



M2K Advisors



Bequest under a Will

SUCCESSION PLANNING SERIES #15

Cases where bequest is regarded as void (1/2)

Bequest – Transfer or devolution of assets by the testator through testamentary succession. The following are some examples of bequests that are treated as void:

A

A bequest made to a person who is not in existence at the time of the testator's death.

Exception: A bequest being made to a person who is not born at the time of testator's death, but the possession of the asset is deferred until a time later than testator's death by a reason of prior bequest to another person by testator.

Illustration: A bequeaths Rs. 1,000 to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

B

A bequest made to a person not in existence at the time of the testator's death subject to a prior bequest contained in the Will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed

Illustration: A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.



Cases where bequest is regarded as void (2/2)

C

A bequest for charitable or religious uses, if the testator is having a nephew or a niece or any nearer relative.

Exception: Where a Will is executed within 12 months before testator's death and the Will is deposited within 6 months from the execution date in a safe custody as provided by law.

D

A bequest upon an impossible condition.

Illustration: An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

E

A bequest upon a condition, the fulfilment of which would be contrary to law or to morality.

Illustration: A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.



Onerous Bequest (involving obligation)

In case of a bequest of 2 similar property, where one of them involves obligation, the legatee can either accept both or refuse both.

Illustration:

A, having shares in X Ltd., a prosperous joint stock company and also shares in Y Ltd., a joint stock company in difficulties, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in Y Ltd. Hence, shares in X Ltd. alone cannot be taken by him.

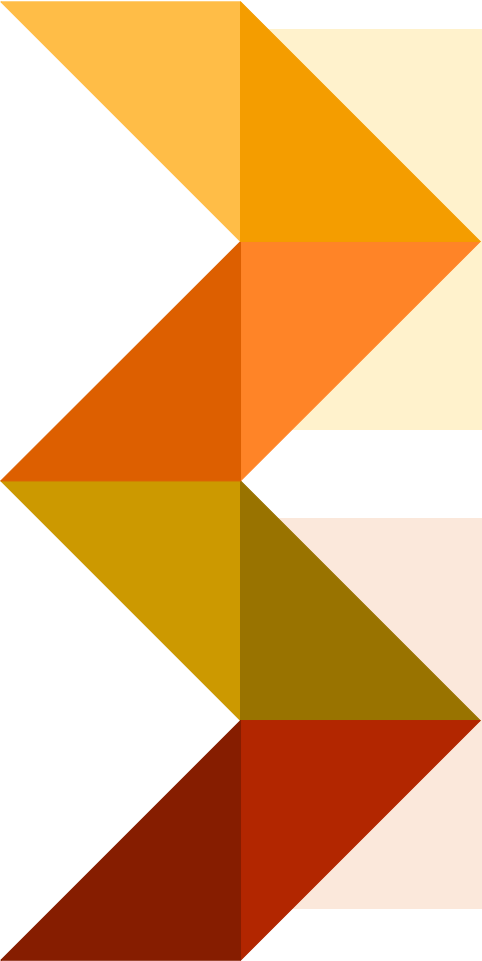


Where a Will contains two separate and independent bequests (say property and sum of money), the legatee is at liberty to accept one and refuse the other one.

Illustration:

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B can refuse to accept the lease and accept sum of money.

Contingent Bequest



Where a bequest is made subject to a specified uncertain event and no time is mentioned in the Will for occurrence of the said event, the bequest shall not take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustration: A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

Where a bequest is made to more than one person, who survives until certain period, but the period is not specified therein, the legacy shall go to such person/s who are alive at the time of payment or distribution.

Illustration: Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

Conditional Bequest (1/2)

A

Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustration: A legacy is bequeathed to A if he executes a certain document within a time specified in the Will. The document is executed by A within a reasonable time, but not within the time specified in the Will. A has not performed the condition, hence is not entitled to receive the legacy.

B

Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest.

Illustration: A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having a child. The bequest to B takes effect.

C

Where in the Will it is mentioned that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

Illustration: A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him, the bequest to B does not take effect.

Conditional Bequest (2/2)

D

If the ulterior bequest (further bequest) is not valid, the original bequest is not affected by it.

Illustration: An estate is bequeathed to A for his life with condition added that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the Will.

E A bequest may be made with the condition added that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustration: An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the Will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

F

Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction.

Illustration: A sum of money is bequeathed towards purchasing a car for A, or to purchase Z Ltd. for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

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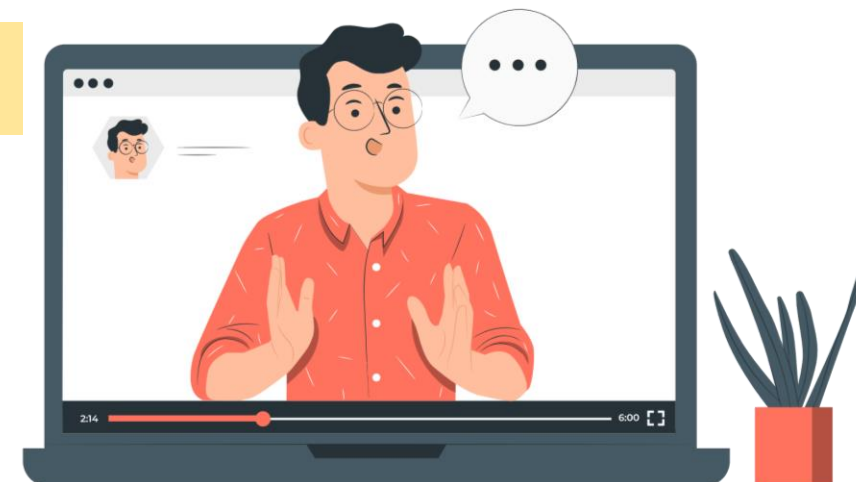
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