - No Income-tax Exemption / No s.80G Benefits
 - Registration of Trust Deed optional
 - Can own Property & Investments
 - Advisable for
 - **Minors, Unborn Persons, Married Daughters, Handicapped Relatives, Mentally Unstable, Pets, etc.**

Trust - Features





Gifts / Release Deed

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
 - If Deed made ~ SD in Maharashtra as on a Conveyance

Revocation of Gifts

- **Can Gifts once made be taken back?**
 - Conditional Gifts can be revoked if conditions not met—TOPA
 - Completed Gifts can't be revoked
 - Even by taking recourse to Senior Citizens Act – Unless Gift Deed provided such conditions - SC
 - Unilateral cancellation not allowed
 - Parent sought to rescind gift of House since child not taking care of them. Held, nothing in deed to show that this was the condition of the gift. ∴ Revocation not allowed even if circumstances changed subsequent to gift

Release Deed

- ▶ In Restructuring of family owned properties
 - Execution of a Release Deed is a popular mode of Estate Planning
- ▶ One co-owner renounces his share in favour of another co-owner
 - **Consideration may or may not be paid for the Release**
- ▶ Intestate Succession, all Legal heirs are automatically co-owners
 - **Only way to give up one's share is by a Release Deed / NOC NA**
 - Class I LHs after death of Hindu Male: Wife, 2 Sons.
 - If Sons want mother to be sole owner, they must execute a Release Deed in her favour

Estate Planning & Tax / Duty



Type	Income-tax	Stamp Duty
Receipt as Nominee	No	No
Receipt under Intestate Succession	No	No
Bequest under Will	No	No
HUF Partition	No if Full Partition	Yes
Receipt under Gift	No in some cases	Yes if Gift Deed
Creation of Trust	No in some cases	Yes



Others

SMA

- ▶ **Marriage registered under Special Marriage Act**
 - Can even register a marriage already performed
 - If Hindu marries non-Hindu (e.g., Christian / Parsee)
 - HSA ceases - ISA Takes over + ceases to be HUF's Member
 - Changes the succession pattern for couple + child born to them
 - If Muslims get marriage registered ~ Shariya ceases and ISA applies - can make Wills for entire estate
 - But for marriages inter se Hindu / Jain / Sikh / Buddhist which are also registered under SMA
 - HSA continues to be applicable

Female Converting Religion



- **If a daughter of a Hindu marries a Muslim / Christian**
 - Converts her religion by renouncing Hinduism
 - Would she continue to inherit her father's Properties?
 - Did the father change religion or did she change?
 - Would she be part of Father's HUF if her Marriage is registered under Special Marriage Act?
 - Position of her children ~ Disentitled to succeed to Hindu's property
- **If daughter of a Muslim converts to Hinduism**
 - She will now be governed by HSA and not Shariya Law
 - Can make a Will for all her properties – No restrictions like in Shariya
 - If no Will then Intestate as per HSA

Thank You !!

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