No. 101/XXXVI(3)/2024/05(1)/2024
Dated Dehradun, March 12, 2024

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of **'The Uniform Civil Code, Uttarakhand, 2024' (Act No. 03 of 2024).**

As passed by the Uttarakhand Legislative Assembly and assented to by the President on 11 th March, 2024.

THE UNIFORM CIVIL CODE OF UTTARAKHAND, 2024

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THE UNIFORM CIVIL CODE, UTTARAKHAND, 2024

(Act No. 03 of 2024)

An

Act

to govern and regulate the laws relating to marriage and divorce, succession, live-in relationships, and matters related thereto.

Be it enacted by the Uttarakhand State Legislative Assembly in the 75th years of the Republic of India, as follows-

PRELIMINARY

1. **Short title, commencement and extent -**

(1) This Act may be called the Uniform Civil Code, Uttarakhand, 2024.

(2) It shall come into force on such date as the State Government may, by notification in the Gazette, appoint.

(3) It extends to the whole of the State of Uttarakhand and applies also to the residents of Uttarakhand who resides outside the territories to which this Code extends.

2. **Applicability of the Code to Scheduled Tribes -** Nothing contained in this Code shall apply to the members of any Scheduled Tribes within the meaning of clause (25) of Article 366 read with Article 342 of the Constitution of India and the persons and group of persons whose customary rights are protected under Part XXI of the Constitution of India.

3. **Definitions -**

(1) In this Code, unless the context otherwise requires -

(a) "child", in relation to parents, means their biological child, and includes an adopted child, an illegitimate child, or a child born through surrogacy or assisted reproductive technology;

(b) "Court" means a court of original civil jurisdiction and includes a family court established under the Family Courts Act, 1984 (Act No. 66 of 1984) or any court upon which the powers and jurisdiction of a family court are conferred;

(c) "custom and usage" signify any rule which, having been

continuously and uniformly observed for a long time and has obtained the force of law among persons in any local area, tribe or community:

Provided that the rule is certain and not unreasonable or against the public policy and morality;

(d) "degrees of prohibited relationship" - a man and any of the persons mentioned in List-1 of the Schedule - 1 and a woman and any of the persons mentioned in List-2 of the said Schedule are within the degrees of prohibited relationship.

Explanation 1 - Relationship includes -

(i) relationship by half or uterine blood as well as by full blood, adoption, surrogacy or assisted reproductive technology;

(ii) legitimate blood relationship as well as illegitimate;

and all terms of relationship in this Code shall be construed accordingly;

Explanation 2 - "full blood" - two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife;

Explanation 3 - "half blood" - two persons are said to be related to each other by half blood when they are descended from a common ancestor but by different wives;

Explanation 4 - "uterine blood" - two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation 5 - in Explanation 3 and Explanation 4, "ancestor" includes the father and "ancestress" includes the mother;

(e) "estate" means property of any kind, whether movable or immovable, self-acquired or ancestral/coparcenary/joint, tangible or intangible and includes a share, interest or right in such property;

(f) "High Court" means the High Court of Uttarakhand;

(g) "minor" means a person who has not attained the age of eighteen years;

(h) "notification" means a notification published in the Uttarakhand Gazette and the expression "notified" shall be construed accordingly;

(i) "parent" means father or mother of a child;

(j) "person" means an individual, whether female or male, and the expressions "she/he", "her/his", "her/him" and "herself/himself" shall be construed accordingly;

(k) "prescribed" means prescribed by rules made under this Code;

(l) "Registrar" means the Registrar appointed by the State Government;

(m) "Registrar General" means the Registrar General appointed by the State Government;

(n) "resident" means a citizen of India, whether residing within or outside the territories of the State of Uttarakhand, who -

(i) is eligible to be a permanent resident under the notification issued by the State Government in this regard, or

(ii) is a permanent employee of the State Government or its undertakings/entities, or

(iii) is a permanent employee of the Central Government or its undertakings/ entities, employed within the territory of the State, or

(iv) has been residing in the State for not less than one year, or

(v) is a beneficiary of any scheme of the State Government or the Central Government, applicable in the State;

(o) "spouse" means either husband or wife in a marriage;

(p) "State" means the State of Uttarakhand;

(q) "State Government" means the Government of Uttarakhand; and

(r) "Sub-Registrar" means, in a rural area, such village level officer and, in an urban area, such official of the urban local body, as may be notified by the State Government for the purposes this Code.

(2) In Part - 1 of this Code, unless the context otherwise requires -

(a) "maintenance" includes provision for food, clothing, residence, education, medical attendance and treatment, and special needs, if any.

(b) "parties to the marriage" means a man and a woman between whom the marriage has been solemnized/contracted;

(3) In Part - 2 of this Code, unless the context otherwise requires -

(a) "administrator" means a person appointed by the competent authority to administer the estate of a deceased person when there is no executor;

(b) "bequest" means the act of assigning specific estates of a person to others after the death of that person, and its grammatical variations and cognate expressions shall be construed accordingly;

(c) "caveat" means the notice for allowing the applicant to be heard before a Court before granting a probate or administration;

(d) "codicil" means an instrument made in relation to a Will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the Will;

(e) "District Judge" means the Judge of a principal civil court of original jurisdiction in a district, and includes an Additional District Judge;

(f) "executor" means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided;

(g) "heir" means any person who is entitled to succeed to the estate of an intestate;

(h) "intestate" - a person is said to die intestate in respect of estate belonging to such person for which no testamentary disposition capable of taking effect has been made;

(i) "legacy" signifies the estate which may pass on from one person to other/others in accordance with the provisions contained in Chapter-2 of Part-2 of this Code ;

(j) "probate" means the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;

(k) "testator" means the person who executes a Will;

(l) "Will" means the legal declaration of the intention of a testator with respect to her/his estate which she/he desires to be carried into effect after her/his death.

Explanation - Words and expressions used in this sub-section and not defined but in the Indian Succession Act, 1925, shall have same meaning respectively assigned to them in that Act.

(4) In Part-3 of this Code, unless the context otherwise requires -

(a) "child", in relation to a man and a woman in a live-in relationship, means their biological child, and includes an adopted child, an illegitimate child or a child born through surrogacy or assisted reproductive technology.

(b) "live-in relationship" means a relationship between a man and a woman (hereinafter referred to as "partners"), who cohabit in a shared household through a relationship in the nature of marriage, provided that such relationship is not prohibited under Part - 3 of this Code;

(c) "shared household" means a household where a man and a woman, not being minors, live under one roof in a rented accommodation or in a house owned jointly or by any one of them or any other accommodation;

(d) "statement of live-in relationship" means a jointly signed statement to the effect that a man and a woman are in a live-in relationship or intend to enter into such a relationship, submitted to the Registrar in the prescribed manner for registration in accordance with the provisions of Part - 3 of this Code; and

(e) "statement of termination" means a signed statement by any or both partners to an existing live-in relationship that such relationship has been terminated, and submitted to the Registrar in the prescribed manner.

Part – 1

Marriage and Divorce

Chapter – 1

Conditions for Solemnizing/Contracting Marriage

4. **Conditions for marriage** - A marriage may be solemnized/contracted between a man and a woman, if the following conditions are fulfilled, namely -

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party –

(a) is incapable of giving valid consent in consequence of unsoundness of mind; or

(b) though capable of giving valid consent, has been suffering from a mental disorder of such a kind or to such an extent so as to be unfit for marriage; or

(c) has been subject to recurrent attacks of insanity;

(iii) the man has completed the age of twenty-one years and the woman the age of eighteen years;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing one of them permits marriage between the two;

Provided that such customs and usage are not against the public policy and morality;

(v) the marriage is not prohibited under any law in force.

5. **Ceremonies for marriage** - Marriage may be solemnized/contracted between a man and a woman in accordance with the religious beliefs, practices, customary rites and ceremonies including but not limited to "*Saptapadi*", "*Ashirvad*", "*Nikah*", "*Holy Union*", "*Anand Karaj*" under The Anand Marriage Act 1909 as well as under, but not limited to, The Special Marriage Act, 1954 and Arya Marriage Validation Act, 1937.

Chapter – 2

Registration of Marriage and Divorce

6. **Compulsory registration of marriage solemnized/contracted after the commencement of the Code** - Notwithstanding anything contained in any other law for the time being in force or in any custom or usage to the contrary, a marriage solemnized/contracted in the State or outside the territory thereof, after the commencement of this Code, where at least one party to the marriage is a resident of the State, shall be registered in accordance with the procedure as mentioned under sub-section (1) of section 10;

Provided that the conditions under section 4 and requirements of section 5 are fulfilled.

7. **Registration of marriage solemnized/contracted before the commencement of the Code** -

(1) Any marriage solemnized/contracted in the State between 26.03.2010[1] and the date of commencement of this Code, where at least one party to the marriage was/is a resident of the State at the time of the marriage/registration, shall be registered in accordance with the procedure as mentioned under sub-section (2) of section 10;

Provided that no marriage registered under the Uttarakhand Compulsory Registration of Marriage Act, 2010 (Uttarakhand Act No. 19 of 2010) shall be required to be registered again under this sub-section;

Provided further that in respect of any marriage registered under the Uttarakhand Compulsory Registration of Marriage Act, 2010 (Uttarakhand Act No. 19 of 2010), a declaration of registration of marriage shall be filed by both or either of the parties thereto within a period of six months from the date of commencement of this Code before the Sub-Registrar within whose jurisdiction the marriage was

[1] The date on which the Uttarakhand Compulsory Registration of Marriage Act, 2010 (Uttarakhand Act No. 19 of 2010) was notified in the Uttarakhand Gazette.

solemnized/contracted or either of the parties resides.

(2) Any marriage solemnized/contracted in the State before 26.03.2010 or outside the State before the commencement of the Code, where at least one party to the marriage was/is a resident of the State at the time of the marriage/registration, may be registered in accordance with the procedure as mentioned under sub-section (3) of section 10;

Provided that a marriage may be registered under this section only if the following conditions are fulfilled -

(a) a ceremony of marriage has been performed between the parties and they have been living together as spouses ever since;

(b) neither party has at the time of registration having more than one spouse living, unless otherwise permitted under custom or usage of any of the parties at the time of marriage;

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

(d) the parties are not within the degrees of prohibited relationship:

Provided that the prohibitions will not apply to person(s) whose customs and usage permit the relationship;

Provided further that such customs and usage are not against public policy and morality.

8. Registration of decree of divorce or nullity passed after the commencement of the Code -

(1) Any decree of divorce or nullity of marriage passed after the commencement of this Code by any Court in the State shall be registered in accordance with the procedure as mentioned under sub-section (1) of section 11.

(2) Any decree of divorce or nullity of marriage passed after the commencement of this Code by any court outside the State, where at least one party to the decree is a resident of the State, shall be registered in accordance with the procedure as mentioned under sub-section (2) of section 11.

9. Registration of decree of divorce or nullity passed before the commencement of the Code -

(1) Any decree of divorce or nullity of marriage passed by any court in the State, before the commencement of this Code, may be registered in accordance with the procedure as mentioned under sub-section (3) of section 11.

(2) Any decree of divorce or nullity of marriage passed by any court outside the State, before the commencement of this Code, where at least one party to the decree is a resident of the State, may be registered in accordance with the procedure as mentioned under sub-section (4) of section 11.

10. Period and procedure for registration of marriage under section 6 and section 7 -

(1) In case of a marriage solemnized/contracted in the State or outside the territory thereof after the commencement of this Code, for which registration is required under section 6, the parties to the marriage shall prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise within a period of sixty days from the date of marriage, in case of a marriage solemnized/contracted in the State, to the Sub-Registrar within whose jurisdiction the marriage was solemnized/contracted or either of the parties to the marriage resides and, in case of a marriage solemnized/contracted outside the State, to the Sub-Registrar within whose jurisdiction either of the parties resides in the State.

(2) In case of a marriage solemnized/contracted in the State between 26.03.2010 and the date of commencement of this Code, which is required to be registered under sub-section (1) of section 7, the parties to the marriage seeking registration shall prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise within a period of six months from the date of commencement of this Code to the Sub-Registrar within whose jurisdiction the marriage was solemnized/contracted or either of the parties to the marriage resides.

(3) In case of a marriage solemnized/contracted in the State before 26.03.2010 or outside the State before the commencement of this Code, which may be registered under sub-section (2) of section 7, the parties to the marriage seeking registration may prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise within a period of six months from the date of commencement of this Code, in case of a marriage solemnized/contracted in the State, to the Sub-Registrar within whose jurisdiction the marriage was solemnized/contracted or either of the parties to the marriage resides and, in case of a marriage solemnized/contracted outside the State, to the Sub-Registrar within whose jurisdiction either of the parties resides in the State.

Provided that the Sub-Registrar may entertain a memorandum presented beyond the period prescribed under this sub-section on being satisfied that there are sufficient grounds for doing so.

11. Period and procedure for registration of decree of divorce or nullity under section 8 and section 9 -

(1) In case of any decree of divorce or nullity of marriage passed after the commencement of this Code by any Court in the State, both or either of the parties to the decree shall prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise, if there is no right of appeal, within a period of sixty days from the date of decree, and if there is such a right of appeal, within a period of sixty days from the date on which the period of such right to appeal expires without an appeal having been presented, or the date on which the appeal has been dismissed where an appeal has been presented, as the case may be, to the Sub-Registrar within whose jurisdiction the marriage was solemnized/contracted, or registered under this Part, or either of the parties to the decree resides.

(2) In case of any decree of divorce or nullity of marriage passed by any court after the commencement of this Code outside the State, where at least one party to the decree is a resident of the State, both or either

of the parties to the decree seeking registration shall prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise, if there is no right of appeal, within a period of sixty days from the date of decree, and if there is such a right of appeal, within a period of sixty days from the date on which the period of such right to appeal expires without an appeal having been presented, or the date on which the appeal has been dismissed where an appeal has been presented, as the case may be, to the Sub-Registrar within whose jurisdiction either of the parties to the decree resides in the State.

(3) In case of any decree of divorce or nullity of marriage passed before the commencement of this Code by any court in the State, both or either of the parties to the decree seeking registration may prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise, within a period of six months from the date of commencement of this Code, to the Sub-Registrar within whose jurisdiction the marriage was solemnized/contracted, or registered under this Part, or either of the parties to the decree resides.

(4) In case of any decree of divorce or nullity of marriage passed before the commencement of this Code by any court outside the State, where at least one party to the decree is a resident of the State, both or either of the parties to the decree seeking registration may prepare and sign a memorandum in the form prescribed by the State Government and deliver it electronically or otherwise, within a period of six months from the date of commencement of this Code, to the Sub-Registrar within whose jurisdiction the marriage was solemnized/contracted, or registered under this Part, or either of the parties to the decree resides in the State:

Provided that the Sub-Registrar may entertain a memorandum presented beyond the period prescribed under sub-section (3) or sub-section (4) on being satisfied that there are sufficient grounds for doing so.

12. Appointment of Registrar General, Registrar and Sub-Registrar -

(1) The State Government shall, by notification, appoint such person as it considers appropriate not below the rank of Secretary to the Government of Uttarakhand to be the Registrar General for the State and shall also appoint Registrar for any area(s) as it considers appropriate not below the rank of Sub-Divisional Magistrate and such number of Sub-Registrars as the State Government may notify for such area(s) as may be specified in the notification.

(2) Registrar General and Registrar shall each maintain a register of appeals and such other registers as may be prescribed.

(3) The Sub-Registrar shall maintain such registers of marriage and divorce and other registers as may be prescribed.

13. Action on receipt of memorandum under section 10 or section 11 -

(1) Every memorandum presented under section 10 or section 11 shall be accompanied with a fee to be prescribed by the State Government.

(2) Within fifteen days of the receipt of a memorandum of marriage or of divorce or nullity of marriage in the prescribed manner, as the case may be, the Sub-Registrar shall either -

(i) enter the particulars in the register of marriage and divorce and issue, in the case of registration of marriage, a certificate of marriage and, in the case of registration of divorce or nullity of marriage, an acknowledgement thereof, in such form and manner as may be prescribed. While issuing the certificate of marriage or acknowledgement of divorce or nullity of marriage, as the case may be, the Sub-Registrar shall satisfy herself/himself that the marriage has been duly solemnized/ contracted in accordance with the provisions of this Part or that the decree of divorce or nullity of marriage has been duly passed; or

(ii) reject the memorandum of marriage or of divorce or nullity of

marriage and inform the parties accordingly together with the reasons in writing for doing so.

(3) If the Sub-Registrar fails to act under sub-section (2), the Sub-Registrar shall be deemed to have registered the marriage, divorce or nullity of marriage, as the case may be.

(4) Any person whose marriage, divorce or nullity of marriage is deemed to have been registered under sub-section (3) shall be entitled to a certificate of marriage or an acknowledgement of divorce or nullity of marriage, as the case may be, from the Sub-Registrar concerned and such person shall be entitled to file a complaint about the inaction of the Sub-Registrar to the Registrar concerned.

14. Appeal against rejection of registration -

(1) Where the Sub-Registrar rejects the memorandum of marriage or of divorce or nullity of marriage, both or either party to the marriage or decree of divorce or nullity of marriage, as the case may be, may within a period of thirty days from the date of receipt of such rejection, prefer an appeal to the Registrar of the area.

(2) If the Registrar rejects the appeal under the preceding sub-section, the aggrieved party may, within a period of thirty days from the date of receipt of such rejection, prefer an appeal to the Registrar General, whose decision shall be final and binding.

(3) An appeal under sub-section (1) or sub-section (2) shall be accompanied with a duly authenticated copy of rejection order and shall be in such form and manner as may be prescribed.

(4) While deciding the appeal, the Registrar or the Registrar General, as the case may be, shall have regard to all the attendant circumstances and, if so desired, may hear the parties.

(5) An appeal under sub-section (1) or sub-section (2) shall, as far as possible, be disposed of within sixty days from the date of filing thereof.

15. **Register to be open for public inspection** - The registers of marriage and divorce, the registers of appeals and such other registers as may be prescribed, which are maintained under this Part, shall, at all reasonable times, be open for inspection by any person, and certified extracts therefrom, shall on application, be issued by such officer as may be authorised by the Sub-Registrar or the Registrar concerned or the Registrar General, as the case may be, on payment of the prescribed fee and in the prescribed manner.

16. **Evidentiary value of certain documents** -

(1) Any extract issued under section 15 shall be signed by such officer as may be authorised by the Sub-Registrar or the Registrar concerned or the Registrar General, as the case may be, and shall be admissible in evidence in any court of law or any other authority for the purpose of establishing the factum of marriage or divorce or nullity of marriage to which such extract relates.

(2) Certificate of marriage or any extract of the register, issued under sub-section (1), shall be presumed to be correct, unless the contrary is proved.

17. **Penalty for neglect or false statement** –

(1) Any person who wilfully omits or neglects to deliver the memorandum, in a case where it is compulsory to do so under section 10 or section 11, shall be liable to pay penalty not exceeding ten thousand rupees, as may be imposed by the Sub-Registrar.

(2) Any person who makes any statement in the memorandum which is false and which she/he knows or has reason to believe to be false, or delivers a forged or a fabricated document, shall be punishable with imprisonment for a term which may extend to three months, or with fine not exceeding twenty-five thousand rupees, or with both.

18. **Procedure in case of non-registration** -

(1) Where parties to a marriage have failed to deliver the memorandum of marriage, or neither party to a decree of divorce or nullity of

marriage has delivered the memorandum of divorce or nullity of marriage, as the case may be, in a case where registration of marriage, divorce or nullity of marriage is compulsory under this Part, the Sub-Registrar, either *suo motu* or on receipt of a complaint or information in this regard, shall by notice to such persons require them to present a memorandum within thirty days from the date of receipt of such notice. On such memorandum being filed, the Sub-Registrar shall register the marriage or the decree of divorce or nullity of marriage, as the case may be, on payment of the prescribed fee and the penalty prescribed under sub-section (1) of section 17.

(2) On failure of the parties to approach the Sub-Registrar for registration of marriage, divorce or nullity of marriage, as the case may be, on being required by a notice to do so under sub-section (1), such persons shall be punishable with fine not exceeding twenty-five thousand rupees.

19. **Punishment for inaction by Sub-Registrar** - The Sub-Registrar who wilfully fails to act in accordance with sub-section (2) of section 13, shall be punishable with fine not exceeding twenty-five thousand rupees.

20. **Non-registration not to invalidate marriage** - No marriage shall be deemed to be invalid solely by reason of the fact that it was not registered under this Part or that the memorandum was not delivered to the Sub-Registrar or that the certificate of marriage was not issued by the Sub-Registrar or that the particulars in such memorandum or certificate of marriage were defective, irregular or incorrect.

Chapter – 3

Restitution of Conjugal Rights and Judicial Separation

21. Restitution of conjugal rights - When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground for rejection, may decree restitution of conjugal rights accordingly.

Explanation - Where a question arises whether there has been reasonable excuse for withdrawal from the society of the other, the burden of proving such reasonable excuse shall be on the person who has withdrawn from the society.

22. Judicial separation -

(1) Either party to a marriage, whether solemnized/contracted before or after the commencement of this Code, may present a petition to the Court praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 25, and in the case of a wife, also on any of the grounds specified in sub-section (3) thereof, as grounds on which a petition for divorce might have been presented.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may, on a petition by either party and on being satisfied of the truth of the statement made in such petition, rescind the decree if it considers it just and reasonable to do so.

Chapter – 4

Nullity of Marriage and Divorce

23. **Void marriages** - Any marriage solemnized/contracted after the commencement of this Code shall be null and void, and may, on a petition presented to the Court by either party thereto against the other party, be so declared by a decree of nullity, if it contravenes any one of the conditions specified in clauses (i), (ii), (iv) and (v) of section 4.

24. **Voidable marriages -**

(1) Any marriage solemnized/contracted, whether before or after the commencement of this Code, shall be voidable and may be annulled by a decree of nullity on a petition presented to the Court on any of the following grounds, namely -

(a) that the marriage has not been consummated owing to the impotence or wilful refusal of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (iii) of section 4; or

(c) that the consent of the petitioner was obtained by force, coercion or fraud; or

(d) that the wife was at the time of the marriage pregnant by a man other than the husband or that the husband had at the time of the marriage impregnated a woman other than the wife.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage -

(a) on the ground specified in clause (b) of sub-section (1) shall be entertained if the proceedings have been instituted after the expiry of one year from the date of attaining the age of twenty-one years by the petitioner;

(b) on the ground specified in clause (c) of sub-section (1) shall be entertained if -

(i) the petition is presented more than one year after the force or coercion had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with her/his full consent, lived with the other party to the marriage as spouse after the force or coercion had ceased to operate or, as the case may be, the fraud had been discovered;

(c) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the Court is satisfied -

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted, in the case of a marriage solemnized/contracted before the commencement of this Code, within one year of such commencement, and in the case of a marriage solemnized/contracted after such commencement, within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.

25. Divorce -

(1) Any marriage solemnized/contracted, whether before or after the commencement of this Code, may, on a petition presented to the Court by either party to the marriage, be dissolved by a decree of divorce on the ground that the other party has –

(i) after the solemnization/contracting of the marriage, had voluntary sexual intercourse with any person other than the petitioner; or

(ii) after the solemnization/contracting of the marriage, treated the petitioner with cruelty; or

(iii) deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition;

Explanation - In this clause, the expression "desertion" means the desertion of the petitioner by the other party to the marriage, without reasonable cause and

without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly; or

(iv) converted to another religion to which the petitioner belonged; or

(v) been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent;

Explanation - In this clause -

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(vi) been suffering from incurable form of communicable venereal disease; or

(vii) renounced the world by entering any religious order or otherwise; or

(viii) not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; or

(ix) solemnized/contracted another marriage in contravention of clause (i) of section 4; or

(x) failed to comply with an order of maintenance passed in favour of the petitioner and against the respondent by a competent court under any law in force, for a period of not less than one year immediately preceding the presentation of the petition.

(2) Either party to a marriage, whether solemnized/contracted before or after the commencement of this Code, may also present a petition to the Court for dissolution of marriage by a decree of divorce on the ground that -

(i) there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties, or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(3) A wife may also present a petition to the Court for the dissolution of marriage by a decree of divorce on the additional ground that -

(i) the husband has, since the solemnization/contracting of the marriage, been guilty of rape or any other kind of unnatural sexual offence; or

(ii) the husband had more than one wife from marriages solemnized/contracted before the commencement of this Code.

26. Alternate relief in divorce proceedings -

In any proceeding under this Part, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on any of the grounds mentioned in clauses (vi), (vii) and (viii) of sub-section (1) and clauses (i) and (ii) of sub-section (2) of section 25, the Court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

27. Divorce by mutual consent -

(1) Subject to the provisions of this Part, a petition for dissolution of marriage by a decree of divorce may be presented to the Court by both the parties to a marriage together, whether such marriage was solemnized/contracted before or after the commencement of this Code, on the ground that they have been living separately for a period of one year or more, that they are not able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months

after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized/ contracted and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

(3) Where the Court is of the opinion that due to the case being one of exceptional hardship suffered by any of the parties to the marriage or of exceptional depravity on the part of any such party, there is no possibility of reconciliation between the parties, it may waive off the requirement of one year of separation for filing petition under sub-section (1) as well as the time limit of six months for filing of motion under sub-section (2) and proceed with passing of a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

28. Restriction on petition for divorce within one year of marriage -

(1) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition, one year has elapsed since the date of marriage:

Provided that the Court may, upon application being made to it, allow a petition to be presented before the expiry of one year on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent.

(2) Where the Court has allowed the petition to be presented before the expiry of one year and it is discovered that such permission has been obtained by any misrepresentation or concealment of facts, the Court may reject the petition without prejudice to the right of the petitioner to present a petition after the expiry of one year upon the same or substantially the same facts and grounds.

(3) In allowing any petition for divorce to be presented within one year of marriage under proviso to sub-section (1), the Court shall have

regard to the best interest and welfare of children of the marriage, if any, and matters related thereto.

29. **Prohibition on dissolution of marriage** - No marriage solemnized/ contracted before or after the commencement of this Code shall be dissolved in any manner except in accordance with the provisions of this Part, notwithstanding any usage, custom, tradition, personal law of any party to the marriage or any enactment to the contrary.

30. **Right of a person to remarry where a decree of divorce or nullity of marriage has been passed -**

(1) When a decree for divorce or nullity of marriage has been passed and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the decree to marry again.

(2) Right to remarry under sub-section (1) includes the right to remarry the divorced spouse without any condition, such as marrying a third person before such remarriage.

31. **Legitimacy of children of void and voidable marriages** - Notwithstanding that a marriage has been declared null and void, any child of such marriage shall be deemed to be legitimate.

32. **Punishment for contravention of certain provisions -**

(1) Any person who -

(i) procures a marriage in contravention of clause (iii) or (iv) of section 4 shall be punishable with simple imprisonment for a term which may extend to six months and with fine not exceeding rupees fifty thousand, and in default of fine, to undergo further imprisonment for a term which may extend to one month;

(ii) dissolves a marriage in contravention of section 29 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine;

(iii) compels, abets or induces a person to observe any condition as is referred to in sub-section (2) of section 30 before remarriage shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine of rupees one lakh, and in default of fine, to undergo further imprisonment for a term which may extend to six months.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) -

(a) an offence punishable under clause (ii) and clause (iii) of sub-section (1) shall be cognizable;

(b) an offence punishable under clause (ii) and clause (iii) of sub-section (1) shall be compoundable, at the instance of the aggrieved person with the permission of the Judicial Magistrate, on such terms and conditions as the Judicial Magistrate may impose.

Chapter – 5

Incidental Proceedings

33. Maintenance *pendente lite* and expenses of proceedings - Where in any proceeding under this Part, it appears to the Court that either the wife or the husband or in case a man having more than one wife prior to the commencement of this Code, each of the wives has no independent income sufficient for her/his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the applicant, during the pendency of the proceeding, the expenses of the proceeding and such monthly sum as, having regard to the applicant's own income and the income of the respondent, it may seem to the Court to be just and reasonable;

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

34. Permanent alimony and maintenance -

(1) Any Court exercising jurisdiction under this Part may, at the time of passing any decree or at any time subsequent thereto, on application made by any of the parties to the decree, order that the other party shall pay to the applicant for her/his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's income and estate, the income and estate of the applicant, any mutual agreement/settlement between the parties, if any, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and such payment may be secured, if necessary, by a charge on the immovable property of the other party;

Provided that *mahr*, dower, *streedhan* or any other property presented to the wife shall be in addition to her claim for maintenance.

(2) If the Court is satisfied that there is a change in the circumstances of

either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just and proper.

35. Custody of children -

(1) In any proceeding under this Part, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the care, education, custody and maintenance of minor children consistently with their wishes, wherever possible, and may, after the decree, upon application for the purpose, make from time to time, all such orders and provisions with respect to the care, education, custody and maintenance of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made;

Provided that the application with respect to the care, education, custody and maintenance of such children shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

(2) In making any such order under sub-section (1), the best interest and welfare of the child Court shall be the paramount consideration;

Provided that the custody of a minor child who has not completed the age of five years shall ordinarily be with the mother.

36. Disposal of estate -

(1) In any proceeding under this Part, the Court may, for the benefit of the wife or the husband or their children, make such provisions in the decree as it deems just and proper with respect to any estate which may belong, either individually or jointly, to the parties whose marriage is the subject of the decree.

(2) In making any such provisions in the decree under sub-section (1), the Court shall have regard to the existence of any mutual agreement/settlement between the parties, to the marriage and may vary or modify any such agreement/settlement so made for the benefit of the wife or the husband or their children as may be deemed just and proper.

Chapter – 6

Jurisdiction and Procedure

37. Court to which petition shall be presented - Every petition under this Part shall be presented to the Court within the local limits of whose jurisdiction -

(i) the marriage was solemnized/contracted, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iv) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or

(v) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Code extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had the respondent been alive.

38. Pleadings under this Part -

(1) Every petition presented and written statement filed under this Part shall state as distinctly as the nature of the case permits, the facts on which the claim to relief and the objection thereto are founded and, except in a petition under section 23, shall also state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition, written statement and any other pleading filed under this Part shall be verified by the petitioner or the respondent, as the case may be, or by some other competent person in the manner prescribed for the verification of pleadings under the Code of Civil Procedure, 1908 (Act No. 5 of 1908).

39. Procedure for the proceedings in the Court under this Part - Subject

to the other provisions contained in this Part, all proceedings in the Court under this Part shall be regulated as per the procedure prescribed under the Family Courts Act, 1984 (Act No. 66 of 1984) and the rules made thereunder.

40. Power to transfer petitions in certain cases -

(1) Where -

(a) a petition under this Part has been presented, to the Court having jurisdiction, by a party to a marriage praying for a decree for restitution of conjugal rights, nullity of marriage, judicial separation or divorce under this Part, and

(b) another petition under this Part has been presented thereafter by the other party to the marriage praying for a decree for any of the reliefs contemplated under clause (a) on any ground, whether in the same Court or in a different Court.

The petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies -

(a) if the petitions are presented to the same Court, both the petitions shall be tried and heard together by that Court;

(b) if the petitions are presented to different Courts, the petition presented later shall be transferred to the Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the Court in which the earlier petition was presented.

(3) Notwithstanding anything contained in clause (b) of sub-section (2), the High Court may, on an application by any of the parties or on its own motion, assign and transfer all the petitions to one of the Courts hearing the petitions or any other Court as may be considered just and proper.

41. Special provision relating to trial and disposal of petitions under this Part -

(1) The hearing of a petition under this Part, as far as practicable, shall be continued from day-to-day, unless otherwise directed for reasons to be recorded.

(2) Every petition under this Part shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Part shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

42. Documentary evidence - Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the hearing of a petition under this Part on the ground that it is not duly stamped or registered.

43. Decree in proceedings -

(1) In any proceeding under this Part, whether defended or not, if the Court is satisfied that -

(a) any of the grounds for granting relief exists and the petitioner, except in cases where the relief is sought by her/him on the ground specified in sub-clause (a), (b) or (c) of clause (ii) of section 4, is not in any way taking advantage of her/his own wrong or disability for the purpose of such relief; and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 25, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is as specified in clause (ii) of sub-section (1) of section 25, the petitioner has not willingly condoned the cruelty; and

(c) when a divorce is sought on the ground of mutual consent under section 27, such consent has not been obtained by force, fraud or undue influence, the Court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Part, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clauses (v), (vi), (vii) and (viii) of sub-section (1) of section 25.

(3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding thirty days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court, if the parties fail to name any person. On such reconciliation being successful, a report to that effect shall be filed with the Court for appropriate orders. However, on failure of the reconciliation, no record of the reconciliation proceedings shall be maintained and only the failure of reconciliation shall be communicated to the Court.

44. **Relief for respondent in divorce and other proceedings** - In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief but also seek relief on any of the grounds permissible under this Part and if proved, the Court may grant such relief to the respondent under this Part to which she/he would have been entitled, if she/he had presented a petition seeking such relief on that ground.

45. **Power to punish and procedure therefor** - Any Judicial Magistrate within whose jurisdiction any offence under this Part is committed may, on a complaint made to her/him, try and impose such punishment as is prescribed under the provisions of this Part in accordance with the Code of Criminal Procedure, 1973 (Act No. 02 of 1974).

Chapter – 7

Supplemental Provisions

46. Appeals from decrees and orders -

(1) All decrees, except consent decrees, made by the Court in proceedings under this Part shall, subject to the provisions of sub-section (3), be appealable to the High Court.

(2) Orders made by the Court under section 34, section 35 or section 36 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the High Court.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of ninety days from the date of the decree or order;

Provided that if the Court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of ninety days, it may entertain the appeal within a further period not exceeding sixty days.

47. Enforcement of decrees and orders - All decrees and orders made by the Court in any proceeding under this Part shall be enforced in the like manner as the decrees and orders under the Code of Civil Procedure, 1908 (Act No. 5 of 1908) or the Code of Criminal Procedure, 1973 (Act No. 02 of 1974), as the case may be.

48. Power to make rules -

(1) The State Government may, by notification in the Uttarakhand Gazette, make rules for carrying out the purposes of this Part.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -

(a) the appointment of Registrar General, Registrars, Sub-

Registrars and other officers and employees, their duties and powers and the areas of their jurisdiction;

(b) the documents to be furnished for proof of marriage solemnised/contracted by the parties to a marriage;

(c) the forms for certificate of marriage and for acknowledgement of registration of decree of divorce or nullity of marriage to be issued under this Part;

(d) the form and manner in which registers or books required by or under this Part shall be maintained;

(e) the manner in which separate entries are to be made in the registers or books regarding the marriage ceremonies performed according to the religious practices and customary rites of the parties to a marriage;

(f) the forms for submission of memorandum for purposes of registration of marriage, divorce and nullity of marriage and the form for filing appeal;

(g) the fee that may be levied for registration of marriage, divorce and nullity of marriage and for filing any appeal and such other fee as may be prescribed for any purpose under this Part;

(h) the manner in which any penalty under this Part may be imposed;

(i) the forms and the manner for issuance of notices under this Part;

(j) facilitation and encouragement of registration of marriages including compulsory registration for availing benefits under government-sponsored welfare schemes; and

(k) any other matter which is required to be, or may be, prescribed or provided for by rules.

Part – 2

Succession

Chapter - 1

Intestate Succession

Order of Preference and Distribution of Shares

49. General rules of succession - The estate of a person dying intestate shall devolve according to the provisions of this Chapter in the following order of preference -

(i) firstly, upon the heirs being the relatives specified in Class-1 of Schedule - 2 of this Code;

(ii) secondly, if there is no heir of Class-1, then upon the heirs being the relatives specified in Class-2 of Schedule - 2 of this Code;

(iii) thirdly, if there is no heir of the two classes mentioned in clauses (i) or (ii), then upon the other relatives;

(iv) lastly, if there is no heir belonging to any of the clauses above, then by escheat upon the Government; and the Government shall take the estate subject to all the obligations and liabilities to which an heir would have been subject.

Explanation - In this Chapter, any reference to -

(a) "Class 1 heirs", in relation to the intestate, shall mean the spouse(s); the children; the children and the spouses of predeceased children; the children and the spouses of predeceased children of predeceased children; and the parents, limited to the relatives enumerated in Schedule - 2;

(b) "Class-2 heirs", in relation to the intestate, shall mean the step parents; the siblings; the children and the spouses of predeceased siblings; the siblings of parents; the paternal grandparents; and the

maternal grandparents, limited to the relatives enumarated in Schedule - 2;

(c) "Other relatives", in relation to the intestate, shall mean the persons who are related to the intestate, other than the Class 1 and Class 2 heirs enumerated in Schedule - 2;

(d) "branch" of a predeceased person shall mean her/his surviving spouse(s) and children, and in case of branch of a predeceased child of the intestate, shall also include the surviving spouse(s) and children of a predeceased child of such predeceased child of the intestate.

50. **Manner of succession** - The heirs specified in each of the clauses (i), (ii) or (iii) of section 49 shall succeed to the estate of the intestate and shall take such shares as are specified hereinafter.

51. **Distribution of estate amongst the Class-1 heirs** - Class-1 heirs shall succeed simultaneously and the estate of an intestate shall be divided amongst them in accordance with the following rules -

Rule 1 - Every surviving spouse of the intestate shall take one share each.

Rule 2 - Every surviving child of the intestate shall take one share each.

Rule 3 - The heirs in the branch of each predeceased child of the intestate shall take one share together.

Rule 4 - The share devolving upon the branch of a predeceased child shall be divided equally amongst every surviving spouse, surviving child and branch of a predeceased child of the predeceased child.

Rule 5 -The share devolving upon the branch of a predeceased child of a predeceased child shall be divided equally amongst every surviving spouse and child.

Rule 6 - Surviving parents of the intestate shall together take one share in equal proportion, and in case of only one of the parents surviving the intestate, such parent shall alone take one share;

Provided that in case both the parents have together taken one share and one of them subsequently dies, her/his interest in that one share shall devolve upon the other.

52. **Distribution of estate amongst the Class - 2 heirs** - The estate of an intestate shall be divided amongst Class-2 heirs in accordance with the following rules -

Rule 1 - The heirs in the first entry in Class - 2 shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Rule 2 - The estate of an intestate shall be divided among the heirs specified in any one entry in Class - 2 of the Schedule - 2 so that they share equally.

53. **Distribution of estate amongst the other relatives** - The relatives of the nearest degree shall succeed together to the estate of an intestate to the exclusion of all other relatives in accordance with the following rule -

Rule - Each one of the 'other relatives' of the nearest degree shall take one share each.

Illustration

A dies intestate and is survived by his two grandnephews, *A1* and *A2*, and a child of a predeceased grandnephew, *A3*. The estate of *A* shall be divided equally between *A1* and *A2*; *A3* shall not take any share.

General Provisions

54. **Computation of degrees** - For the purposes of computing degrees under this Part, relationship shall be reckoned such that every generation in ascent or descent constitutes one degree, exclusive of the person whose relatives are to be reckoned.

Illustration

A dies intestate and is survived by his father A_1, grandchild A_2, nephew A_3 and a first cousin A_4.

A_1, A_2, A_3 and A_4 are removed from *A* by one, two, three and four degrees respectively.

55. **Right of child in womb** - For the purposes of intestate succession, there is no distinction between an heir who was actually born in the lifetime of an intestate and an heir who at the time of her/his death was only conceived

in the womb, but who has been subsequently born alive, and such a child shall be deemed to be the successor of the intestate with effect from the time of the death of the intestate.

56. **Presumption in cases of simultaneous deaths** - Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to estate, it shall be presumed, until the contrary is proved, that the younger survived the elder.

Disqualifications

57. **Disqualification upon remarriage** - Where a widow or widower of any predeceased relative of an intestate has married again in the lifetime of the intestate, such widow or widower shall not succeed to the estate of the intestate.

58. **Murderer disqualified** - A person who commits murder or abets the commission of murder shall be disqualified from succeeding to the estate of the person murdered, or any other estate in furtherance of the succession to which she/he committed or abetted the commission of the murder.

59. **Succession when heir disqualified** - If any person is disqualified from succeeding to any estate under this Code, it shall devolve as if such person had died before the intestate.

60. **Disease, Defect or Deformity not to disqualify** - No person shall be disqualified from succeeding to any estate on the ground of any disease, defect or deformity, or save as provided in this Code, on any other ground whatsoever.

Chapter – 2

Testamentary Succession

Wills and Codicils

61. Person capable of making Wills - Every person of sound mind not being a minor may dispose of her/his estate by Will.

Explanation 1- Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 2 - A person who is ordinarily insane may make a Will during interval in which she/he is of sound mind.

Explanation 3 - No person can make a Will while she/he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that she/he does not know what she/he is doing.

Illustrations

(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his estate, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.

(ii) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid Will.

(iii) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his estate, makes a Will. This is a valid Will.

62. Will obtained by fraud, coercion or importunity- A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations

(i) A, falsely and knowingly represents to the testator, that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a Will in his favour; such Will has been obtained by fraud, and is void.

(ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.

(iv) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a Will yet being so much under the control of B that he is not a free agent, makes a Will, dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(vi) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport and does so merely to purchase peace and in submission to B. The Will is invalid.

(vii) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(viii) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his Will, by

which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

63. **Will may be revoked or altered** - A Will is liable to be revoked or altered by the maker of it at any time when she/he is competent to dispose of her/his estate by Will.

Execution of Wills

64. **Execution of Wills** -

(1) **Execution of unprivileged Wills** - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute her/his Will according to the following rules –

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

(b) The signature or mark of the testator, or the signature of the person signing for her/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 her/his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of her/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 witness be present at the same time, and no particular form of attestation shall be necessary.

(2) **Privileged Wills** - Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if she/he has completed the age of eighteen years, dispose of her/his estate by a Will made in the manner provided in sub-section (3). Such Wills are called privileged Wills.

Illustrations

(i) A, a medical officer attached to a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(ii) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged Will.

(iii) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.

(iv) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while the ship is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged Will.

(v) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(vi) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

(3) Mode of making, and rules for executing, privileged Wills -

(a) Privileged Wills may be in writing, or may be made by word of mouth.

(b) The execution of privileged Wills shall be governed by the following rules -

(i) The Will may be written wholly by the testator, with her/his own hand. In such case it need not be signed or attested.

(ii) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(iii) If the instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be her/his Will, if it is shown that it was written by the testator's directions or that she/he recognised it as her/his Will.

(iv) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the

instrument shall not, by reason of that circumstance, be invalid, provided that her/his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(v) If the soldier, airman or mariner has written instructions for the preparation of her/his Will, but has died before it could be prepared and executed, such instructions shall be considered to constitute her/his Will.

(vi) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of her/his Will, and they have been reduced into writing in her/his lifetime, but she/he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute her/his Will, although they may not have been reduced into writing in her/his presence, nor read over to her/him.

(vii) The soldier, airman or mariner may make a Will by word of mouth by declaring her/his intentions before two witnesses present at the same time.

(viii) A Will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged Will.

65. **Incorporation of papers by reference** - If a testator, in a Will or codicil duly attested, refers to any other document then actually written as expressing any part of her/his intentions, such document shall be deemed to form a part of the Will or codicil in which it is referred to.

Attestation, Revocation, Alteration and Revival of Wills

66. **Witness not disqualified by interest or by being executor** - No person, by reason of interest in, or of her/his being an executor of, a Will, shall be disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.

67. **Revocation of Will or codicil** -

(1) **Revocation of unprivileged Will or codicil** - No unprivileged Will

or codicil, nor any part thereof, shall be revoked otherwise than by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator with the intention of revoking the same.

Illustrations

(i) A has made an unprivileged Will. Afterwards, A makes another unprivileged Will which purports to revoke the first. This is a revocation.

(ii) A has made an unprivileged Will. Afterwards, A, being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

(2) **Revocation of privileged Will or codicil** - A privileged Will or codicil, may be revoked by the testator by an unprivileged Will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in her/his presence and by her/his direction, with the intention of revoking the same.

Explanation - In order to the revocation of a privileged Will or codicil by an act accompanied by such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles her/him to make a privileged Will.

68. **Effect of obliteration, interlineation or alteration in unprivileged Will** - No obliteration, interlineation or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the Will;

Provided that the Will, as so altered, shall be deemed to be duly executed

if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

69. Revival of unprivileged Will -

(1) No unprivileged Will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.

(2) When any Will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the Will or codicil.

Construction of Wills

70. Wording of Wills - It is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom.

71. Inquiries to determine questions as to object or subject of Will - For the purpose of determining questions as to what person or what estate is denoted by any words used in a Will, a court shall inquire into every material fact relating to the persons who claim to be interested under such Will, the estate which is claimed as the subject of disposition, the circumstances of the testator and of her/his family, and into every fact knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations

(i) A, by his Will, bequeaths 100,000 rupees to his eldest son or to his youngest grandchild, or to his cousin, Geeta. A court may make inquiry in order to ascertain to what person the description in the Will applies.

(ii) A, by his Will, leaves to B "my estate called Rudrapur Farms". It may be necessary to take evidence in order to ascertain what the subject-matter of the bequest is; that is to say, what estate of the testator's is called Rudrapur Farms.

(iii) A, by his Will, leaves to B "the estate which I purchased of C". It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

72. Misnomer or misdescription of object -

(1) Where the words used in a Will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

(2) A mistake in the name of a legatee may be corrected by a description of her/him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations

(i) A bequeaths a legacy to "Sanjay, the second son of my brother Mohan". The testator has an only brother named Mohan, who has no son named Sanjay, but has a second son whose name is Mahesh. Mahesh will have the legacy.

(ii) A bequeaths a legacy to "Sanjay, the second son of my brother Mohan". The testator has an only brother, named Mohan, whose first son is named Sanjay and whose second son is named Mahesh. Sanjay will have the legacy.

(iii) The testator bequeaths his estate to "A and B, the legitimate children of C". C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(iv) The testator gives his residuary estate to be divided among "my seven children" and, proceeding to enumerate them, mentions six names only. This omission will not prevent the seventh child from taking a share with the others.

(v) The testator, having six grandchildren, makes a bequest to "my six

grandchildren" and, proceeding to mention them by their names, mentions one twice over omitting another altogether. The one whose name is not mentioned will take a share with the others.

(vi) The testator bequeaths "100,000 rupees to each of the three children of A". At the date of the Will, A has four children. Each of these four children will, if she/he survives the testator, receive a legacy of 100,000 rupees.

73. **When words may be supplied** - Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration

The testator gives a legacy of "50,000" to his daughter A and a legacy of "50,000 rupees" to his daughter B. A will take a legacy of 50,000 rupees.

74. **Rejection of erroneous particulars in description of subject** - If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustration

A bequeaths to B "my marsh-lands lying in L and in the occupation of X". The testator had marsh-lands lying in L but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marshlands of the testator lying in L will pass by the bequest.

75. **When part of description may not be rejected as erroneous** - If a Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any estate of her/his in respect of which all those circumstances exist, the bequest shall be considered as limited to such estate, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other estate to which such part of the description does not apply.

Explanation - In judging whether a case falls within the meaning of this

section, any words which would be liable to rejection under section 74 shall be deemed to have been struck out of the Will.

Illustrations

(i) A bequeaths to B "my marsh-lands lying in L and in the occupation of X". The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest will be considered as limited to such of the testator's marsh-lands in L as were in the occupation of X.

(ii) A bequeaths to B "my marsh-lands lying in L and in the occupation of X, comprising 1,000 bighas of lands". The testator had marsh-lands lying in L some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement will be considered as struck out of the Will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

76. **Extrinsic evidence admissible in cases of patent ambiguity** - Where the words of a Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations

(i) A man, having two cousins of the name of Sunita, bequeaths a sum of money to "my cousin Sunita". It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(ii) A, by his Will, leaves to B "my estate called Chakrata Farmhouse". It turns out that he had two estates called Chakrata Farmhouse. Evidence is admissible to show which estate was intended.

77. **Extrinsic evidence inadmissible in case of patent ambiguity or**

deficiency - Where there is an ambiguity or deficiency on the face of a Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations

(i) A man has an aunt, Sangeeta, and a cousin, Radha, and has no aunt of the name of Radha. By his Will, he bequeaths 1,00,000 rupees to "my aunt, Sangeeta" and 1,00,000 rupees to "my cousin, Radha" and afterwards bequeaths 2,00,000 rupees to "my before-mentioned aunt, Radha". There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by "my before-mentioned aunt, Radha". The bequest is, therefore, void for uncertainty under section 85.

(ii) A bequeaths 1,00,000 rupees to ..... leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(iii) A bequeaths to B ..... rupees, or "my estate of .....". Evidence is not admissible to show what sum or what estate the testator intended to insert.

78. **Meaning or clause to be collected from entire Will** - The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

Illustrations

(i) The testator gives to B a specific fund or estate at the death of A, and by a subsequent clause gives the whole of his estate to A. The effect of the several clauses taken together is to vest the specific fund or estate in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(ii) Where a testator having an estate, one part of which is called Mountain View Farm, bequeaths the whole of his estate to A, and in another part of his Will bequeaths Mountain View Farm to B, the

latter bequest is to be read as an exception out of the first as if he had said "I give Mountain View Farm to B, and all the rest of my estate to A".

79. **When words may be understood in restricted sense, and when in sense wider than usual** - General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

Illustrations

(i) A testator gives to A "my farm in the occupation of B", and to C "all my marsh-lands in L". Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all my marsh-lands in L", are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(ii) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend, A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(iii) A, by his Will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his estate. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

80. **Which of two possible constructions preferred** - Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

81. **No part rejected, if it can be reasonably construed** - No part of a Will

shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

82. **Interpretation of words repeated in different parts of Will** - If the same words occur in different parts of the same Will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

83. **Testator's intention to be effectuated as far as possible** - The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

84. **The last of two inconsistent clauses prevails** - Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations

(i) The testator by the first clause of his Will leaves his estate of Chamoli "to A", and by the last clause of his Will leaves it "to B and not to A". B will have it.

(ii) If a man, at the commencement of his Will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail.

85. **Will or bequest void for uncertainty** - A Will or bequest not expressive of any definite intention is void for uncertainty.

Illustration

If a testator says "I bequeath goods to A", or "I bequeath to A", or "I leave to A all the goods mentioned in the Schedule" and no Schedule is found, or "I bequeath 'money', 'wheat', 'oil'" or the like, without saying how much, this is void.

86. **Words describing subject refer to estate answering description at testator's death** - The description contained in a Will of estate, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed to refer to and comprise the estate answering that description at the death of the testator.

87. **Power of appointment executed by general bequest** - Unless a contrary intention appears by the Will, a bequest of the estate of the testator shall be construed to include any estate which she/he may have power to appoint by Will to any object she/he may think proper, and shall operate as an execution of such power; and a bequest of estate described in a general manner shall be construed to include any estate to which such description may extend, which she/he may have power to appoint by Will to any object she/he may think proper, and shall operate as an execution of such power.

88. **Implied gift to objects of power in default of appointment** - Where estate is bequeathed to or for the benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the Will does not provide for the event of no appointment being made; if the power given by the Will is not exercised, the estate belongs to all the objects of the power in equal shares.

Illustration

A, by his Will bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund will be divided equally among the children.

89. **Bequest to "heirs", etc., of particular person without qualifying terms** - Where a bequest is made to the "heirs" "own heirs"or "relatives" or "nearest relatives" or "family" or "kindred" or "nearest of kin" or "next-of-kin" of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the estate bequeathed shall be distributed as if it had belonged to such person and she/he had died intestate in respect of it, leaving assets for the payment of her/his debts independently of such estate.

Illustrations

(i) A leaves his estate "to my own nearest relatives". The estate goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such estate.

(ii) A bequeaths 10,000 rupees "to B for his life, and, after the death of B, to my own heirs". The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed estate.

(iii) A leaves his estate to B; but if B dies before him, to B's next-of kin; B dies before A; the estate devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such estate.

(iv) A leaves 10,000 rupees "to B for his life, and after his death to the heirs of C". The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debt independently of the legacy.

90. Bequest to "representatives", etc., of particular person - Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the estate bequeathed shall be distributed as if it had belonged to such person and she/he had died intestate in respect of it.

Illustration

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator.

B is entitled to receive the legacy, and will apply it in the first place to the discharge of such part of A's debt as may remain unpaid. If there be any surplus, B will pay it to those persons who at A's death would have been entitled to receive any estate of A's which might remain after payment of his debts, or to the representatives of such persons.

91. Bequest without words of limitation - Where estate is bequeathed to any person, she/he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for her/him.

92. Bequest in alternative - Where a estate is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if

a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy if she/he is alive at the time when it takes effect; but if she/he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations

(i) A bequest is made to A or to B. A survives the testator. B takes nothing.

(ii) A bequest is made to A or to B. A dies after the date of the Will, and before the testator. The legacy goes to B.

(iii) A bequest is made to A or to B. A is dead at the date of the Will. The legacy goes to B.

(iv) Estate is bequeathed to A or his heirs. A survives the testator. A takes the estate absolutely.

(v) Estate is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(vi) Estate is bequeathed to A for life, and after this death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(vii) Estate is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death, the bequest to the heirs of B takes effect.

93. **Effect of words describing a class added to bequest to person** - Where estate is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Illustrations

(i) A bequest is made -

to A and his children,

to A and his children by his present wife,

to A and his heirs,

to A and the heirs of his body,

to A and the heirs male of his body,

to A and the heirs female of his body,

to A and his issue,

to A and his family,

to A and his descendants,

to A and his representatives,

to A and his personal representatives,

to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the estate.

(ii) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(iii) A bequest is made to A for life and after his death to his issue. At the death of A, the estate belongs in equal shares to all persons who then answer the description of issue of A.

94. **Bequest to class of persons under general description only** - Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

95. **Construction of terms** - In a Will -

(a) the word "children" applies only to lineal descendants in the first degree of the person whose "children" are spoken of;

(b) the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "grandchildren" are spoken of;

(c) the words "nephews" and "nieces" apply only to children of brothers or sisters;

(d) the word "descendants" applies to all lineal descendants whatever

of the person whose "descendants" are spoken of;

(e) words expressive of collateral relationship apply alike to relatives of full and of half blood; and

(f) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

96. **Rules of construction where Will purports to make two bequests to same person** - Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what she/he intended, the following rules shall have effect in determining the construction to be put upon the Will -

(a) If the same specific thing is bequeathed twice to the same legatee in the same Will or in the Will and again in the codicil, she/he is entitled to receive that specific thing only.

(b) Where one and the same Will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, she/he shall be entitled to one such legacy only.

(c) Where two legacies of unequal amount are given to the same person in the same Will, or in the same codicil, the legatee is entitled to both.

(d) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation - In clauses (a) to (d) of this section, the word "Will" does not include a codicil.

Illustrations

(i) A, having ten shares, and no more, in the State Bank of India, made his Will, which contains near its commencement the words "I bequeath my ten shares in the State Bank of India to B". After other bequests, the Will concludes with the words "and I bequeath my ten shares in the State Bank of India to B". B is entitled simply to receive A's ten shares in the State Bank of India.

(ii) A, having one diamond ring, which was given to him by B, bequeaths to C the diamond ring which was given by B. A afterwards made a codicil to his Will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given to him by B. C can claim nothing except the diamond ring which was given to A by B.

(iii) A, by his Will, bequeaths to B the sum of 50,000 rupees and afterwards in the same Will repeats the bequest in the same words. B is entitled to one legacy of 50,000 rupees only.

(iv) A, by his Will, bequeaths to B the sum of 50,000 rupees and afterwards in the same Will bequeaths to B the sum of 60,000 rupees. B is entitled to receive 110,000 rupees.

(v) A, by his Will, bequeaths to B 50,000 rupees and by a codicil to the Will he bequeaths to him 50,000 rupees. B is entitled to receive 100,000 rupees.

(vi) A, by one codicil to his Will, bequeaths to B 50,000 rupees and by another codicil bequeaths to him, 60,000 rupees. B is entitled to receive 110,000 rupees.

(vii) A, by his Will, bequeaths "50,000 rupees to B because she was my nurse", and in another part of the Will bequeaths 50,000 rupees to B "because she went to England with my children". B is entitled to receive 100,000 rupees.

(viii) A, by his Will, bequeaths to B the sum of 50,000 rupees and also, in another part of the Will, an annuity of 4000 rupees. B is entitled to both legacies.

(ix) A, by his Will, bequeaths to B the sum of 50,000 rupees and also bequeaths to him the sum of 50,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 50,000 rupees, and takes a contingent interest in another sum of 50,000 rupees.

97. **Constitution of residuary legatee** - A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of her/his estate.

Illustrations

(i) A makes her Will, consisting of several testamentary papers, in one of which are contained the following words: - "I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(ii) A makes his Will, with the following passage at the end of it: - "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby, desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(iii) A bequeaths all his estate to B, except certain stock and funds, which he bequeaths to C. B is the residuary legatee.

98. **Estate to which residuary legatee entitled** - Under a residuary bequest, the legatee is entitled to all estate belonging to the testator at the time of her/his death, of which she/he has not made any other testamentary disposition which is capable of taking effect.

Illustration

A by his Will bequeaths certain legacies, of which one is void and another lapses by the death of the legatee. He bequeaths the residue of his estate to B. After the date of his Will, A purchases a house, which belongs to him at the time of his death. B is entitled to the two legacies and the house as part of the residue.

99. **Time of vesting legacy in general terms** - If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if she/he dies without having received it, it shall pass to her/his representatives.

100. **In what case legacy lapses** -

(1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's estate, unless it appears by the Will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that she/he survived the testator.

Illustrations

(i) The testator bequeaths to B "50,000 rupees which B owes me". B dies before the testator; the legacy lapses.

(ii) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the Will is made. The legacy to A and his children lapses.

(iii) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(iv) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(v) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(vi) The testator and the legatee perished in the same ship-wreck. There is no evidence to show who died first. The legacy lapses.

101. Legacy does not lapse if one of two joint legatees dies before testator - If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.

Illustration

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

102. Effect of words showing testator's intention to give distinct shares - If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for her/him shall fall into the residue of the testator's estate.

Illustration

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator, B and C will only take so much as they would have had if A had survived the testator.

103. When lapsed share goes as undisposed of - Where a share which lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

104. When bequest to testator's child or lineal descendant does not lapse on her/his death in testator's lifetime - Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of her/his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the Will.

Illustration

A makes his Will, by which he bequeaths a sum of money to his son, B, for his own absolute use and benefit. B dies before A, leaving a son, C, who survives A, and having made his Will whereby he bequeaths all his estate to his widow, D. The money goes to D.

105. Bequest to A for benefit of B does not lapse by A's death - Where a bequest is made to one person, for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

106. Survivorship in case of bequest to described class - Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death.

Exception - If estate is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but

their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the estate shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations

(i) A bequeaths 100,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the Will, leaving three children, C, D and E. E died after the date of the Will, but before the death of A. C and D survive A. The legacy will belong to C and D, to the exclusion of the representatives of E.

(ii) A lease for years of a house, was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E, his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(iii) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and, after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a Will, E having made no Will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(iv) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B. D and E have survived B. One-third of A's land belong to D, E and the representatives of C, in equal shares.

(v) A bequeaths 100,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any

child. The bequest after the death of B is void.

(vi) A bequeaths 100,000 rupees to "all the children born or to be born" of B to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(vii) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

Void Bequests

107. Bequest to person by particular description, who is not in existence at testator's death - Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception - If estate is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but her/his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the estate shall, at such later time, go to that person, or, if she/he is dead, to her/his representatives.

Illustrations

(i) A bequeaths 100,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(ii) A bequeaths 100,000 rupees 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.

(iii) A bequeaths 100,000 rupees 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, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(iv) A bequeaths his estate of Rampur Farms to B for life, and at his decease, to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(v) A bequeaths 100,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 100,000 rupees.

108. Bequest to person not in existence at testator's death subject to prior bequest - Where a bequest is 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.

Illustrations

(i) Estate is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(ii) 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.

(iii) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age

of eighteen, her portion shall be settled so that it may belong, to herself for life and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(iv) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

109. Rule against perpetuity - No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if she/he attains full age, the thing bequeathed is to belong.

Illustrations

(i) A fund is bequeathed to A for his life and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have

elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(ii) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time as when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(iii) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(iv) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

110. Bequest to a class some of whom may come under rules in sections 108 and 109 - If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 108 or section 109, such bequest shall be void in regard to those persons only, and not in regard to the whole class.

Illustrations

(i) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and

has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A.

(ii) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in Illustration (IAlthough the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attain the age of 25 within 18 years after A's death.

111. **Bequest to take effect on failure of prior bequest** - Where by reason of any of the rules contained in sections 108 and 109, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same Will and intended to take effect after or upon failure of such prior bequest is also void.

Illustrations

(i) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 109. The bequest to B is void.

(ii) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is

intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 109. The bequest to B is void.

112. Effect of direction for accumulation -

(1) Where the terms of a Will direct that the income arising from any estate shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the estate and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of -

(i) the payment of the debts of the testator or any other person taking any interest under the Will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the Will, or

(iii) the preservation or maintenance of any estate bequeathed;

and such direction may be made accordingly.

Vesting of Legacies

113. Date of vesting of legacy when payment or possession postponed - Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if she/he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation - An intention that a legacy to any person shall not become

vested in interest in her/him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations

(i) A bequeaths to B 10,000 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(ii) A bequeaths to B 10,000 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest B.

(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(iv) A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.

(v) A bequeaths the whole of his estate to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(vi) A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

114. Date of vesting when legacy contingent upon specified uncertain event -

(1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

(2) A legacy bequeathed in case a specified uncertain event shall not

happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception - Where a fund is bequeathed to any person upon her/his attaining a particular age, and the Will also gives to her/him absolutely the income to arise from the fund before she/he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for her/his benefit, the bequest of the fund is not contingent.

Illustrations

(i) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(ii) A sum of money is bequeathed to A "in case he shall attain the age of 18", or "when he shall attain the age of 18". A's interest in the legacy is contingent until the condition is fulfilled by his attaining that age.

(iii) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one, or in the other has happened.

(iv) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(v) A legacy is bequeathed to A when she shall attain the age of 18 with a proviso that if she does not attain the age of 18, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy.

(vi) An estate is bequeathed to A until he shall marry and after that event to B. B's interest in the bequest is contingent until the condition is fulfilled by A's marrying.

(vii) An estate is bequeathed to A until he shall take advantage of any law

for the relief of insolvent debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of such a law.

(viii) An estate is bequeathed to A if he shall pay 50,000 rupees to B. A's interest in the bequest is contingent until he has paid 50,000 rupees to B.

(ix) A leaves his farm of Nainital to B, if B shall convey his own farm of Haldwani to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(x) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition is fulfilled by the expiration of the five years without B's having married C, or by the occurrence within that period of an event which makes the marriage of B and C impossible.

(xi) A fund is bequeathed to A if B shall not make any provision for him by Will. The legacy is contingent until B's death.

(xii) A bequeaths to B 50,000 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(xiii) A bequeaths to B 50,000 rupees when he shall attain the age of 18 and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

115. Vesting of interest in bequest to such members of a class as shall have attained particular age - Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the

bequest.

Onerous Bequests

116. Onerous bequests - Where a bequest imposes an obligation on the legatee, she/he can take nothing by it unless she/he accepts it fully.

Illustration

A, having shares in X, a prosperous joint stock company and also shares in Y, a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in Y. He forfeits the shares in X.

117. One of two separate and independent bequests to same person may be accepted, and other refused - Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

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 refuses to accept the lease. He will not by this refusal forfeit the money.

Contingent Bequests

118. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence - Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations

(i) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(ii) 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.

(iii) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(iv) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death without children", to C. The words "in case of B's death without children" are to be understood as meaning in case B dies without children during the lifetime of A.

(v) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death", to C. The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A".

119. Bequest to such of certain persons as shall be surviving at some period not specified - Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the Will.

Illustrations

(i) Estate 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.

(ii) Estate is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death, the legacy goes to C.

(iii) Estate is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(iv) Estate is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A.

Afterward C dies in the lifetime of A. The legacy goes to the representative of C.

Conditional Bequests

120. Bequest upon impossible condition - A bequest upon an impossible condition is void.

Illustrations

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

(ii) A bequeaths 50,000 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the Will. The bequest is void.

121. Bequest upon illegal or immoral condition - A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations

(i) A bequeaths 50,000 rupees to B on condition that he shall murder C. The bequest is void.

(ii) A bequeaths 50,000 rupees to his niece if she will desert her husband. The bequest is void.

122. Fulfilment of condition precedent to vesting of legacy - 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.

Illustrations

(i) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(ii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and

C. A has fulfilled the condition.

(iii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(iv) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(v) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(vi) A makes his Will whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(vii) 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, and is not entitled to receive the legacy.

123. Bequest to 'A' and on failure of prior bequest to '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 although the failure may not have occurred in the manner contemplated by the testator.

Illustrations

(i) 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 ever had a child. The bequest to B takes effect.

(ii) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The

bequest to C takes effect.

124. When second bequest not to take effect on failure of first - Where the Will shows an intention 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.

125. Bequest over, conditional upon happening or not happening of specified uncertain event -

(1) A bequest may be made to any person with the condition super-added, that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

(2) In each case the ulterior bequest is subject to the rules contained in sections 114, 115, 116, 117, 118, 119, 120, 121, 123 and 124.

Illustrations

(i) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A dies under 18.

(ii) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a Will, the estate shall go to B. A disputes the competency of the testator to make a Will. The estate goes to B.

(iii) A sum of money is bequeathed to A for life, and, after his death, to B; but if B shall then be dead leaving a son, such son is to stand in the

place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(iv) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(v) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

126. Condition must be strictly fulfilled - An ulterior bequest of the kind contemplated by section 125 cannot take effect, unless the condition is strictly fulfilled.

Illustrations

(i) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(ii) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

127. Original bequest not affected by invalidity of second - If the ulterior bequest be not valid the original bequest is not affected by it.

Illustrations

(i) An estate is bequeathed to A for his life with condition super-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.

(ii) An estate is bequeathed to A for her life and, if she does not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the Will.

(iii) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 100, and A is entitled to the estate during his life.

128. Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen - A bequest may be made with the condition super-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.

Illustrations

(i) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(ii) 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.

(iii) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(iv) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the Will.

(v) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

129. Such condition must not be invalid under section 114 - In order that a

condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 114.

130. **Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over** - Where a bequest is made with a condition super-added that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations

(i) A bequest is made to A, with a proviso that, unless he enters the army, the legacy shall go over to B. A enters a religious order, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(ii) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfilment of the conditions. The bequest ceases to have effect.

131. **Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud** - Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Bequests with Directions as to Application or Enjoyment

132. **Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person** - 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 country residence for A, or to purchase an annuity for A, or to place A in any business. A choses to receive the legacy in money. He is entitled to do so.

133. **Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee** - Where a testator absolutely bequeaths a fund, so as to sever it from her/his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to her/him as if the Will had contained no such direction.

Illustrations

(i) A bequeaths the residue of his estate to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(ii) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

134. **Bequest of fund for certain purposes, some of which cannot be fulfilled** - Where a testator does not absolutely bequeath a fund, so as to sever it from her/his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator.

Illustrations

(i) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(ii) A bequeaths the residue of his estate, to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

Bequests to an Executor

135. **Legatee named as executor cannot take unless she/he shows intention to act as executor** - If a legacy is bequeathed to a person who is named an executor of the Will, she/he shall not take the legacy, unless she/he proves the Will or otherwise manifests an intention to act as executor.

Illustration

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the Will, and dies a few days after the testator, without having proved the Will. A has manifested an intention to act as executor.

Specific Legacies

136. **Specific legacy defined** - Where a testator bequeaths to any person a specified part of her/his estate, which is distinguished from all other parts of her/his estate, the legacy is said to be specific.

Illustrations

(i) A bequeaths to B -

"the diamond ring presented to me by C";

"my gold chain";

"a certain bale of wool";

"a certain piece of cloth";

"all my household goods which shall be in or about my dwelling-house in Dehradun, at time of my death";

"the sum of 10,000 rupees in a certain chest";

"the debt which B owes me";

"all my bills, bonds and securities belonging to me lying in my lodgings in Vikasnagar";

"all my furniture in my house in Chakrata";

"all my goods on board a certain vessel now lying in the river Ganga";

"35,000 rupees which I have in the hands of C";

"the money due to me on the bond of D";

"my mortgage on the Haridwar factory";

"one-half of the money owing to me on my mortgage of Haridwar factory";

"50,000 rupees, being part of a debt due to me from C";

"my capital stock of 100,000 rupees in XYZ stock";

"my promissory notes of the Central Government for 15,000 rupees in their 4 per cent. loan";

"all such sums of money as my executors may, after my death, receive in respect of the debt due to me from the insolvent firm of R and Company";

"all the wine which I may have in my cellar at the time of my death";

"such of my horses as B may select";

"all my shares in the State Bank of India";

"all my shares in the State Bank of India which I may possess at the time of my death";

"all the money which I have in the 5 per cent loan of the Central Government";

"all the Government securities I shall be entitled to at the time of my decease".

Each of these legacies is specific.

(ii) A, having Government promissory notes for 100,000 rupees, bequeaths to his executors "Government promissory notes for 100,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(iii) A, having estate at Uttarkashi, and also in other places, bequeaths to B all his estate at Uttarkashi. The legacy is specific.

(iv) A bequeaths a sum of money -

to buy a house in Dehradun for B;

to buy an estate in Kalsi for B;

to buy a diamond ring for B;

to buy a horse for B;

to be invested in shares in the State Bank of India for B;

to be invested in Government securities for B.

A bequeaths to B -

"a diamond ring";

"a horse";

"10,000 rupees worth of Government securities";

"an annuity of 25,000 rupees";

"20,000 rupees to be paid in cash";

"so much money as will produce 50,000 rupees four per cent. Government securities."

These bequests are not specific.

(v) A, having estate in England and estate in Uttarakhand (India), bequeaths a legacy to B, and directs that it shall be paid out of the estate which he may leave in Uttarakhand (India). He also

bequeaths a legacy to C, and directs that it shall be paid out of estate which he may leave in England.

No one of these legacies is specific.

137. **Bequest of certain sum where stocks, etc., in which invested are described** - Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the Will.

Illustration

A bequeaths to B—

"100,000 rupees of my funded estate";

"100,000 rupees of my estate now invested in shares of Tata Motors Ltd.";

"100,000 rupees, at present secured by mortgage of Haridwar factory".

No one of these legacies is specific.

138. **Bequest of stock where testator had, at date of Will, equal or greater amount of stock of same kind** - Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of her/his Will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration

A bequeaths to B 50,000 rupees five per cent Government securities. A had at the date of the Will five per cent Government securities for 50,000 rupees. The legacy is not specific.

139. **Bequest of money where not payable until part of testator's estate disposed of in certain way** - A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the estate of the testator has been reduced to a certain form, or remitted to a certain place.

Illustration

A bequeaths to B 100,000 rupees and directs that this legacy shall be paid as soon as A's estate in Uttarakhand (India) shall be realised in England. The legacy is not specific.

140. **When enumerated articles not deemed specifically bequeathed -** Where a Will contains a bequest of the residue of the testator's estate along with an enumeration of some items of estate not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

141. **Retention, in form, of specific bequest to several persons in succession -** Where estate is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations

(i) A, having lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the estate as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(ii) A, having an annuity during the life of B, bequeaths it to C, for his life, and, after C' s death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

142. **Sale and investment of proceeds of estate bequeathed to two or more persons in succession -** Where estate comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may by any general rule authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Illustration

A, having a lease for a term of years, bequeaths all his estate to B for life,

and, after B's death to C. The lease must be sold, the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

143. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies - If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Demonstrative Legacies

144. Demonstrative legacy defined - Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation - The distinction between a specific legacy and a demonstrative legacy consists in this, that -

where specified estate is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified estate, it is demonstrative.

Illustrations

(i) A bequeaths to B 100,000 rupees, being part of a debt due to him from W. He also bequeaths to C 100,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific, the legacy to C is demonstrative.

(ii) A bequeaths to B -

"ten bushels of the corn which shall grow in my Mussoorie Farmhouse";

"800 boxes of blue pens which shall be made at my factory of Haridwar";

"10,000 rupees out of my five per cent promissory notes of the Central Government";

"an annuity of 5,000 rupees from my funded estate";

"10,000 rupees out of the sum of 20,000 rupees due to me by C";

An annuity, and directs it to be paid "out of the rents arising from my estate at Pithoragarh".

(iii) A bequeaths to B -

"10,000 rupees out of my estate at Pithoragarh", or charges it on his estate at Pithoragarh;

"10,000 rupees, being my share of the capital embarked in a certain business".

Each of these bequests is demonstrative.

145. **Order of payment when legacy directed to be paid out of fund the subject of specific legacy** - Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration

A bequeaths to B 10,000 rupees, being part of a debt due to him from W. He also bequeaths to C 10,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 15,000 rupees; of these 15,000 rupees, 10,000 rupees belong to B and 5000 rupees are to be paid to C. C is also to receive 5000 rupees out of the general assets of the testator.

Ademption of Legacies

146. **Ademption explained** - If anything which has been specifically bequeathed does not belong to the testator at the time of her/his death, or has been converted into estate of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the Will.

Illustrations

(i) A bequeaths to B -

"the diamond ring presented to me by C";

"my gold chain";

"a certain bale of wool";

"a certain piece of cloth";

"all my household goods which shall be in or about my dwelling-house in Dehradun, at the time of my death."

A in his life time -

sells or gives away the ring;

converts the chain into a cup;

converts the wool into cloth;

makes the cloth into a garment;

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(ii) A bequeaths to B -

"the sum of 10,000 rupees, in a certain chest";

"all the horses in my stable".

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(iii) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

147. **Non-ademption of demonstrative legacy** - A demonstrative legacy is not adeemed by reason that the estate on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into estate of a different kind, but it shall in such case be paid out of the general assets of the testator.

148. **Ademption of specific bequest of right to receive something from third party** - Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator herself/himself receives it, the bequest is adeemed.

Illustrations

(i) A bequeaths to B -

"the debt which C owes me";

"20,000 rupees which I have in the hands of D";

"the money due to me on the bond of E";

"my mortgage on the Haridwar factory".

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(ii) A bequeaths to B his interest in certain policies of life assurance. A in his lifetime receives the amount of the policies. The legacy is adeemed.

149. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed - The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration

A bequeaths to B "the debt due to me by C". The debt amounts to 10,000 rupees. C pays to A 5,000 rupees the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

150. Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed - If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

151. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and,

testator having received portion of that fund, remainder insufficient to pay both legacies - Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration

A bequeaths to B 10,000 rupees, part of the debt of 20,000 rupees due to him from W. He also bequeaths to C 10,000 rupees to be paid out of the debt due to him from W. A afterwards receives 5,000 rupees, part of that debt, and dies leaving only 15,000 rupees due to him from W. Of these 15,000 rupees, 10,000 rupees belong to B, and 5,000 rupees are to be paid to C. C is also to receive 5,000 rupees out of the general assets of the testator.

152. Ademption where stock, specifically bequeathed, does not exist at testator's death - Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration

A bequeaths to B -

"my capital stock of 10,000 rupees in XYZ Stock";

"my promissory notes of the Central Government for 10,000 rupees in their 4 per cent loan."

A sells the stock and the notes. The legacies are adeemed.

153. Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death - Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration

A bequeaths to B his 10,000 rupees in the 5.5 per cent loan of the Central

Government. A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

154. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal - A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations

(i) A bequeaths to B "all my households goods which shall be in or about my dwelling-house in Rudraprayag at the time of my death". The goods are removed from the house to save them from fire. A dies before they are brought back.

(ii) A bequeaths to B "all my household goods which shall be in or about my dwelling-house in Rudraprayag at the time of my death". During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

155. When removal of thing bequeathed does not constitute ademption - The removal of the thing bequeathed from the place in which it is stated in the Will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations

(i) A bequeaths to B "all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Nainital". At the time of his death these effects had been removed from his lodgings in Nainital.

(ii) A bequeaths to B all his furniture then in his house in Almora. The testator has a house at Almora and another at Ranikhet, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death the

furniture is in the house at Ranikhet.

(iii) A bequeaths to B all his goods on board a certain vessel then lying in the river Ganga. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

156. When thing bequeathed is a valuable to be received by testator from third person; and testator herself/himself, or her/his representative, receives it - Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which may be received from the third person by the testator herself/himself or by her/his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if she/he mixes it up with the general mass of her/his estate, the legacy is adeemed.

Illustration

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his estate. The legacy is not adeemed.

157. Change by operation of law of subject of specific bequest between date of Will and testator's death - Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations

(i) A bequeaths to B "all the money which I have in the 5.5 per cent loan of the Central Government". The securities for the 5.5 per cent loan are converted during A's lifetime into 5 per cent stock.

(ii) A bequeaths to B the sum of 20,000 rupees invested in Government securities in the names of trustees for A. The sum of 20,000 is transferred by the trustees into A's own name.

Neither of these legacies has been adeemed.

158. Change of subject without testator's knowledge - Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration

A bequeaths to B "all my 3 per cent Government securities". The Government securities are, without A's knowledge, sold by his agent, and the proceeds converted into XYZ Stock. This legacy is not adeemed.

159. Stock specifically bequeathed lent to third party on condition that it be replaced - Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

160. Stock specifically bequeathed sold but replaced, and belonging to testator at her/his death - Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at her/his death, the legacy is not adeemed.

Payment of Liabilities in Respect of the Subject of a Bequest

161. Non-liability of executor to exonerate specific legatees -

(1) Where estate specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance created by the testator herself/himself or by any person under whom she/he claims, then, unless a contrary intention appears by the Will, the legatee, if she/he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between herself/himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

(2) A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally.

Explanation - A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations

(i) A bequeaths to B the diamond ring given to him by C. At A's death the ring is held in pawn by D to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(ii) A bequeaths to B an estate which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

162. Completion of testator's title to things bequeathed to be at cost of her/his estate - Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations

(i) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(ii) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

163. Exoneration of legatee's immoveable estate for which land-revenue or rent payable periodically - Where there is a bequest of any interest in immovable estate in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of her/his death.

Illustration

A bequeaths to B a house, in respect of which 36,500 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate will make good 2,500 rupees in respect of the rent.

164. **Exoneration of specific legatee's stock in joint-stock company** - In the absence of any direction in the Will, where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of her/his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if she/he accepts the bequest.

Illustrations

(i) A bequeaths to B his shares in a certain company. At A's death there was due from him the sum of 100 rupees in respect of each share, being the amount of a call which had been duly made, and the sum of five rupees in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(ii) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 100 rupees in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(iii) A bequeaths to B his shares in a certain company. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(iv) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(v) A is the owner of ten shares in a company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three

instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

Bequests of Things Described in General Terms

165. Bequest of thing described in general terms - If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations

(i) A bequeaths to B a motor vehicle or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(ii) A bequeaths to B "my motor cars". A had no motor car at the time of his death. The legacy fails.

Bequests of the Interest or Produce of a Fund

166. Bequest of interest or produce of fund - Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal, as well as the interest, shall belong to the legatee.

Illustrations

(i) A bequeaths to B the interest of his 5 per cent promissory notes of the Central Government. There is no other clause in the Will affecting those securities. B is entitled to A's 5 per cent promissory notes of the Central Government.

(ii) A bequeaths the interest of his 5.5 per cent promissory notes of the Central Government to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(iii) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

Bequests of Annuities

167. Annuity created by Will payable for life only unless contrary

intention appears by Will - Where an annuity is created by Will, the legatee is entitled to receive it for her/his life only, unless a contrary intention appears by the Will, notwithstanding that the annuity is directed to be paid out of the estate generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations

(i) A bequeaths to B 5,000 rupees a year. B is entitled during his life to receive the annual sum of 5,000 rupees.

(ii) A bequeaths to B the sum of 1,000 rupees monthly. B is entitled during his life to receive the sum of 1,000 rupees every month.

(iii) A bequeaths an annuity of 5,000 rupees to B for life, and on B's death to C. B is entitled to an annuity of 5,000 rupees during his life. C, if he survives B, is entitled to an annuity of 5,000 rupees from B's death until his own death.

168. **Period of vesting where Will directs that annuity be provided out of proceeds of estate, or out of estate generally, or where money bequeathed to be invested in purchase of annuity** - Where the Will directs that an annuity shall be provided for any person out of the proceeds of estate, or out of estate generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death, the legacy vests in interest in the legatee, and she/he is entitled at her/his option to have an annuity purchased for her/him or to receive the money appropriated for that purpose by the Will.

Illustrations

(i) A by his Will directs that his executors shall, out of his estate, purchase an annuity of 10,000 rupees for B. B is entitled at his option to have an annuity of 10,000 rupees for his life purchased for him or to receive such a sum as will be sufficient for the purchase of such an annuity.

(ii) A bequeaths a fund to B for his life, and directs that after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death, the fund belongs to the representative of C.

169. Abatement of annuity - Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.

170. Where gift of annuity and residuary gift, whole annuity to be first satisfied - Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Legacies to Creditors and Portioners

171. Creditor *prima facie* entitled to legacy as well as debt - Where a debtor bequeaths a legacy to her/his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy, as well as to the amount of the debt.

172. Child *prima facie* entitled to legacy as well as portion - Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by her/his Will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy, as well as the portion.

Illustration

A, by articles entered into in contemplation of his marriage with B covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

173. No ademption by subsequent provision for legatee - No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations

(i) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(ii) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

Election

174. Circumstances in which election takes place - Where a person, by her/his Will, professes to dispose of something which she/he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and, in the latter case, she/he shall give up any benefits which may have been provided for her/him by the Will.

175. Devolution of interest relinquished by owner - An interest relinquished in the circumstances stated in section 174 shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to her/him by the Will.

176. Testator's belief as to her/his ownership immaterial - The provisions of sections 174 and 175 apply whether the testator does or does not believe that which she/he professes to dispose of by her/his Will to be her/his own.

Illustrations

(i) The farm of Chamoli was the estate of C. A bequeathed it to B, giving a legacy of 100,000 rupees to C. C has elected to retain his farm of Chamoli, which is worth 80,000 rupees. C forfeits his legacy of 100,000 rupees, of which 80,000 rupees goes to B, and the remaining 20,000 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(ii) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel or to lose the estate.

(iii) A bequeaths to B 100,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married

and has children) shall leave no issue living at his death. B must elect to give up the estate or to lose the legacy.

(iv) A, a person of the age of 18, domiciled in India in Uttarakhand but owning real estate in England, to which C is heir at law, bequeaths a legacy to C and, subject thereto, devises and bequeaths to B "all my estate whatsoever and wheresoever", and dies under 21. The real estate in England does not pass by the Will. C may claim his legacy without giving up the real estate in England.

177. **Bequest for person's benefit how regarded for purpose of election** - A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to herself/himself.

Illustration

The farm of Nainital being the estate of B, A bequeathed it to C; and bequeathed another farm called Haldwani farmhouse to his own executors with a direction that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the Will, or keep his farm of Nainital in opposition to it.

178. **Person deriving benefit indirectly not put to election** - A person taking no benefit directly under a Will, but deriving a benefit under it indirectly, is not put to her/his election.

Illustration

The lands of Champawat are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Champawat to B, and 100,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the Will. In that capacity he receives the legacy of 100,000 rupees and accounts to B for the rents of the lands of Champawat which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Champawat in opposition to the Will.

179. **Person taking in individual capacity under Will may in other character elect to take in opposition** - A person who in her/his individual capacity takes a benefit under a Will may, in another character, elect to take in opposition to the Will.

Illustration

The estate of Tehri is settled upon A for life, and after his death, upon B. A leaves the estate of Tehri to D, and 200,000 rupees to B, and 100,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Tehri in opposition to the Will, and to relinquish the legacy of 200,000 rupees. C may do this, and yet claim his legacy of 100,000 rupees under the Will.

180. Exception to provisions of last six sections - Notwithstanding anything contained in sections 174 to 179, where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the Will, then, if the legatee claims that thing, she/he must relinquish the particular gift, but she/he is not bound to relinquish any other benefit given to her/him by the Will.

Illustration

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Dehradun during her life. A by his Will bequeaths to his wife an annuity of 200,000 rupees during her life, in lieu of her interest in the estate of Dehradun, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000,000 rupees. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity but not the legacy of 1,000,000 rupees.

181. When acceptance of benefit given by Will constitutes election to take under Will - Acceptance of a benefit given by a Will constitutes an election by the legatee to take under the Will, if she/he had knowledge of her/his right to elect and of those circumstances which would influence the judgment of a reasonable person in making an election, or if she/he waives inquiry into the circumstances.

Illustrations

(i) A is owner of an estate called Bageshwar farm, and has a life interest in another estate called Almora farm to which upon his death his son B will be absolutely entitled. The Will of A gives the estate of Bageshwar farm to B, and the estate of Almora farm to C. B, in ignorance of his own right to the estate of Almora farm, allows C to

take possession of it, and enters into possession of the estate of Bageshwar farm. B has not confirmed the bequest of Almora farm to C.

(ii) B, the eldest son of A, is the possessor of an estate called Mussoorie Farmhouse. A bequeaths Mussoorie Farmhouse to C, and to B the residue of A's estate. B having been informed by A's executors that the residue will amount to 500,000 rupees, allows C to take possession of Mussoorie Farmhouse. He afterwards discovers that the residue does not amount to more than 50,000 rupees. B has not confirmed the bequest of the estate of Mussoorie Farmhouse to C.

182. Circumstances in which knowledge or waiver is presumed or inferred -

(1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for her/him by the Will without doing any act to express dissent.

(2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

183. When testator's representatives may call upon legatee to elect - If the legatee does not, within one year after the death of the testator, signify to the testator's representatives her/his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require her/him to make her/his election; and; if she/he does not comply with such requisition within a reasonable time after she/he has received it, she/he shall be deemed to have elected to confirm the Will.

184. Postponement of election in case of disability - In case of disability the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Gifts in Contemplation of Death

185. Estate transferable by gift made in contemplation of death -

(1) A person may dispose, by gift made in contemplation of death, of any moveable estate which she/he could dispose of by Will.

(2) A gift is said to be made in contemplation of death where a person, who is ill and expects to die shortly of her/his illness, delivers, to another the possession of any moveable estate to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if she/he recovers from the illness during which it was made; nor if she/he survives the person to whom it was made.

Illustrations

(i) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death -

a watch;

a bond granted by C to A;

a bank-note;

a promissory note of the Central Government endorsed in blank;

a bill of exchange endorsed in blank;

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to -

the watch;

the debt secured by C's bond;

the bank-note;

the promissory note of the Central Government;

the bill of exchange;

the money secured by the mortgage-deeds.

(ii) A, being ill, and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to

A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(iii) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

Chapter – 3

Protection of Estate of Deceased

186. Person claiming right by succession to estate of deceased may apply for relief against wrongful possession -

(1) If any person dies leaving estate, moveable or immoveable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the estate is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any guardian, agent, relative or near friends may, in the event of any minor, or any disqualified or absent person being entitled by succession to such estate as aforesaid, make the like application for relief.

187. Inquiry made by Judge - The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as she/he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf she/he applies is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made bona fide.

188. Procedure - If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, she/he shall summon the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly:

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether she/he shall

have concluded the inquiry necessary for summoning the party complained of or not.

189. Appointment of curator pending determination of proceeding - If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the estate before the summary proceeding can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided she/he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of her/his or their respective appointment, and in no case beyond the determination of the summary proceeding and the confirmation or delivery of possession in the consequence thereof;

Provided that, in the case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator;

Provided, further, that every appointment of a curator in respect of any estate shall be duly published.

190. Powers conferrable on curator - The District Judge may authorise the curator to take possession of the estate either generally, or until security is given by the party in possession, or until inventories of the estate have been made, or for any other purpose necessary for securing the estate from misappropriation or waste by the party in possession:

Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

191. Prohibition of exercise of certain powers by curators -

(1) Where a certificate has been granted under Chapter-6 of this Part, or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) All persons who have paid debts or rents to a curator authorised by a court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

192. Curator to give security and may receive remuneration -

(1) The District Judge shall take from the curator security for the faithful discharge of her/his trust, and for rendering, satisfactory accounts of the same as hereinafter provided, and may authorise her/him to receive out of the estate such remuneration, in no case exceeding five percent on the moveable estate and on the annual profits of the immoveable estate, as the District Judge thinks reasonable.

(2) All surplus money realized by the curator shall be paid into court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary proceeding.

(3) Security shall be required from the curator with all reasonable despatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator; but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of her/his office.

193. Report from Collector where estate includes revenue paying land -

(1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same:

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(2) The Judge shall not be obliged to act in conformity with any such report.

194. Institution and defence of suits - The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate;

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

195. Allowances to apparent owners pending custody by curator - Pending the custody of the estate by the curator, the District Judge may make such allowances to parties having a prima facie right thereto as upon a summary investigation of the right and circumstances of the parties interested she/he considers necessary, and may, at her/his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceeding, not to be entitled thereto.

196. Accounts to be filed by curator - The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if her/his administration lasts so long, and, upon giving up the possession of the estate, file a detailed account of her/his administration to the satisfaction of the District Judge.

197. Inspection of accounts and right of interested party to keep duplicate -

(1) The accounts of the curator shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.

(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete, or if the curator does not produce them whenever she/he is ordered to do so by the District Judge, she/he shall be punishable with fine not exceeding one thousand rupees for every such default.

198. Bar to appointment of second curator for same estate - If the Judge of any district has appointed a curator; in respect to the whole of the estate of

a deceased person, such appointment shall preclude the Judge of any other district within the same State from appointing any other curator, but the appointment of a curator in respect of a portion of the estate of the deceased shall not preclude the appointment within the same State of another curator in respect of the residue or any portion thereof:

Provided that no Judge shall appoint curator or entertain a summary proceeding in respect of estate which is the subject of a summary proceeding previously instituted under this Chapter before another Judge:

Provided, further, that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole estate.

199. **Limitation of time for application for curator** - An application under this Chapter to the District Judge must be made within six months of the death of the proprietor whose estate is claimed by right in succession.

200. **Bar to enforcement of this Chapter against public settlement or legal directions by deceased** - Nothing in this Chapter shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any estate for the possession of her/his estate after her/his decease in the event of minority or otherwise, and, in every such case, as soon as the Judge having jurisdiction over the estate of a deceased person is satisfied of the existence of such directions, she/he shall give effect thereto.

201. **Saving of right to bring suit** - Nothing contained in this Chapter shall be any impediment to the bringing of a suit either by the party whose application may have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Chapter.

202. **Effect of decision of summary proceeding** - The decision of a District Judge in a summary proceeding under this Chapter shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.

203. **Appointment of public curators** - The State Government may appoint

public curators for any district or number of districts; and the District Judge having jurisdiction shall nominate such public curators in all cases where the choice of a curator is left discretionary with her/him under this Chapter.

Chapter – 4

Representative title to Estate of Deceased on Succession

204. Character and estate of executor or administrator as such - The executor or administrator, as the case may be, of a deceased person is her/his legal representative for all purposes, and all the estate of the deceased person vests in her/him as such.

205. Proof of representative title a condition precedent to recovery through the courts of debts from debtors of deceased persons -

(1) No court shall -

(a) pass a decree against a debtor of a deceased person for payment of her/his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of her/his debt, except on the production, by the person so claiming of –

(i) a probate or letters of administration evidencing the grant to her/him of administration to the estate of the deceased, or

(ii) a succession certificate granted under Chapter-6 of this Part and having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

206. Effect on certificate of subsequent probate or letters of administration -

(1) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Chapter-6 of this Part, in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

207. Grantee of probate or administration alone to sue, etc., until same revoked - After any grant of probate or letters of administration, none other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the State in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.

Chapter – 5

Probate, Letters of Administration and Administration of Assets of Deceased

208. Application of this Chapter - Save as otherwise provided by this Part or by any other law for the time being in force, all grants of probate and letters of administration with the Will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Chapter.

Grant of Probate and Letters of Administration

209. To whom administration may be granted -

(1) If the deceased has died intestate, administration of her/his estate may be granted to any person who, according to the provisions of Chapter-1 of this Part, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

210. Effect of letters of administration - Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after her/his death.

211. Acts not validated by administration - Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

212. Probate only to appointed executor -

(1) Probate shall be granted only to an executor appointed by the Will.

(2) The appointment may be expressed or by necessary implication.

Illustrations

(i) A wills that C be his executor if B will not. B is appointed executor by implication.

(ii) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C, and adds "but should the within-named C be not living I do constitute and appoint B my whole and sole executrix". C is appointed executrix by implication.

(iii) A appoints several persons executors of his Will and codicils and his nephew residuary legatee, and in another codicil are these words - "I appoint my nephew my residuary legatee to discharge all lawful demands against my Will and codicils signed of different dates". The nephew is appointed an executor by implication.

213. Persons to whom probate cannot be granted - Probate cannot be granted to any person who is a minor or is of unsound mind nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made, by notification in the Uttarakhand Gazette by the State Government in this behalf.

214. Grant of probate to several executors simultaneously or at different times - When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration

A is an executor of B's Will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time or to A first and then to C, or to C first and then to A.

215. Separate probate of codicil discovered after grant of probate -

(1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will.

(2) If different executors are appointed by the codicil, the probate of the Will shall be revoked, and a new probate granted of the Will and the codicil together.

216. **Accrual of representation to surviving executor** - When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

217. **Effect of probate** - Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

218. **Administration, with copy annexed, of authenticated copy of Will proved abroad** - When a Will has been proved and deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

219. **Grant of administration where executor has not renounced** - When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce her/his executorship;

Provided that, when one or more of several executors have proved a Will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

220. **Form and effect of renunciation of executorship** - The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude her/him from ever thereafter applying for probate of the Will appointing her/him executor.

221. **Procedure where executor renounces or fails to accept within time limited** - If an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

222. **Grant of administration to universal or residuary legatees** - When -

(a) the deceased has made a Will, but has not appointed an executor, or

(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before she/he has proved the Will, or

(c) the executor dies after having proved the Will, but before she/he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to her/him of the whole estate, or of so much thereof as may be unadministered.

223. **Right to administration of representative of deceased residuary legatee** - When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, her/his representative has the same right to administration with the Will annexed as such residuary legatee.

224. **Grant of administration where no executor, nor residuary legatee nor representative of such legatee** - When there is no executor and no residuary legatee or representative of a residuary legatee, or she/he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if she/he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to her/him or them accordingly.

225. **Citation before grant of administration to legatee other than universal or residuary** - Letters of administration with the Will annexed shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

226. **To whom administration may not be granted** - Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by notification in the Uttarakhand Gazette, by the State Government in this behalf.

227. **Laying of rules before State Legislature** - Every rule made by the State Government under section 213 and section 226 shall be laid, as soon as it is made, before the State Legislature.

Limited Grants

Grants Limited in Duration

228. **Probate of copy or draft of lost Will** - When a Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.

229. **Probate of contents of lost or destroyed Will** - When a Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

230. **Probate of copy where original exists** - When the Will is in the possession of a person residing out of the State in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it is produced.

231. **Administration until Will produced** - Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will or an authenticated copy of it is produced.

Grants for the Use and Benefit of others Having Right

232. **Administration, with Will annexed, to attorney of absent executor** - When any executor is absent from the State in which application is made, and there is no executor within the State willing to act, letters of administration, with the Will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of her/his principal, limited until she/he shall obtain probate or letters of administration granted to herself/himself.

233. **Administration, with Will annexed to attorney of absent person who, if present, would be entitled to administer** - When any person to whom, if present, letters of administration, with the Will annexed, might be granted, is absent from the State, letters of administration, with the Will annexed may be granted to her/his attorney or agent, limited as mentioned in section 232.

234. **Administration to attorney of absent person entitled to administer in case of intestacy** - When a person entitled to administration in case of intestacy is absent from the State, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 232.

235. **Administration during minority of sole executor or residuary legatee** - When a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person as the court may think fit until the minor has attained her/his majority at which period, and not before, probate of the Will shall be granted to her/him.

236. **Administration during minority of several executors or residuary legatee** - When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have attained her/his majority.

237. **Administration for use and benefit of lunatic or minor** - If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the provisions of Chapter-1 of this Part, is a minor or lunatic, letters of administration with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of her/his estate has been committed by competent authority, or, if there is no such person, to such other person as the court may think fit to appoint, for the use and benefit of the minor or lunatic until she/he attains majority or becomes of sound mind, as the case may be.

238. **Administration *pendente lite*** - Pending any suit touching the validity of

the Will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the court and shall act under its direction.

Grants for Special Purposes

239. **Probate limited to purpose specified in Will** - If an executor is appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose, and if she/he should appoint an attorney or agent to take administration on her/his behalf, the letters of administration, with the Will annexed, shall be limited accordingly.

240. **Administration, with Will annexed, limited to particular purpose** - If an executor appointed generally gives an authority to an attorney or agent to prove a Will on her/his behalf, and the authority is limited to a particular purpose, the letters of administration, with the Will annexed, shall be limited accordingly.

241. **Administration limited to estate in which person has beneficial interest** - Where a person dies, leaving estate of which she/he was the sole or surviving trustee, or in which she/he had no beneficial interest on her/his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such estate, may be granted to the beneficiary, or to some other person on her/his behalf.

242. **Administration limited to suit** - When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor, or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

243. Administration limited to purpose of becoming party to suit to be brought against administrator - If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the State within which the court which has granted the probate or letters of administration exercises jurisdiction, the court may grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

244. Administration limited to collection and preservation of deceased's estate - In any case in which it appears necessary for preserving the estate of a deceased person, the court within whose jurisdiction any of the estate is situate may grant to any person, whom such court may think fit, letters of administration limited to the collection and preservation of the estate of the deceased and to the giving of discharges for debts due to her/his estate, subject to the directions of the court.

245. Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration -

(1) When a person has died intestate, or leaving a Will of which there is no executor willing and competent to act or where the executor is, at the time of the death of such person, resident out of the State, and it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances, would be entitled to a grant of administration, the court may, in its discretion, having regard to relationship, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(2) In every such case letters of administration may be limited or not as the court thinks fit.

Grants with Exception

246. Probate or administration, with Will annexed, subject to exception - Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception.

247. Administration with exception - Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Grants of the Rest

248. Probate or administration of rest - Whenever a grant with exception of probate, or of letters of administration with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Grant of effects Unadministered

249. Grant of effects unadministered - If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

250. Rules as to grants of effects unadministered - In granting letters of administration of an estate not fully administered, the court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

251. Administration when limited grant expired and still some part of estate unadministered - When a limited grant has expired, by efflux of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Alteration and Revocation of Grants

252. What errors may be rectified by court - Errors in names and

descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the court and the grant of probate or letters of administration may be altered and amended accordingly.

253. **Procedure where codicil discovered after grant of administration with Will annexed** - If, after the grant of letters of administration with the Will annexed, a codicil is discovered, it may be added to the grant on due proof and identification, and the grant may be altered and amended accordingly.

254. **Revocation or annulment for just cause** - The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation - Just cause shall be deemed to exist where -

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with sections 308 to 320, or has exhibited under those provisions an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The Will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.

(vi) Since probate was granted, a later Will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

Practice in Granting and Revoking Probates and Letters of Administration

255. Jurisdiction of District Judge in granting and revoking probates, etc. - The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within her/his district.

256. Power to appoint delegate of District Judge to deal with non-contentious cases -

(1) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe;

(2) Persons so appointed shall be called "District Delegates".

257. District Judge's powers as to grant of probate and administration - The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in her/him in relation to any civil suit or proceeding pending in her/his court.

258. District Judge may order person to produce testamentary papers -

(1) The District Judge may order any person to produce and bring into court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that she/he has the knowledge of any such paper or writing, the court

may direct such person to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer truly such question as may be put to her/him by the court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code (Act No. 45 of 1860), in case of default in not attending or in not answering such question or not bringing in such paper or writing, as she/he would have been subject to in case she/he had been a party to a suit and had made such default.

(4) The costs of the proceeding shall be in the discretion of the Judge.

259. **Proceedings of District Judge's court in relation to probate and administration** - The proceeding of the court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908 (Act No. 5 of 1908).

260. **When and how District Judge to interfere for protection of estate** - Until probate is granted of the Will of a deceased person, or an administrator of her/his estate is constituted, the District Judge, within whose jurisdiction any part of the estate of the deceased person is situate, is authorised and required to interfere for the protection of such estate at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the estate incurs any risk of loss or damage; and for that purpose, if she/he thinks fit, to appoint an officer to take and keep possession of the estate.

261. **When probate or administration may be granted by District Judge** - Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of her/his court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of her/his decease had a fixed place of abode, or any estate, moveable or immoveable, within the jurisdiction of the Judge.

262. Disposal of application made to Judge of district in which deceased had no fixed abode - When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of her/his death, it shall be in the discretion of the Judge to refuse the application, if in her/his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the estate within her/his own jurisdiction.

263. Probate and letters of administration may be granted by Delegate - Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by her/him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of her/his death had a fixed place of abode within the jurisdiction of such Delegate.

264. Conclusiveness of probate or letters of administration - Probate or letters of administration shall have effect over all the estate, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding estate which belongs to her/him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such estate to the person to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted by a District Judge, where the deceased at the time of her/his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the estate and estate affected beyond the limits of the State does not exceed ten lakh rupees, shall, unless otherwise directed by the grant, have like effect throughout the other States.

265. Transmission to High Courts of certificate of grants under proviso to section 264 -

(1) Where probate or letters of administration has or have been granted by a District Judge with the effect referred to in the proviso to section 264, the District Judge shall send a certificate thereof to the

High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be made as nearly as circumstances admit in the form set forth in Schedule-3, and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 267 and 269, to be situate within the jurisdiction of a District Judge in another State, the court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

266. Conclusiveness of application for probate or administration if properly made and verified - The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration; and no such grant shall be impeached by reason only that the testator or intestate had no fixed place of abode or no estate within the district at the time of her/his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.

267. Petition for probate - (1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English/Hindi or in the language in ordinary use in proceedings before the court in which the application is made, with the Will or, in the cases mentioned in sections 228, 229 and 230, a copy, draft, or statement of the contents thereof, annexed, and stating –

(a) the time of the testator's death,

(b) that the writing annexed is her/his last Will and testament,

(c) that it was duly executed,

(d) the amount of assets which are likely to come to the petitioner's hands, and

(e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state –

(a) when the application is to the District Judge, that the deceased at the time of her/his death had a fixed place of abode, or had some estate, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of her/his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

268. In what cases translation of Will to be annexed to petition. Verification of translation by person other than court translator - In cases wherein the Will, copy or draft, is written in any language other than English/Hindi or than that in ordinary use in proceedings before the court, there shall be a translation thereof annexed to the petition by a translator of the court, if the language be one for which a translator is appointed; or, if the Will, copy or draft, is in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner, namely –

"I (A.B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

269. Petition for letters of administration - (1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating –

(a) the time and place of the deceased's death;

(b) the family or other relatives of the deceased, and their respective residences;

(c) the right in which the petitioner claims;

(d) the amount of assets which are likely to come to the petitioner's

hands;

(e) when the application is to the District Judge, that the deceased at the time of her/his death had a fixed place of abode, or had some estate, situate within the jurisdiction of the Judge; and

(f) when the application is to a District Delegate, that the deceased at the time of her/his death had a fixed place of abode within the jurisdiction of such Delegate.

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

270. Addition to statement in petition, etc., for probate or letters of administration in certain cases -

(1) Every person applying to the court mentioned in the proviso to section 264 for probate of a Will or letters of administration of an estate intended to have effect throughout India, shall state in her/his petition, in addition to the matters respectively required by section 267 and section 269, that to the best of her/his belief no application has been made to any other court for a probate of the same Will or for letters of administration of the same estate, intended to have such effect as last aforesaid, or, where any such application has been made, the court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

(2) The court to which any such application is made under the proviso to section 264 may, if it thinks fit, reject the same.

271. Petition for probate, etc., to be signed and verified - The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and her/his pleader, if any, and shall be verified by the petitioner in the following manner, namely –

"I (A.B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

272. Verification of petition for probate, by one witness to Will - Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable) in the manner or to the effect following, namely –

"I (C.D.), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix her/his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be her/his last Will and testament in my presence)."

273. Punishment for false averment in petition or declaration - If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under section 193 of the Indian Penal Code (Act No. 45 of 1860).

274. Powers of District Judge -

(1) In all cases the District Judge or District Delegate may, if she/he thinks proper –

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be;

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by herself/himself,

and shall certify such publication to the District Judge who issued the citation.

275. Caveats against grant of probate or administration -

(1) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.

(2) Immediately on any caveat being lodged with any District Delegate, she/he shall send copy thereof to the District Judge.

(3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of her/his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

(4) The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule-4.

276. After entry of caveat, no proceeding taken on petition until after notice to caveator - No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the court may think reasonable.

277. District Delegate when not to grant probate or administration - A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to her/him that probate or letters of administration ought not to be granted in her/his court.

Explanation - "Contention" means the appearance of any one in person, or by her/his recognized agent, or by a pleader duly appointed to act on her/his behalf, to oppose the proceeding.

278. Power to transmit statement to District Judge in doubtful cases where no contention - In every case in which there is no contention, but it

appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if she/he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

279. **Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in her/his court** - In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in her/his court, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which she/he is hereby authorised to do; and, in that case, the same shall be sent by her/him to the District Judge.

280. **Grant of probate to be under seal of court** - When it appears to the District Judge or District Delegate that probate of a Will should be granted, she/he shall grant the same under the seal of her/his court in the form set forth in Schedule-5.

281. **Grant of letters of administration to be under seal of court** - When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, she/he shall grant the same under the seal of her/his court in the form set forth in Schedule-6.

282. **Administration-bond** - Every person to whom any probate or letters of administration is granted shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

283. **Assignment of administration-bond** - The court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into court, or otherwise, as the court may think fit, assign the same to some person, her/his executors or administrators, who shall thereupon be entitled to sue on the said bond in her/his or their own name or names as if the same had been originally given to her/him or them instead of to the Judge of the court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.

284. **Time for grant of probate and administration** - No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator's or intestate's death.

285. **Filing of original Wills of which probate or administration with Will annexed granted** -

(1) Every District Judge, or District Delegate, shall file and preserve all original Wills, of which probate or letters of administration with the Will annexed may be granted by her/him, among the records of her/his court, until some public registry for Wills is established.

(2) The State Government shall make regulations for the preservation and inspection of the Wills so filed.

286. **Procedure in contentious cases** - In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (Act No. 5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

287. **Surrender of revoked probate or letters of administration** -

(1) When a grant of probate or letters of administration is revoked or annulled under this Part, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, she/he shall be punishable with fine which may extend to ten thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

288. **Payment to executor or administrator before probate or administration revoked** - When a grant of probate or letters of administration is revoked, all payments bona fide made to any executor or administrator under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked grant may retain and reimburse herself/himself in respect of any payments made by her/him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made.

289. **Power to refuse letters of administration** - Notwithstanding anything hereinbefore contained, it shall be in the discretion of the court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Part.

290. **Appeals from orders of District Judge** - Every order made by a District Judge by virtue of the powers hereby conferred upon her/him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (Act No. 5 of 1908), applicable to appeals.

291. **Removal of executor or administrator and provision for successor** - The District Judge may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any estate belonging to the estate.

292. **Directions to executor or administrator** - Where probate or letters of administration in respect of any estate has or have been granted under this Part, the District Judge may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

Executors of their own Wrong

293. Executor of her/his own wrong - A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes herself/himself an executor of her/his own wrong.

Exceptions - (1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for her/his funeral or for the immediate necessities of her/his family or estate, does not make an executor of her/his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of her/his own wrong.

Illustrations

(i) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.

(ii) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(iii) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

294. Liability of executor of her/his own wrong - When a person has so acted as to become an executor of her/his own wrong, she/he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to her/his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.

Powers of an Executor or Administrator

295. In respect of causes of action surviving deceased and debts due at death - An executor or administrator has the same power to sue in respect

of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living.

296. Demands and rights of action of or against deceased survive to and against executor or administrator - All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of her/his decease, survive to and against her/his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code (Act No. 45 of 1860), or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Illustrations

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

297. Power of executor or administrator to dispose of estate -

(1) Subject to the provisions of sub-section (2), an executor or administrator has power to dispose of the estate of the deceased, vested in her/him under section 204, either wholly or in part, in such manner as she/he may think fit.

Illustrations

(i) The deceased has made a specific bequest of part of his estate. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(ii) The executor in the exercise of his discretion mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

(2) The general power conferred by sub-section (1) shall be subject to the following restrictions and conditions, namely –

(i) The power of an executor to dispose of immovable estate so vested

in her/him is subject to any restriction which may be imposed in this behalf by the Will appointing her/him, unless probate has been granted to her/him and the court which granted the probate permits her/him by an order in writing, notwithstanding the restriction, to dispose of any immovable estate specified in the order in a manner permitted by the order.

(ii) An administrator may not, without the previous permission of the court by which the letters of administration were granted –

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable estate for the time being vested in her/him under section 204, or

(b) lease any such estate for a term exceeding five years.

(iii) A disposal of estate by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the estate.

(3) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto a copy of sub-section (1) and clauses (i) and (iii) of sub-section (2), or of sub-section (1) and clauses (ii) and (iii) of sub-section (2), as the case may be.

(4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub-section (3) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

298. General powers of administration - An executor or administrator may, in addition to, and not in derogation of any other powers of expenditure lawfully exercisable by her/him, incur expenditure –

(a) on such acts as may be necessary for the proper care or management of any estate belonging to any estate administered by her/him; and

(b) with the previous permission of the District Judge, on such

religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such estate.

299. **Purchase by executor or administrator of deceased's estate** - If any executor or administrator purchases, either directly or indirectly, any part of the estate of the deceased, the sale is voidable at the instance of any other person interested in the estate sold.

300. **Powers of several executors or administrators exercisable by one** - When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.

Illustrations

(i) One of several executors has power to release a debt due to the deceased.

(ii) One has power to surrender a lease.

(iii) One has power to sell the estate of the deceased whether movable or immovable.

(iv) One has power to assent to a legacy.

(v) One has power to endorse a promissory note payable to the deceased.

(vi) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

301. **Survival of powers on death of one of several executors or administrators** - Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the Will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor.

302. **Powers of administrator of effects unadministered** - The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

303. **Powers of administrator during minority** - An administrator during minority has all the powers of an ordinary administrator.

304. Powers of married executrix or administratrix - When a grant of probate or letters of administration has been made to a married person, she/he has all the powers of an ordinary executor or administrator.

Duties of an Executor or Administrator

305. As to deceased's funeral - It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to her/his condition, if she/he has left estate sufficient for the purpose.

306. Inventory and account -

(1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may appoint, exhibit in that court an inventory containing a full and true estimate of all the estate in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said court may appoint, exhibit an account of the estate, showing the assets which have come to her/his hands and the manner in which they have been applied or disposed of.

(2) The High Court may prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, she/he shall be deemed to have committed an offence under section 176 of the Indian Penal Code (Act no. 45 of 1860).

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of the Indian Penal Code (Act No. 45 of 1860).

307. Inventory to include estate in any part of India in certain cases - In all cases where a grant has been made of probate or letters of administration intended to have effect throughout India, the executor or administrator

shall include in the inventory of the effects of the deceased all her/his moveable and immoveable estate situate in India, and the value of such estate situate in each state shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the estate affected thereby wheresoever situate within India.

308. **As to estate of, and debts owing to, deceased** - The executor or administrator shall collect, with reasonable diligence, the estate of the deceased and the debts that were due to her/him at the time of her/his death.

309. **Expenses to be paid before all debts** - Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to her/his death, shall be paid before all debts.

310. **Expenses to be paid next after such expenses** - The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.

311. **Wages for certain services to be next paid, and then other debts** - Wages due for services rendered to the deceased within three months next preceding her/his death by any labourer, artisan or domestic servant shall next be paid, and then the other debts of the deceased according to their respective priorities (if any).

312. **Save as aforesaid, all debts to be paid equally and rateably** - Save as aforesaid, no creditor shall have a right of priority over another; but the executor or administrator shall pay all such debts as she/he knows of, including her/his own, equally and rateably as far as the assets of the deceased will extend.

313. **Application of moveable estate to payment of debts where domicile not in India** -

(1) If the domicile of the deceased was not in India, the application of

her/his moveable estate to the payment of her/his debts is to be regulated by the law of India.

(2) No creditor who has received payment of a part of her/his debt by virtue of sub-section (1) shall be entitled to share in the proceeds of the immoveable estate of the deceased unless she/he brings such payment into account for the benefit of the other creditors.

Illustration

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable estate to the value of 500,000 rupees, and immoveable estate to the value of 1,000,000 rupees, debts on instruments under seal to the amount of 1,000,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal received half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts have been discharged. This will leave 500,000 rupees which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

314. Debts to be paid before legacies - Debts of every description must be paid before any legacy.

315. Executor or administrator not bound to pay legacies without indemnity - If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

316. Abatement of general legacies - If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and, in the absence of any direction to the contrary in the Will, the executor has no right to pay one legatee in preference to another, or to retain any money on account of a legacy to herself/himself or to any person for whom she/he is a trustee.

317. Non-abatement of specific legacy when assets sufficient to pay debts - Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

318. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses - Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of her/his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted and if, after the fund is exhausted, part of the legacy still remains unpaid, she/he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

319. Rateable abatement of specific legacies - If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration

A has bequeathed to B a diamond ring valued at 50,000 rupees, and to C a motor vehicle, valued at 100,000 rupees. It is found necessary to sell all the effects of the testator; and his assets, after payment of debts, are only 100,000 rupees. Of this sum, rupees 33,333 are to be paid to B, and rupees 66,667 to C.

320. Legacies treated as general for purpose of abatement - For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Assent to a legacy by Executor or Administrator

321. Assent necessary to complete legatee's title - The assent of the executor or administrator is necessary to complete a legatee's title to her/his legacy.

Illustrations

(i) A by his Will bequeaths to B his Government paper which is in deposit with the State Bank of India. The Bank has no authority to

deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(ii) A by his Will has bequeathed to C his house in Dehradun in the tenancy of B. C is not entitled to receive the rents without the assent of the executor or administrator.

322. Effect of executor's assent to specific legacy -

(1) The assent of the executor or administrator to a specific bequest shall be sufficient to divest her/his interest as executor or administrator therein, and to transfer the subject of the bequest of the legatee, unless the nature or the circumstances of the estate require that it shall be transferred in a particular way.

(2) This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator.

Illustrations

(i) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(ii) The interest of a fund is directed by the Will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(iii) A bequest is made of a fund to A and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(iv) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(v) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

323. Conditional assent - The assent of an executor or administrator to a legacy may be conditional, and if the condition is one which she/he has a

right to enforce, and it is not performed, there is no assent.

Illustrations

(i) A bequeaths to B his lands of Roorkee, which at the date of the Will, and at the death of A, were subject to a mortgage for 500,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(ii) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

324. Assent of executor to her/his own legacy -

(1) When the executor or administrator is a legatee, her/his assent to her/his own legacy is necessary to complete her/his title to it, in the same way as it is required when the bequest is to another person, and her/his assent may, in like manner, be expressed or implied.

(2) Assent shall be implied if in her/his manner of administering the estate she/he does any act which is referable to her/his character of legatee and is not referable to her/his character of executor or administrator.

Illustration

An executor takes the rent of a house or the interest of Government securities bequeathed to him and applied it to his own use. This is assent.

325. Effect of executor's assent - The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

Illustrations

(i) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.

(ii) A bequeaths 100,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

326. Executor when to deliver legacies - An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration

A by his Will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

Payment and Apportionment of Annuities

327. Commencement of annuity when no time fixed by Will - Where an annuity is given by a Will and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

328. When annuity, to be paid quarterly or monthly, first falls due - Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.

329. Dates of successive payments when first payment directed to be made within a given time or on day certain: death of annuitant before date of payment -

(1) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the Will authorises the first payment to be made.

(2) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to her/his representative.

Investment of Funds to Provide for Legacies

330. Investment of sum bequeathed, where legacy, not specific, given for life - Where a legacy, not being a specific legacy, is given for life, the sum

bequeathed shall at the end of the year be invested in such securities as the High Court may by any general rule authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

331. Investment of general legacy, to be paid at future time: disposal of intermediate, interest -

(1) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 330.

(2) The intermediate interest shall form part of the residue of the testator's estate.

332. Procedure when no fund charged with, or appropriated to, annuity - Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in securities of the kind mentioned in section 330.

333. Transfer to residuary legatee of contingent bequest - Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on her/his giving sufficient security for the payment of the legacy, if it shall become due.

334. Investment of residue bequeathed for life, without direction to invest in particular securities - Where the testator has bequeathed the residue of her/his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 330 shall be converted into money and invested in such securities.

335. Investment of residue bequeathed for life, with direction to invest in specified securities - When the testator has bequeathed the residue of her/his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of her/his death invested in securities of the specified kind shall be converted into money and invested in such securities.

336. Time and manner of conversion and investment - Such conversion and investment as are contemplated by sections 334 and 335 shall be made at such times and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent per annum upon the market-value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested.

337. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on her/his behalf -

(1) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the Will to pay it to any person on her/his behalf, the executor or administrator shall pay or deliver the same into the court of the District Judge, by whom or by whose District Delegate the probate was, or letters of administration with the Will annexed were, granted to the account of the legatee.

(2) Such payment into the court of the District Judge shall be a sufficient discharge for the money so paid.

(3) Money when paid in under this section shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for her/his benefit, as the Judge may direct.

Produce and Interest of Legacies

338. Legatee's title to produce of specific legacy - The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception - A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations

(i) A bequeaths his flock of sheep to B. Between the death of A and

delivery by his executor the sheep are shorn or some of the ewes produce lambs. The wool and lambs are the estate of B.

(ii) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(iii) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them between the testator's death and A's completing 18, forms part of the residue.

339. Residuary legatee's title to produce of residuary fund - The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception - A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations

(i) The testator bequeaths the residue of his estate to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(ii) The testator bequeaths the residue of his estate to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

340. Interest when no time fixed for payment of general legacy - Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death.

Exception - (1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the

legatee, or has put herself/himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for her/his maintenance out of it, interest is payable from the death of the testator.

341. Interest when time fixed - Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception - Where the testator was a parent or a more remote ancestor of the legatee, or has put herself/himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance, or unless the Will contains a direction to the contrary.

342. Rate of interest - The rate of interest shall be six per cent per annum.

343. No interest on arrears of annuity within first year after testator's death - No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by Will for making the first payment of the annuity.

344. Interest on sum to be invested to produce annuity - Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Refunding of Legacies

345. Refund of legacy paid under court's orders - When an executor or administrator has paid a legacy under the order of a court, she/he is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

346. No refund if paid voluntarily - When an executor or administrator has voluntarily paid a legacy, she/he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

347. Refund when legacy has become due on performance of condition within further time allowed under section 131 - When the time

prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under section 131 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom she/he has paid it are liable to refund the amount.

348. **When each legatee compellable to refund in proportion** - When the executor or administrator has paid away the assets in legacies, and she/he is afterwards obliged to discharge a debt of which she/he had no previous notice, she/he is entitled to call upon each legatee to refund in proportion.

349. **Distribution of assets** - Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe for creditors and others to send in to her/him their claims against the estate of the deceased, she/he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as she/he knows of, and shall not be liable for the assets so distributed to any person of whose claim she/he shall not have had notice at the time of such distribution;

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same.

350. **Creditor may call upon legatee to refund** - A creditor who has not received payment of her/his debt may call upon a legatee who has received payment of her/his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of her/his death to pay both debts and legacies; and whether the payment of the legacy by the executor or administrator was voluntary or not.

351. **When legatee, not satisfied or compelled to refund under section 350, cannot oblige one paid in full to refund** - If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of her/his legacy, or who has been compelled to refund under section 350, cannot oblige one who has received payment in

full to refund, whether the legacy were paid to her/him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

352. **When unsatisfied legatee must first proceed against executor, if solvent** - If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of her/his legacy must, before she/he can call on a satisfied legatee to refund, first proceed against the executor or administrator if she/he is solvent; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

353. **Limit to refunding of one legatee to another** - The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration

A has bequeathed 24,000 rupees to B, 48,000 rupees to C, and 72,000 rupees to D. The assets are only 120,000 rupees and, if properly administered, would give 20,000 rupees to B, 40,000 rupees to C and 60,000 rupees to D. C and D have been paid their legacies in full leaving nothing to B. B can oblige C to refund 8,000 rupees, and D to refund 12,000 rupees.

354. **Refunding to be without interest** - The refunding shall in all cases be without interest.

355. **Residue after usual payments to be paid to residuary legatee** - The surplus or residue of the deceased's estate, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.

356. **Transfer of assets from India to executor or administrator in country of domicile for distribution** - Where a person not having her/his domicile in India has died leaving assets both in India and in the country in which she/he had her/his domicile at the time of her/his death, and there has been a grant of probate or letters of administration in India with

respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in India, after having given such notices as are mentioned in section 349, and after having discharged, at the expiration of the time therein named, such lawful claims as she/he knows of, may, instead of herself/himself distributing any surplus or residue of the deceased's estate to persons residing out of India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to her/him for distribution to those persons.

Liability of an Executor or Administrator for Devastation

357. **Liability of executor or administrator for devastation** - When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, she/he is liable to make good the loss or damage so occasioned.

Illustrations

(i) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(ii) The deceased had a valuable lease renewable by notice which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(iii) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

358. **Liability of executor or administrator for neglect to get any part of estate** - When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the estate of the deceased, she/he is liable to make good the amount.

Illustrations

(i) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(ii) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate. The executor is liable to make good the amount.

Chapter – 6

Succession Certificates

359. Court having jurisdiction to grant certificate - The District Judge within whose jurisdiction the deceased ordinarily resided at the time of her/his death, or, if at that time she/he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the estate of the deceased may be found, may grant a certificate under this Chapter.

360. Application for certificate -

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (Act No. 5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely –

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of her/his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the estate of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under any provision of this Part or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that

person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (Act No. 45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

361. Procedure on application -

(1) If the District Judge is satisfied that there is ground for entertaining the application, she/he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing –

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to her/him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, she/he may nevertheless grant a certificate to the applicant if she/he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

362. Contents of certificate - When the District Judge grants a certificate, she/he shall therein specify the debts and securities set forth in the

application for the certificate, and may thereby empower the person to whom the certificate is granted –

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

363. Requisition of security from grantee of certificate -

(1) The District Judge shall in any case in which she/he proposes to proceed under sub-section (3) or sub-section (4) of section 361, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom she/he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by her/him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Judge may, on application made by petitioner and on cause shown to her/his satisfaction, and upon such terms as to security, or providing that the money received be paid into court, or otherwise, as she/he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in her/his own name as if it had been originally given to her/him instead of to the Judge of the court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

364. Extension of certificate -

(1) A District Judge may, on the application of the holder of a certificate under this Chapter, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer

of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 363 may be required, in the same manner as upon the original grant of a certificate.

365. Forms of certificate and extended certificate - Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in Schedule - 7.

366. Amendment of certificate in respect of powers as to securities - Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered her/him to receive interest or dividends on, or to negotiate or transfer, the security the Judge may, on application made by petitioner and on cause shown to her/his satisfaction, amend the certificate by conferring any of the powers mentioned in section 362 or by substituting any one for any other of those powers.

367. Mode of collecting court-fees on certificates -

(1) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-Fees Act, 1870 (Act No. 7 of 1870), in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

368. Local extent of certificate - A certificate under this Chapter shall have effect throughout India.

369. Effect of certificate - Subject to the provisions of this Chapter, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any defect, afford full indemnity to all such persons as regards all payments

made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

370. Revocation of certificate - A certificate granted under this Chapter may be revoked for any of the following causes, namely -

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

371. Appeal -

(1) Subject to the other provisions of this Chapter, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Chapter, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (Act No. 5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (Act No. 5 of 1908),

as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

372. **Effect on certificate of previous certificate, probate or letters of administration** - Save as provided by this Part, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

373. **Validation of certain payments made in good faith to holder of invalid certificate** - Where a certificate under this Chapter has been superseded or is invalid by reason of the certificate having been revoked under section 370, or by reason of the grant of a certificate to a person named in an appellate order under section 371, or by reason of a certificate having been previously granted, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate.

374. **Effect of decisions under this Chapter, and liability of holder of certificate thereunder** - No decision under this Chapter upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Chapter shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

375. **Investiture of inferior courts with jurisdiction of District Court for purposes of this Chapter-**

(1) The State Government may by notification in the Uttarakhand Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Chapter.

(2) Any inferior court so invested shall, within the local limits of its

jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Chapter upon the District Judge, and the provisions of this Chapter relating to the District Judge shall apply to such an inferior court as if it were a District Judge:

Provided that an appeal from any such order of an inferior court as is mentioned in sub-section (1) of section 371 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if she/he thinks fit, by her/his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (Act No. 5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Chapter from an inferior court, and may either herself/himself dispose of them or transfer them to another such court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior court specially or any class of such courts in any local area.

(6) Any civil court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a court inferior in grade to a District Judge.

376. Surrender of superseded and invalid certificates -

(1) When a certificate under this Chapter has been superseded or is invalid from any of the causes mentioned in section 373, the holder thereof shall, on the requisition of the court which granted it, deliver it upto that court.

(2) If she/he wilfully and without reasonable cause omits so to deliver it up, she/he shall be punishable with fine which may extend to ten thousand rupees, or with imprisonment for a term which may extend to three months or with both.

Chapter – 7

Miscellaneous

377. Saving - Nothing in Chapter-2 of this Part shall authorise a testator to –

(a) bequeath estate which she/he could not have alienated *inter vivos*;

(b) deprive any persons of any right of maintenance of which she/he could not otherwise deprive them by Will.

Part – 3

Live-in Relationship

378. Submission of statement by partners to a live-in relationship -

(1) It shall be obligatory for partners to a live-in relationship within the State, whether they are residents of Uttarakhand or not, to submit a statement of live-in relationship under sub-section (1) of section 381 to the Registrar within whose jurisdiction they are so living.

(2) Any resident(s) of Uttarakhand staying in a live-in relationship outside the territory of the State may submit a statement of live-in relationship under sub-section (1) of section 381 to the Registrar within whose jurisdiction such resident(s) ordinarily resides.

379. Children of a live-in relationship - Any child of a live-in relationship shall be a legitimate child of the couple.

380. When live-in relationships not to be registered- A live-in relationship between two persons shall not be registered-

(1) where the partners are within the degrees of prohibited relationship as defined under clause (d) of sub-section (1) of section 3:

Provided that the prohibitions will not apply to person(s) whose customs and usage permit the relationship, if it were a marriage;

Provided further that such customs and usage are not against the public policy and morality: or

(2) where at least one of the persons is married or is already in a live-in relationship: or

(3) where at least one of the persons is a minor: or

(4) where the consent of one of the partners was obtained by force, coercion, undue influence, misrepresentation or fraud as to any material fact or circumstance concerning the other partner, including her/his identity.

381. Procedure for registration of live-in relationship -

(1) Partners in a live-in relationship, or persons intending to enter into a live-in relationship, shall submit a statement of live-in relationship to the Registrar concerned in such format and in such manner as may be prescribed.

(2) The Registrar shall examine the contents of the statement of live-in relationship so submitted and satisfy herself/himself by conducting a summary inquiry that the live-in relationship is not of such a kind as is mentioned under section 380.

(3) In conducting summary inquiry under sub-section (2), the Registrar may summon the partners/persons or any other person for verification in the prescribed manner and require the partners/persons to supply additional information or evidence, if necessary.

(4) After conducting such summary inquiry as may be deemed appropriate, the Registrar shall, within thirty days of the receipt of the statement of live-in relationship under sub-section (1), either-

(a) enter such statement in a prescribed register for registering the live-in relationship, and issue a registration certificate in the prescribed format to the partners/persons; or

(b) refuse to register such statement, in which case the Registrar shall inform the partners/persons of the reasons in writing for such refusal.

382. Registration under this Part only for record - Registration regarding live-in relationship under clause (a) of sub-section (4) of section 381 shall be only for the purposes of record.

383. Empowerment of Registrar under this Part, and maintenance of registers-

(1) The State Government may, by notification in the Uttarakhand Gazette, empower a Registrar appointed under Part-1 to act as Registrar under this Part.

(2) The Registrar shall maintain registers for statements of live-in relationships and statements of termination of live-in relationships and such other registers and in such manner as may be prescribed.

384. Submission of statement of termination of live-in relationship - Both partners to a live-in relationship, or either of them, may terminate it and submit a statement of termination in the prescribed format and in the prescribed manner to the Registrar within whose jurisdiction such resident(s) ordinarily resides, and provide a copy of such statement to the other partner in case only one of the partners terminates the live-in relationship.

385. Duties of Registrar -

(1) Any statement of live-in relationship submitted under sub-section (1) of section 381 shall be forwarded by the Registrar to the officer-in-charge of the local police station for record, and in case either of the partners is less than twenty-one years of age, also inform the parents/guardians of such partner(s).

(2) If the Registrar comes to the conclusion that the relationship is of such a kind as is mentioned under section 380, or that the contents of the statement under sub-section (1) of section 381 are incorrect or suspicious, she/he shall inform the officer-in-charge of the local police station for appropriate action.

(3) On any statement of termination being submitted under section 384 by one partner to a live-in relationship, the Registrar shall inform the other partner about such statement, and in case either of the partners is less than twenty-one years of age, also to the parents/guardians of such partner(s).

386. Notice for registration of live-in relationship - Where any partner(s) to a live-in relationship has failed to submit the statement of such relationship, the Registrar, either of her/his own motion or on receipt of a complaint or information in this regard, shall by notice require such partner(s) to submit a statement in a prescribed manner within thirty days from the date of receipt of such notice. On such statement being submitted, the Registrar shall act in accordance with the procedure laid down in the preceding provisions.

387. Offences and punishment -

(1) Whoever stays in a live-in relationship for more than one month from

the date of entering into such relationship without submitting the statement of such relationship under sub-section (1) of section 381 shall be punished on conviction by a Judicial Magistrate with imprisonment for a term which may extend to three months or with fine not exceeding ten thousand rupees or with both.

(2) Any person who makes any averment in the statement of live-in relationship submitted under sub-section (1) of section 381 which is false and which she/he knows or has reason to believe to be false, or withholds any material fact therefrom affecting the decision of the Registrar whether to register such live-in relationship or refuse to do so, shall be punishable with imprisonment for a term which may extend to three months, or with fine not exceeding twenty-five thousand rupees, or with both.

(3) Any partner to a live-in relationship who fails to submit the statement of live-in relationship on being required by a notice to do so under section 386 shall be punished on conviction by a Judicial Magistrate with imprisonment for a term which may extend to six months or with fine not exceeding twenty-five thousand rupees or with both.

388. **Maintenance** - If a woman gets deserted by her live-in partner, she shall be entitled to claim maintenance from her live-in partner for which she may approach the competent Court having jurisdiction over the place where they last cohabited, and in such a case the provisions contained in Chapter - 5, Part - 1 of this Code shall *mutatis-mutandis* apply.

389. **Power to make rules-** The State Government may, by notification in the Uttarakhand Gazette, make rules for carrying out the purposes of this Part.

Part – 4

Miscellaneous

390. Repeal and Savings -

(1) Subject to the provisions of section 2 of this Code, any law (statutory or otherwise), practice, custom or usage in force in the State immediatly before the commencment of this Code relating to the matters covered by this Code, shall cease to have effect within the territory of the State, in so far as they are inconsistent with any of the provisions contained in this Code.

(2) Nothing contained in this Code shall affect any right, responsibility or obligation accrued or proceedings initiated under any law for the time being in force prior to the commencment of this Code relating to the matters covered by this Code, such proceedings shall continue as per the law (statutory or otherwise), practice, custom or usage existing on the date of commencment of this Code.

(3) For removal of doubts, The Uttarakhand Compulsory Registration of Marriage Act, 2010 (Uttarakhand Act No, 19 of 2010) is hereby repealed.

391. Power to make rules -

(1) The State Government may, by notification in the Uttarakhand Gazette, make rules for carrying out the purposes of this Code.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely –

(a) facilitating the processes by putting in place electronic and digital systems, and allowing parties to make submissions and applications through designated web portals;

(b) facilitation and encouragement of registration of marriages including compulsory registration for availing benifits under government sponsored welfare schemes; and

(c) any other matter which is required to be, or may be, prescribed or provided for by rules.

392. Power to remove difficulties -

(1) If any difficulty arises in giving effect to the provisions of the Code, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period two years from the commencement of this Code.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly.

Schedule - 1
[See Section 3(1)(d)]
Lists of Prohibited Relationships

List - 1

1. Mother.
2. Father's widow (step-mother).
3. Mother's mother.
4. Mother's father's widow (step grand-mother).
5. Mother's mother's mother.
6. Mother's mother's father's widow (step great grand-mother).
7. Mother's father's mother.
8. Mother's father's father's widow (step great grand-mother).
9. Father's mother.
10. Father's father's widow (step-grand mother).
11. Father's mother's mother.
12. Father's mother's father's widow (step great grand-mother).
13. Father's father's mother.
14. Father's father's father's widow (step great grand-mother).
15. Daughter.
16. Son's widow.
17. Daughter's daughter.
18. Daughter's son's widow.
19. Son's daughter.
20. Son's son's widow.
21. Daughter's daughter's daughter.
22. Daughter's daughter's son's widow.
23. Daughter's son's daughter.
24. Daughter's son's son's widow.

25. Son's daughter's daughter.
26. Son's daughter's son's widow.
27. Son's son's daughter.
28. Son's son's son's widow.
29. Sister.
30. Sister's daughter.
31. Brother's daughter.
32. Mother's sister.
33. Father's sister.
34. Father's brother's daughter.
35. Father's sister's daughter.
36. Mother's sister's daughter.
37. Mother's brother's daughter.

Explanation - For the purposes of this Part, the expression "widow" includes a divorced wife.

List - 2

1. Father.
2. Mother's husband (step-father).
3. Father's father.
4. Father's mother's husband (step grand-father).
5. Father's father's father.
6. Father's father's mother's husband (step great grand-father).
7. Father's mother's father.
8. Father's mother's mother's husband (step great grand-father).
9. Mother's father.
10. Mother's mother's husband (step grand-father).
11. Mother's father's father.
12. Mother's father's mother's husband (step great grand-father).

13. Mother's mother's father.
14. Mother's mother's mother's husband (step great grand-father).
15. Son.
16. Daughter's husband.
17. Son's son.
18. Son's daughter's husband.
19. Daughter's son.
20. Daughter's daughter's husband.
21. Son's son's son.
22. Son's son's daughter's husband.
23. Son's daughter's son.
24. Sen's daughter's daughter's husband.
25. Daughter's son's son.
26. Daughter's son's daughter's husband.
27. Daughter's daughter's son.
28. Daughter's daughter's daughter's husband.
29. Brother.
30. Brother's son.
31. Sister's son.
32. Mother's brother.
33. Father's brother.
34. Father's brother's son.
35. Father's sister's son.
36. Mother's sister's son.
37. Mother's brother's son.

Explanation - For the purposes of this part, the expression "husband" includes a divorced husband.

Schedule - 2
[See Section 49]
Lists of Heirs for Succession

Class - 1

1. Son.
2. Daughter.
3. Widow.
4. Mother and father.
5. Son of a predeceased son.
6. Daughter of a predeceased son.
7. Son of a predeceased daughter.
8. Daughter of a predeceased daughter.
9. Widow of a predeceased son.
10. Son of a predeceased son of a predeceased son.
11. Daughter of a predeceased son of a predeceased son.
12. Widow of a predeceased son of a predeceased son.
13. Son of a predeceased daughter of a predeceased daughter.
14. Son of a predeceased daughter of a predeceased son.
15. Son of a predeceased son of a predeceased daughter.
16. Daughter of a predeceased daughter of a predeceased daughter.
17. Daughter of a predeceased son of a predeceased daughter.
18. Daughter of a predeceased daughter of a predeceased son.

Class -2

Entry I.	(1) Brother.
	(2) Sister.
Entry II.	(1) Brother's son.
	(2) Sister's son.
	(3) Brother's daughter.
	(4) Sister's daughter.
Entry III.	(1) Father's father.
	(2) Father's mother.
Entry IV.	(1) Father's widow (Step mother).
	(2) Brother's widow.
Entry V.	(1) Father's brother.
	(2) Father's sister.
Entry VI.	(1) Mother's father.
	(2) Mother's mother.
Entry VII.	(1) Mother's brother.
	(2) Mother's sister.

Schedule - 3

[*See* section 265(2)]

Form of Certificate

I, ..., Judge of the District of ....., hereby certify that on the ..... day of ....., the ..... court granted probate of the Will (or letters of administration of the estate) of A.B. of ..... (deceased) to C.D. of ..... and E.F. of ....., and that such probate (or letters) has (or have) effect over all the estate of the deceased throughout India.

Schedule - 4

[*See* section 275(4)]

Form of Caveat

Let nothing be done in the matter of the estate of A. B. of ..... (deceased), who died on the ..... day of ..... at ....., without notice to C.D. of .....

Schedule - 5

(*See* section 280)

Form of Probate

I, ..., Judge of the District of ..... [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that on the ..... day of ..... in the year ....., the last Will of ..... (deceased) of ....., a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the estate and credits of the said deceased, and in any way concerning her/his Will was granted to ....., the executor in the said Will named, she/he having undertaken to administer the same, and to make a full and true inventory of the said estate and credits and exhibit the same in this court within six months from the date of this grant or within such further time as the court may, from time to time, appoint, and also to render to this court a true account of the said estate and credits within one year from the same date, or within such further time as the court may, from time to time, appoint.

Schedule - 6

(*See* section 281)

Form of Letters of Administration

I, ..., Judge of the District of ..... [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that on the ..... day of ..... letters of administration (with or without the Will annexed, as the case may be) of the estate and credits of ..... (deceased) of ..... were granted to ....., the ..... (relation, if any) of the deceased, she/he having undertaken to administer the same and to make a full and true inventory of the said estate and credits and exhibit the same in this court within six months from the date of this grant or within such further time as the court may, from time to time, appoint, and also to render to this court a true account of the said estate and credits within one year from the same date, or within such further time as the court may, from time to time, appoint.

Schedule - 7

(*See* section 365)

Forms of Certificate and Extended Certificate

In the court of

To A. B.

Whereas you applied on the ..... day of ..... for a certificate under Chapter-6 of Part-2 of the Uniform Civil Code of Uttarakhand, 2023, in respect of the following debts and securities, namely:

Debts

Serial Number	*Name of Debtor*	*Amount of debts, including interest on date of application for certificate*	*Description and date of instrument, if any, by which the debt is secured*

Securities

Serial number	*Description*			*Market-value of security on date of application for certificate*
	Distinguishing number or letter of security	*Name, title or class of security*	*Amount or par value of security*	

This certificate is accordingly granted to you and empowers you to collect those debts *and to receive interest on dividends to negotiate to transfer those securities.*

Dated this ..... day of .....

District Judge

In the court of

On the application of A. B. made to me on the ..... day of ....., I hereby extend this certificate to the following debts and securities, namely:

Debts

Serial Number	*Name of Debtor*	*Amount of debts, including interest on date of application for certificate*	*Description and date of instrument, if any, by which the debt is secured*

Securities

Serial number	*Description*			*Market-value of security on date of application for certificate*
	Distinguishing number or letter of security	*Name, title or class of security*	*Amount or par value of security*	

This extension empowers A. B. to collect those debts and to ***receive interest on dividends to negotiate to transfer those securities.***

Dated this ..... day of .....

District Judge

DHANANJAY CHATURVEDI,

Principal Secretary.

पी0एस0यू0 (आर0ई0) 03 विधायी / 152–2024–100+500 (कम्प्यूटर / रीजियो)।