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GROUND FLOOR, BOMBAY SAMACHAR MARG,  
FORT, MUMBAI- 400 023.****LANDMARK: OPPOSITE LION GATE.****DAY & DATE: SATURDAY, 08.11.2014****TIME: 3.00 PM TO 5.00 PM****SUBJECT: WILL AND NOMINATION****BY CA VIMAL PUNMIYA****WE ALL KNOW HOW TO CREATE WEALTH, HOW TO MANAGE WEALTH, NOW  
WE LEARN HOW TO DISTRIBUTE WEALTH!****We are born, and then death is certain. So before the death we can predetermine the  
disposal of our wealth by making A WILL.****Chapter 1: WILL**

A Will is an important document which enables the individual /any living person to rightfully leave his assets and wealth to whoever he chooses to, after his death. In a way a person can ensure that his wishes with respect to his assets and property are followed after his death. There often arise complexities when a person dies without a Will. Some people execute writings, prepared by themselves or with the help and advice of well-meaning friends or relatives. The crux is that the absence of a will or the invalidity of a will or parts of a will often generates problems for the legal heirs and successors. After the death of a person, his property devolves in two ways:

- According to the respective law of succession, when no will is made- i.e. intestate
- By way of will i.e. testamentary

**THE LAW APPLICABLE TO WILLS:-**

India has a well developed system of succession laws that governs a person's property after his death. The Indian Succession Act 1925 applies expressly to wills and codicils made by Hindus, Buddhists, Sikhs, Jains, Parsis and Christians but not to Mohammedans as they are largely covered by Muslim Personal Law. The laws applicable are as under:

- Indian Registration Act, 1908
- Indian Succession Act, 1925
- Muslim Personal Laws
- Hindu Personal Laws

**WHAT IS WILL?**

A Will is a legal declaration made by a person during his lifetime with regard to disposal of his properties after his death. The Will does not take effect from the date of its execution. It speaks from the death of the testator. During the Testator's lifetime, the Will is an ambulatory document, revocable at any time and having no legal effect.

There are two essential characteristics of a Will:-

- (i) It must be intended to come into effect after the death of the testator: A gift to take effect the life time of the donor is a deed of settlement and not a Will.

And,

- (ii) It must be revocable by the testator at any time. Although Wills are usually made for disposing property, they can also be made for appointing executors, for creating trusts and for appointing testamentary guardians of minor children. Section 63 of the Indian Succession Act, 1925 provides that a Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

### **WHO ARE THE PERSONS COMPETENT TO MAKE A WILL?**

According to Section 59 of the Indian Succession Act,

The following persons cannot make a will:

1. A person who is in such a state of mind whether arising from intoxication or from illness or from any other cause that he does not know what he is doing i.e. Lunatics, insane persons.
2. Married woman, aliens and convicts are not debarred from making a will.
3. Minors i.e. below 18 years of age. In case a guardian is appointed to a minor, such minor reaches age of maturity only at the age of 21 years.
4. Corporate bodies, by their very nature, are incapable of making a will, though they may benefit under the will of an individual partner.

### **WHAT IS THE NEED OF A WILL ?**

If one does not make a Will then his property will be inherited by legal heirs in accordance with the laws of inheritance applicable to him. However, most of the people would like to dispose of their property according to their own wishes. Thus, there arises the need for making one's Will. Apart from it there are certain distinct advantages of making a Will, they are as follows-

1. When a person dies without having made a Will, there is often confusion amongst the family members and relatives as to whether the deceased did make any Will prior to his death or not, but if a Will is available, the only question that needs to be ascertained is whether it is the last Will of the testator.
2. A Will is an absolutely personal document. More than anything it is an expression of the relationship with the members of family or relatives, etc. The views, opinions and feelings, etc., are indicated in this document. A Will allows the devolution of property in a personalized manner rather than letting the impersonal rules of inheritance take effect.
3. By means of a Will, one can appoint in writing, a testamentary guardian for his infant children. A testamentary guardian is a person, who is appointed by a testament or a Will. This point needs further clarification. In the event of the death of a parent the law would ordinarily uphold the right of surviving natural parent to be the guardian of the child. However, if there is no surviving parent, the law attaches great importance to the Will of a parent in deciding who to appoint as a guardian. This is a matter of great importance with regard to the future of the children and therefore, this issue must be discussed in details with the proposed guardian before appointing him testamentary guardian.
4. A Will provides more room inter se the laws of inheritance, which sometimes do not cater to the special needs and requirements of the members of a family. For instance, a father has two sons. One is healthy but the other is handicapped due to any chronic disease since childhood. The laws of inheritance would treat both these children on an equal footing. But by means of a Will one can have somewhat greater provision for a handicapped son, a widowed daughter or an invalid parent.
5. In the absence of a Will even the most unwanted son, who had left the house for disobedience, fraud, violence, etc. may turn up to claim his share of estate from his father's property. Similarly, an adulterous wife might demand her share as per inheritance laws.

There are however, some disadvantages also in making a Will and they are mostly psychological. In many cases it has been observed that people lose all their interests in life and idem such before the time they would have lived.

If there is no Will, the property would be dealt with as per the laws of inheritance. For Hindus, Buddhists, *Jains* and Sikhs the laws of inheritance have been codified in the Hindu Succession Act, 1956. For Christians the Indian Succession Act, 1925 will be applicable. Parsis have a different law of inheritance. Similarly, Muslims have their own law. That has, however, not been codified in nay legislation but is based on their religious texts. There are two major sects of Muslims – Shias and Sunnis. Both of them have different laws of inheritance.

### **HOW TO PREPARE A WILL?**

1. Will must be in writing:

All religions except Muslims, the will must be made in writing. The only exception provided under the law are the members of the armed forces employed in an expedition or engaged in actual warfare and mariner at seas who are permitted to make an oral will. Such will is known as “Privileged Will”.

2. Muslims can make oral will:

Muslims are permitted by their personal law to make a oral will.

3. No particular form of will:

There is no particular form of will prescribed by law. The language employed should be as simple as possible and should be free from technical words.

4. Will need not be on Stamp Paper:

It is wrong to say that a will has to be executed on a stamp paper as there is no such stipulation under the Indian Stamp Act. A will can therefore be made on any plain sheet of paper which must of course, be of durable quality.

5. Typing is not essential but desirable:

A will need not be typed. It can be made in testator’s own hand using a ball pen or fountain pen. A handwritten will is known as holograph and is valid in the eyes of law. However, n a handwritten will some confusion is bound to be caused by illegible handwriting of the testator. It is therefore advised that will should be neatly typed with margins on both sides of the pages.

6. Precaution In drafting a will:

- a) Prepare a list of all your assets and property which remain after taking into account all debts, liabilities and expenses to get a clear picture of how you wish to distribute the estate.
- b) The Will should be drafted in the language best understood by the testator so as to give the impression that the contents were fully understood by the testators wishes and intentions.
- c) In case the testator is illiterate the will should be executed in a language which the testator can comprehend. And the attesting witness or third attesting witnesses.
- d) Unusual characters of the will should be explained and clarified in the main body of the will itself. Thus where a testator bequeaths all his property to his daughter disinheriting and excluding his wife and other two sons or bequeaths his entire property to charity disinheriting his entire family it is desirable that in such circumstances reasons are clearly stated in the will itself.

### **WHAT ARE THE LEGAL REQUIREMENTS FOR MAKING A WILL?**

Section 63 of the Indian Succession Act provides as under –

Every testator, not being a soldier employed in a expedition nor engaged in actual warfare, or an airman so employed or engaged or a mariner at sea, shall execute his will according to the following rules:

- a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

- b) The signature or mark of the testator, or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.
- c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence of and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witnesses be present at the same time ,and no particular for of attestation shall be necessary”

#### WHAT ARE THE DIFFERENT KINDS OF WILL?

<p><u>Privileged and Unprivileged Wills:</u> Wills executed according to the provisions of section 63 of the Indian Succession Act are called Unprivileged Wills and Wills executed under section 66 of the Act, by a soldier employed in an expedition or engaged in actual warfare, or by an airman so employed or engaged, or by mariner being at sea, are called Privileged Wills. As a matter of rule, the wills have to be made in writing. However, a soldier during his engagement in an actual warfare or an airman so engaged or a mariner being at sea, may pronounce his will by or of mouth before two witnesses. The will so pronounced by such persons are called privileged wills.</p>
<p><u>Conditional or Contingent Wills</u> A Will may be expressed to take effect only in the event of the happening of some contingency or condition, and if the contingency does not happen or the condition fails, the Will is not be legally enforceable. Accordingly, where A executes a Will to be operative for a particular year, i.e., if he dies within that year. A lives for more years, after that years. Since A does not express an intention that the Will be subsisting even intestate. A Conditional Will is invalid if the condition imposed is invalid or contrary to law.</p>
<p><u>Joint Wills</u> A Joint Will is a testamentary instrument whereby two or more persons agree to make a conjoint Will. Where a Will is joint and is intended to take effect after the death of both, it will not be enforceable during the life– time of either.</p>
<p><u>A Will executed by two or more testators as a single document</u> duly executed by each testator disposing of his separate properties or his joint properties is not a single Will. It operates on the death of each and is in effect for two or more Wills. On the death of each testator, the legatee would become entitled to the properties of the testator who dies.</p>
<p><u>Mutual Wills</u> A Will is mutual when two testators confer upon each other reciprocal benefits by either of them constituting the other his legatee. But when the legatees are distinct from the testators; there can be no position for Mutual Wills.</p>
<p><u>Duplicate Wills</u> A testator, for the sake of safety, may make a Will in duplicate, one to be kept by him and the other to be deposited in the safe custody with a bank or executor or trustee. If the testator mutilates or destroys the one which is in his custody it is revocation of both.</p>
<p><u>Concurrent Wills</u> Generally, a man should leave only one Will at the time of his death. However, for the sake of convenience a testator may dispose of some properties in one country by one Will and the other properties in another country by a separate will.</p>
<p><u>Sham Wills</u> If a document is deliberately executed with all due formalities purporting to be a Will, it will still be nullity if it can be shown that the testator did not intend it to have nay testamentary operation, but was to have only some collaterally object. One thing must be born e in mind that the intention to make the Will is essential to the validity of a Will.</p>
<p><u>Holograph Wills</u> Such Wills are written entirely in the handwriting of the testator.</p>

#### WHO CAN BE THE EXECUTOR/WITNESS OF A WILL?

An executor is the person appointed ordinarily by the testator’s by his will or codicil.

- To administer testator’s property and
- To carry into effect the provision of the will

Casual selection of the witnesses to be will prove fatal in the event of the proof of the execution of the will at future date. It should be clearly understood that the attesting witness

may on some future occasion be required to appear as a witness in court in order to prove the execution of Will.

### **WHAT IS A CODICIL AND HOW TO MAKE ALTERATIONS IN THE NAME OF THE EXECUTOR?**

An instrument made in relation to a Will, Explaining, altering or adding to its dispositions, It shall be deemed to form part of the Will. If the Testator wants to change the names of the Executors by adding some other names, in that case this could be done by making a Codicil in addition to the Will, as there may not be other changes required to be made in the main text of the Will. It may be that the Testator wants to change certain bequests by adding to the names of the legatees or subtracting some of them. It may be some Beneficiaries or Executor may be dead and the names are required to be removed. All these can be done by making a Codicil. The Codicil must be reduced to writing. It must be signed by the Testator and attested by two Witnesses.

### **WHAT ARE THE FORMS & FORMALITIES TO MAKE A WILL?**

#### Form of a Will :

There is no prescribed form of a Will. In order for it to be effective, It needs to be properly signed and attested. The Will must be initialed by the testator at the end of every page and next to any correction and alteration.

#### Stamp Duty :

No stamp duty is required to be paid for executing a Will or a codicil.

A Will need not be made on stamp paper.

#### Attestation :

A Will must be attested by two witnesses who must witness the testator executing the Will. The witnesses should sign in the presence of each other and in the presence of the testator. However, according to Hindu Law, a witness can be a legatee. Under Parsi and Christian law, a witness cannot be an executor or legatee. A Muslim is not required to have his Will attested if it is in writing.

#### Registration:

Under section 18 of the Registration Act the registration of a will is not compulsory. It is strong legal evidence that the proper parties had appeared before the registering officers and the latter had attested the same after ascertaining their identity. A Will is to be registered with the registrar/sub-registrar with a nominal registration fee. The testator must be personally present at the registrar's office along with witnesses.

### **WHEN THE WILL MUST BE EXECUTED?**

On the death of the testator, an executor of the will or an heir of the deceased testator can apply for probate.

The court will ask the other heirs of the deceased if they have any objections to the will. If there are no objections, the court will grant probate.

A probate is a copy of a will, certified by the court. A probate is to be treated as conclusive evidence of the genuineness of a will.

In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent. This has to be displayed prominently in the court.

Thereafter, if no objection is received, the probate will be granted.

It is only after this that the will comes into effect.

### ***Chapter 2: NOMINATION***

#### **WHAT IS NOMINATION ?**

Nominion means an act of nominating. To nominate means to appoint a person who will look after the property of the person after his death. eg: LIC/GIC,BANK etc.

#### **WHO CAN NOMINATE?**

Nomination can be done only by a Investor or Policyholder who is major holding account/investment certificate/policy Bond in his own Name. And the nomination facility is available only to individuals in their own capacity singly or jointly.

#### **WHEN THE NOMINATION CAN BE DONE?**

Nomination can be done at the time of investment and after that filing relevant form.

### **WHETHER CHANGE OF NOMINATION ALLOWED ANYTIME AND IF SO HOW MANY TIMES IT'S ALLOWED?**

Yes, Old nomination can be cancelled and new nomination can be made without informing previous nominee.

### **TO WHOM THE NOMINATION FACILITIES ARE PROVIDED?**

Nomination is available to Individual (Major, Minor cannot nominate).

1. HUF/Reg. Firm/Company can't nominate
2. Nominee can't nominate
3. Holding Assets on representative capacity (like Trustee, Liquidator, Treasurer, Manager of Bank of Baroda)

### **WHO CAN BE APPOINTED AS NOMINEE?**

A nominee can be adult or a minor .If a minor is appointed as a nominee a guardian has to be appointed till the minor attains the age of majority and further the date of birth of the minor also should be mentioned, so that the actual date of attaining the majority could be easily ascertained. A nominee also can be relative or a friend or a well-wisher. It is not necessary that the nominee should be in a blood relative.

### **WHAT ARE THE RIGHTS OF A NOMINEE?**

Under nomination, the nominee gets only the right to receive the policy moneys in the event of the death of the Policyholder. Nomination does not pass on the property in the policy. If the Nominee dies when the policyholder is still surviving then the nomination would be ineffective. Nomination has no effect if policyholder is surviving. If nominee dies after the death of the policyholder, but before receiving policy moneys, then also Nomination becomes ineffective and the money can be claimed only by the legal heirs of the policy Holder.

### **NOMINATION IN CO. OP. SOCIETY.**

#### **A) WHAT IS PROCEDURE FOR NOMINATION ?**

A member can file nomination in -

- Form no. 15A In case of a single Nominee.
- Form no. 15B More nominee-Were percentage of each nominee is required to be mentioned.

The Form is to be filed and signed by the party in presence of two witnesses. And 3 copies are to be filed, One as Acknowledge receipt, Second to be received by the party after necessary entry is recorded in the society's record and the original to be kept in society office.(entered within 7 days from meeting of managing committee).

#### **B) WHAT IS THE FEES FOR RECORDING THE NOMINATION?**

There is no charge for recording the nomination for the first time. However if the earlier nomination is revoked and new nomination is given to the society for each subsequent nomination Rs.5/- will be charged by the society.

#### **C) WHEN SOCIETY TRANSFER PROPERTY IN NAME OF NOMINEE?**

After death of person society can transfer property in name of nominee. Nominee will write to society along with copy of death-certificate and various forms (application, undertaking 500 sq. ft.), used for residence.

- (i) Single nominee
- (ii) More than one nominee (nominees will decide who will represent society).  
Now after new model Bye-law, also allow Joint Ownership in society which was not permitted earlier. Earlier 1<sup>st</sup> person was treated as member and other were as associate members.

#### **D) If the nomination firm is not filed then**

for transfer purposes society may insist for probhate /succession certificate which involve lot of time & expenses.

- i) once application is made society can invite objection in one month (notice board of society public notice in two newspapers ).expenses to be born by legal heirs.
- ii) Indemnity bond for future claim if any.
- iii) more than one legal heir then who will be 1<sup>st</sup> who will represent in society.

**E) If nominee is not able to find share certificate then can apply to society for duplicate-**

Nominee take this steps

- a) first file application to society,
- b) second give advertise in two newspapers,
- c) Indemnity Bond

then duplicate certificate can be issued and original will be treated as cancelled. like railway ticket –if duplicate is issued –original is of no use.

**WHAT IS THE DIFFERENCE BETWEEN WILL & NOMINATION?**

A nomination is not a will.

When there is a nomination already filed with the Society, the normal impression is that the Nominee on the death of the Member, automatically becomes a member by filing an application. However, The Supreme Court of India has ruled in 1984 that “a Nominee is a mere Trustee with whom society can initially deal with after the death of a member. All the legal heirs of the deceased Member have a right of succession to the property of the deceased member and a Nominee cannot exclude the other legal heirs”.

Thus the nominee merely acts as the trustee. In some instances, the nominee and the beneficiary of the will is the same person. At all times, the provisions of the will prevail over the nomination. It is advisable to have the same person as the nominee and the beneficiary of the will, so as to prevent future disputes.

A nomination, in order to be effective, need not be executed as a will but must be in accordance with the formalities required by the particular provision applicable.

**WHETHER WILL ALSO TO BE EXECUTED WHEN NOMINATION IS GIVEN TO THE SOCIETY?**

Any transfer of interest of the deceased member in the Co-operative housing Society is governed by the section 30 of Maharashtra Co-operative Societies Act, 1960. Section 30(1) “On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules or, If no has been nominated, 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:

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

From interpretation of the above section we understand the following thing.

It is very clear on the plain reading of the section that the intention of the section is to provide for who has to deal with the society on the death of the member and not to create a new rule of secession. The purpose of the society has to deal and create interest in the nominee to the exclusion of those who in law will be entitled to the estate. The purpose is to avoid confusion in case there are dispute between the heir and legal representative and to obviate the necessity of obtaining legal representation and to avoid uncertainties as to with whom the society should deal to get proper discharge.

Society has no power, except provisionally and for a limited purpose to determine the disputes about who is the heir, or legal representatives. It, therefore, follows that the provisions for transferring a share and interest to a nominee or to the heir or legal representative as will be decided by the society is only meant to provide for interregnum between the death and the full administration of the estate and not for the purpose of conferring any permanent right of such person to a property forming part of the estate of the deceased. The idea of having this section is to provide for a proper discharge to the society without involving the society into unnecessary litigation which may take place as a result of dispute between the heirs.

Even when a person is nominated or even when a person is recognized as a heir or a legal representative of the deceased member, the rights of the persons who are entitled to the estate or the interest of the deceased member by virtue of law governing succession are not lost and the nominee or the heir or legal representative recognized by the society, as the case may be, holds the share and interest of the deceased for the disposal of the same in accordance with the law. It is only as between the society and the nominee or heir or legal representative that the relationship of the society and its member is created and this relationship continues and subsist only till the estate is administered either by the person entitled to administer the same or by the court or the rights of

the heirs or persons entitled to the estate are decided in a court of law. Thereafter the society will be bound to follow such decision. (Gopal Vishnu Ghatnekar Vs. Madhukar Vishnu gatnekar).

The provisions of section 30 for transferring a share and interest into a nominee. The heir or legal representative as will be decided by the society, is meant to provide for interregnum between the death and the full administration of the estate, and no for the purpose of conferring any permanent right on such a person to a property discharge to the society without involving the society into unnecessary litigation which may take place as a result of dispute between the heirs, or uncertainty as to who are the legal heirs or representatives.

Even when a person is nominated, or a person is recognized as a heir or a legal representative of deceased member right of the person who are entitled to the estate of the interest of the deceased member by virtue of law governing succession are not lost, and the nominee or the heir or the legal representative recognized by the society, as the case may be, holds the share and interest of deceased for disposal of the same in accordance with law. (Gopal Vishnu Ghatnekar Vs. Madhukar Vishnu gatnekar).

### **Chapter 3: FREQUENTLY ASKED QUESTIONS**

#### **Q.1 What is a Will and the benefits of making one?**

Ans: A WILL is a written document in which you provide for:-

- a. the administration of your estate/assets when you die; and
- b. the distribution of your possessions in specific proportions to specific people whom you wish to have a share of your estate/assets;
- c. appoint a person or persons of your choice to administer your estate; and
- d. appoint a guardian or guardians for your infant children (if any).

In other words it a document where you direct, who is to receive your property upon your death. If you have any real property (land) or personal property (cars, jewelry, money) that you want to give to a specific person than you must have a will.

#### **Q.2 Should everybody – working or non-working person, man or woman make a will? and What if you die without making a Will?**

Ans: “Where there’s a Will, there’s a way....Where there is no Will, there will probably be family bitterness/family disputes...” If people die without a WILL, then the law will decide to whom the property of the deceased person should go to.

Thus, every person whether working or non working , man or women should make a will.

#### **Q.3 When should people make a will? At what age on an average?**

Ans: Every adult, no matter what age, should have a Will. Most preferably a person above the age 50 should have a will. And while making a Will a person must be of sound mind.

#### **Q4 How do they make this will? Is there a process to making a will? What kind of paper is to be used? What language do they write it in? Do they need other people to witness the will?**

Ans: No prescribed form for a Will; only needs to be signed and attested

- Can be in any language; no technical words need to be used
- Two witnesses must attest a Will; one preferably a doctor
- They should sign in the presence of each other and the person making the Will.
- In India, the registration of Wills is not compulsory
- The Will should provide for the appointment of executors, though not mandatory.
- No stamp duty is required to be paid for executing a Will.

#### **Q.5 Where should they keep the will when they finish writing it? Should somebody in the family/or friends know where they have kept this paper/will?**

Ans: Keep the original in a safe place where it may be found easily after your death. Leave a copy with the attorney who wrote it for you or with a copy with your family friend, CA or Advocate.

#### **Q.6 Can a will be verbal like told to a person before death, or does it have to be written?**

Ans: A Will has to be Written but a verbal will is permitted in Defence Personal. However, a verbal will is not valid if you have a valid, written will. If you have no written will, a verbal will can be valid with regard to any property you own, except land. Property that can be transferred under a verbal will includes stocks, bonds, cars, coin collections, jewelry and appliances. A verbal will is valid only if know you are dying and say what you want in your

will to two competent, disinterested witnesses. The witnesses must put the will in writing and sign the transcription within ten days.

**Q.7 We see lots of problems in families when the head of a family passes away without leaving a will. Is that true? Would things be easier if there was a will?**

Ans: If you die without leaving a valid legal Will, you are said to have died 'Intestate'. The law dictates who will inherit your Estate and in what proportions. The law also decides who will have responsibility for administering your Estate (your Personal Representatives). Such an decision may create a disputes and some family hurdles among the family members.

**Q.8 Should you keep the contents of a will a secret? Or, can they be shared with people?**

Ans: It is advisable to keep the contents of a will secret. However, it is not necessary to keep it secret, it depend upon person to person and case to case.

**Q.9 A husband may leave a will should a wife also make a will? Or Can a Husband and Wife can make a Joint Wills?**

Ans: No it is not possible to have a joint Will they must be individual Wills. However "Mirror Wills" are quite common. A mirror Will is when a spouse or partner make almost identical Wills, or even identical Wills, leaving for example, everything to each other respectively should one partner perish and if both perish together then direct to children. If they have no children then to a named beneficiary's. This is where major differences often occur say, for example, the husband could leaves his possessions and estate to his siblings and the wife leaves her possessions and estate to her siblings!!!.

**Q.10 Supposing a person makes a will leaving his/her assets and money not to family but to an outsider or perhaps to a charity – is this will to be honored?**

Ans: Yes, basically a Will is a document that states or directs the will of the person, as to whom he/she wants his/her property to be handled after their death. So the person in whose name the assets are transferred can be any person a outsider or even an charitable trust etc.

**Q.11 Wills are often contested by people. Can you enumerate three of the most common grounds on which they are contested?**

Ans: Yes, Wills are often contested by peoples. Some common grounds on which wills are contested are as follows-

- a) That the person was of not sound mind.
- b) The Testator lacked testamentary capacity to sign a will.
- c) The person was unduly influenced into signing a will/ a will is made under pressure.
- d) The will was procured by fraud.
- e) The Will is not signed before two witnesses.
- f) The name of family members is not mentioned in will.

**Q.12 Wills often result in bitterness in families and fragmentation – maybe somebody thinks they have not quite got what they wanted or lesser than the other person.**

Ans: Yes, it might happen in various situations. In order to prevent such happening it is advisable to consult a lawyer which will help you to draft the will in the manner and giving the proper statements as to why only certain assets are given to a particular member instead of others.

**Q.13 Have there been cases in which a will has been deliberately tampered with? Or, when maybe mentally unsound people have been fooled into making wills?**

Ans: There are very few cases where the will has been deliberately tampered with or when the mentally unsound people have been fooled into making Wills.

**Q.14 Can a person change a will he has already made?**

Ans: You can change your will any time you want to. However, make sure that when you make a new will, you mention that this will is the latest and supersedes all earlier wills. If you don't, it can complicate the situation, cause major confusion, make such matters go to the court of law and take several years before arriving at any final verdict  
You can also make an additions to your will by signing a "codicil," with all the formalities of a will. The codicil must be in writing, dated and signed by you and two witnesses. You cannot change a properly executed will by writing revisions into the will, even if you initial

and date the changes. Such changes are valid only if they occur before the will is signed and witnessed. If major changes are needed, consider making a new will.

**Q.15 What would you advise? Always make a will with a cool head, never in a rash or impulsive manner – what should be a person’s state of mind when they make a will?**

Ans: A person should make a Will in a sound mind and should have the will Registered with the Registrar of Sub Assurances in presence of two witnesses registrar will also ask for Identify proof, Doctor Certificate, Residential proof of person who makes Will, Identity proof of witness expenses are very nominal.

**Q.16 Should they take the help of a lawyer when making a will or can they make it on their own?**

Ans: The procedure of making a Will is very simple, if assets are few than the help of lawyer is not necessary but in case if the Assets are many and the family is big and if there is a possibility of disputes than it is advisable to take the help of the lawyer. As “Do-it-yourself” wills often do not contain all the necessary components as required by law and many times ruled as invalid by courts (for example no signatures from witness or no witness at all). Many a time, it can happen that while creating the will, you use such ambiguous language that it results in lengthy legal battles (“My House should go to Sunita.” Now if both mother and wife are called Sunita, which Sunita ought to get it?. Anyone who might benefit from the ambiguity of the will can jump in to claim a share! And if the courts decide in his/her favour, you won’t like that situation (not that, you’ll be around!).

**Q.17 Does marriage / entering into a civil partnership affect my Will?**

Ans: Yes, if you marry or enter into a civil partnership, your Will is revoked. This is because there is an assumption that you would wish to provide for your new spouse or civil partner. There is an exception to this rule if you have made your Will 'in anticipation of' marriage / entering a civil partnership. If you are in any doubt about this, consult your Solicitor for advice.

**Q.18 Does divorce / dissolution of civil partnership affect my Will?**

Ans: Yes, if you divorce or your civil partnership is dissolved, any Will you have made is revoked but only to the extent that your ex-spouse or ex-partner is referred to. For example, any appointment of your ex-spouse or ex-partner as an Executor or beneficiary is revoked. However, your Will may still be valid and, again, you should consult your Solicitor for advice.

**Q. 19. Property will be inherited to nominee under nomination ?**

Ans. No, Appointment of nominee is like appointing trustee .property will be inherited as per will/if no will then succession Act.

Reliance is placed on:

Ramdas shivram sattur Vs. Rameshchandra Bombay. High Court ,order delivered by Justice A.P.Deshpande, order dated 9/4/2009.

- I. Tarabai wife of shivram was nominee sold property to builder.
- II. Ramdas received property in 1976 family settlement (property not transferred in his name)
- III. builder filed case against Tarabai for specific performance.
- IV. Ramdas filed case against mother & builder that he is owner.
- V. Court ordered that all legal heirs are owner .Tarabai can just manage affairs.

**Q. 20. If member is not in the capacity to attend society meeting than what he can do?**

Ans. He can file form to make associate member, who represent member in society meeting. Membership of associate member remain till membership of original member. In case of death of member, membership of associate member also come to end.

**Chapter 4: FORMAT OF WILL**

**WILL**

I ..... aged.....years, an male Indian Inhabitant, residing at..... I Do hereby revoke all my former will, codicils or other Testamentary dispositions and hereby declare this to be my last will and Testament made at Mumbai this..... day of ....., 2013.

1. I am maintaining good health and I am possessed of sound mind. This will is made by me of my own independent decision and free violation and in perfectly sound health and sound mind, I have not been influences, cajoled or coerced by any person.

2. My family consist of the following members:

- i) \_\_\_\_\_.
- ii) \_\_\_\_\_.
- iii) \_\_\_\_\_.
- iv) \_\_\_\_\_.
- v) \_\_\_\_\_.

3. I have during my life time acquired properties and I am possessed of assets in the shape of Movable and Immovable Properties and chooses in action. Keeping in view the dissensions in the family and possible disputes, which may arise relating to inheritance opening out at my demise and in order to save the assets from unnecessary litigation amongst my relatives and others. I so hereby devise and declare all the estate which I am holding at present/or which I may acquire in future in the manner as mentioned herein below.

4. I hereby appoint my wife namely ..... the Executor of this my Last will in case my wife..... predeases me then my son ..... will be executor of my this will.

5. I direct that the said Executor shall pay my funeral and other expenses for obsequies ceremonies, just debts, taxes and other liabilities, out of the property that I have at the time of my death and the balance of my total properties shall be bequeathed .

6. I devise and bequeath all my Immovable and Movable Properties to my Wife ..... and she will be owner for her life time and will be able to make her will as her desire.

7. In case my wife ..... predeceases me then all my Immovable and Movable property will bequeathed as follows :

(A) IMMOVABLE PROPERTIES

All my immovable property will be bequeathed to my son namely .....

(B) MOVABLE PROPERTIES

- i) Rs. .... to be given to my daughter namely.....
- ii) Rs..... to given to my granddaughter i.e sons daughter.
- iii) Rs..... to be given to my grandson i.e my daughters son

And after above amounts are paid whatsoever left including any assets which I may acquire in future or I may dispose of Some Assets will be given to my son .....

Signed by the withinnamed Testatrix )  
.....)

Acknowledged by her as her last will and)  
Testament in the presence of each have )

WITNESSES:

- 1. ....
- 2. ....