

UNIT - V

Wills • Legacies • Family Courts & Uniform Civil Code

Privileged & Unprivileged Wills • Construction • Ademption • Article 44

Unit Structure

01

Wills under Indian Succession Act

Privileged and unprivileged wills, formalities, construction

02

Bequests, Legacies & Ademption

Specific, general, demonstrative legacies; void bequests

03

Protection of Estate & Curator

Appointment of curator, powers and duties

04

Family Courts & Uniform Civil Code

Family Courts Act 1984, Article 44 and the debate on UCC

Privileged and Unprivileged Wills

Unprivileged Will

The ordinary will that must be in writing, signed by the testator (or by another in his presence and by his direction), and attested by at least two witnesses who have seen the testator sign or affix his mark.

Applies to most civilians.

Privileged Will

A will that may be made by a soldier in actual warfare, or an airman so engaged, or a mariner at sea, under less formal requirements (oral or written without the usual attestation).

It is intended to meet the exigencies of active service.

Construction of Wills – General Principles

The dominant principle is to give effect to the intention of the testator as expressed in the will.

Rules of construction include:

- The will is to be read as a whole
- Words are given their ordinary meaning unless a contrary intention appears
- Technical words are given their technical meaning
- The court cannot rewrite the will or supply omissions merely because the result appears unfair
- Where two constructions are possible, the one that gives effect to the will is preferred
- Inconsistent clauses – the later clause generally prevails in case of irreconcilable conflict

Extrinsic evidence is admissible only in limited circumstances (e.g., to resolve latent ambiguity).

Kinds of Legacies

Specific Legacy

A bequest of a specified part of the testator's property distinguished from the rest of the estate.

General Legacy

A bequest payable out of the general assets; not of a particular thing.

Demonstrative Legacy

A bequest of a certain sum payable primarily out of a particular fund or property, but not confined to it.

Residuary Legacy

A bequest of the residue of the estate after payment of debts, expenses and other legacies.

Ademption and Void Bequests

Ademption: A specific legacy is adeemed (fails) when the subject-matter ceases to exist or is disposed of by the testator during his lifetime. The legatee gets nothing in its place unless the will shows a contrary intention.

Void bequests include:

- Bequests to persons not in existence at the testator's death (subject to the rule against perpetuity)
- Bequests that are illegal, immoral or opposed to public policy
- Bequests that are uncertain
- Bequests to the attesting witnesses or their spouses (in certain circumstances under the Act)

The Indian Succession Act contains detailed provisions on when a legacy lapses and who takes in default.

Protection of the Property of the Deceased – Curator

When a person dies and there is no one immediately entitled or available to take possession of the estate, or when there is a dispute, the court may appoint a curator to take temporary charge of the property.

The curator's role is to preserve the estate, collect rents and profits, and hand over the property to the person ultimately entitled when the right is established.

The Indian Succession Act and the relevant procedural rules empower the District Judge to make such appointments and to regulate the curator's security, accounts and remuneration.

Family Courts Act, 1984 – Object and Constitution

The Family Courts Act, 1984 was enacted to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs.

Key features:

- Establishment of Family Courts in areas with population exceeding one million (and elsewhere as State Government decides)
- Judges are expected to have experience and expertise in dealing with family matters
- Emphasis on conciliation and counselling; the court must try to settle the dispute amicably
- Simplified procedure; lawyers may appear only if the court permits
- Jurisdiction over matrimonial reliefs, maintenance, custody, guardianship and related matters

The Act aims to create a less adversarial, more informal forum for family disputes.

Need for Uniform Civil Code – Article 44

Article 44 of the Constitution (Directive Principle): “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

Arguments in favour:

- Equality before the law and non-discrimination on grounds of religion
- National integration and simplification of personal laws
- Protection of vulnerable sections (especially women) from discriminatory personal law rules

Arguments against / concerns:

- Religious freedom and cultural diversity
- Fear of majoritarianism
- Practical difficulty of drafting a code acceptable to all communities

The Supreme Court has repeatedly referred to the desirability of a UCC (Shah Bano, Sarla Mudgal, John Vallamattom, etc.), while leaving the matter to the legislature. Recent developments in some states have revived the debate.

Landmark Judgments Relevant to Unit V

Sarla Mudgal v. Union of India (1995)

Highlighted the problem of conversion to Islam for the purpose of polygamy and called for a uniform civil code.

John Vallamattom v. Union of India (2003)

Struck down a discriminatory provision relating to Christian wills and again referred to Article 44.

Shayara Bano (2017) & related cases

Gender justice in personal law and the constitutional limits of religious practices.

Various Family Court decisions

Emphasis on conciliation, welfare of children and speedy disposal under the Family Courts Act.

Key Takeaways – Unit V

- Unprivileged wills require writing, signature and attestation by two witnesses; privileged wills have relaxed formalities for those in actual service.
- The primary rule of construction is to give effect to the testator's intention as expressed in the will.
- Specific legacies are subject to ademption if the subject-matter ceases to exist.
- Family Courts are specialised forums designed to promote conciliation and speedy settlement of family disputes.
- Article 44 directs the State to endeavour to secure a uniform civil code; the debate continues between equality and religious autonomy.
- The Indian Succession Act provides a comprehensive framework for wills, legacies and representation of estates for communities governed by it.

End of Unit – V

Wills • Legacies • Family Courts • Uniform Civil Code

All Five Units of Family Law – II Completed

Mohammedan Law + Indian Succession Act, 1925