

Frequently Asked Questions (FAQs)

WILL

1) What is 'Will'?

a) Will is a document which states the manner of distribution of one's property after his / her death.

2) Why a person makes 'Will'?

a) Ordinarily, a person makes a Will when he wants to distribute his property in a different manner than what is provided for in the Act applicable to him.
E.g. Hindu Succession Act.

3) What happens if a person does not make a Will?

a) If a person does not prepare a Will, his property will be distributed to the Legal Heirs as provided in the Personal Law applicable to him. i.e. Hindu Succession Act, Mohmadan Law etc.

4) Which properties can be / can not be distributed by way of a will ?

a) Self- acquired property, his own property, Hereditary rights such as rights of worship as Pujari, annuity, contractual rights can be distributed by way of Will. Somebody else's property, tenanted property, hereditary property (except his share in it) can not be given by way of Will.

5) Are there any categories of Heirs under the Hindu Succession Act? What is the main difference between them?

a) Yes. There are two categories of Heirs. Class-I and Class-II categories of Legal Heirs. Class-I heirs are given preference in distribution of assets. If there is not a single person in Class-I category of legal heirs, then only the assets are available for distribution to Class-II category of the Legal Heirs.

6) Which persons come in Class- I of the Legal Heirs and which persons fall in Class-II of the Legal Heirs?

a) There is a list of Legal Heirs described in the Schedule to the Hindu Succession Act, 1956. It is a long list, however it is briefly described below : (In case of males)

Class – I . Son, Daughter, Widow, mother, son/daughter of a pre-deceased son, son / daughter of a pre-deceased daughter etc.

Class- II. Father, Brother, Sister, Father's father (Grand Father), Father's mother (Grand Mother) etc.

7) How is the property distributed among all the Legal Heirs of Class – I ? Does every one gets equal share?

a) No. Section : 10 of the Act describes the method of distribution. Briefly speaking, (i) Widow gets one share, (ii) mother, son and daughter all together get one share; (iii) the Legal heirs in the branch of pre-deceased sons / daughters (if any) get one share. Though this method of distribution is put in very simple words for understanding, it becomes little complicated when there are different types of legal heirs.

8) Please explain the words like 'Executor', 'Administrator' 'Letter of Administration' and 'Probate'.

a) 'Executor' is a person who is appointed by a testator (who makes the will) for distribution of assets as per his conditions in the will.

'Administrator' : If a person making a Will does not appoint an Executor in his Will, then the Court appoints a person to distribute his assets as per Will. He is known as 'Administrator'.

'Letter of Administration' It is a letter of authority given by the Court to the Administrator .

'Probate' It is a document issued by the Court certifying the authenticity / genuineness of the will.

9) Explain the various provisions about 'Probate'. Is it compulsory to obtain probate from the court?

a) The following important provisions about the probate may be noted.

a) If a person making a will is either a Hindu or Buddha or Sikh or Jain and he has made the will in the area falling within the Original Civil Jurisdiction of the High Courts of Mumbai, Chennai and Kolkata, then it is compulsory for his executor to obtain Probate.

b) If a person making a will is Parsi and he made the will in the area falling within the Original Civil Jurisdiction of the High Court Mumbai, Chennai and Kolkata, then it is compulsory for his executor to obtain Probate.

c) If such persons referred in cause (a) & (b) have made their will in the area other than above, but the said will is in connection with the property situated in the areas mentioned above, then it is compulsory for the Executor to obtain Probate.

d) If a will is made in the area other than above (i.e. Mumbai, Chennai and Kolkata) and is in connection with the property situated in the area other than above (i.e. Mumbai, Chennai and Kolkata), then it is not compulsory to obtain Probate. E.g. If a will is made in Ahmedabad, Pune or Vadodara and pertains to the properties in these cities, then it is not compulsory to obtain probate.

e) It is not compulsory for Mohammedans to obtain probate.

- f) There is no time limit to make application for obtaining probate.
 - g) Ordinarily, it takes at least 6 months to one year to obtain probate after making application.
 - h) One has to pay Court fee to obtain probate which is calculated on the basis of the market value of the property and Rs. 75,000/- (Rupees Seventy Five Thousand Only) is the maximum amount of Court fee payable on the application for probate.
- 10) If a person writes in his will “My house should be given to elder nephew Mr. A“ .However, Mr. A is not his elder nephew, but he is the younger nephew, whereas elder nephew is Mr. B To whom that house will be given after death of the person making will?
- a) Since the person making will has specified the beneficiary by his name i.e. Mr. A, the mistake of description shall not invalidate the will and Mr. A only shall get the property.
- 11) A will is attested by two witnesses. However, under the provisions of the will, one witness gets some benefit. Under the circumstances, will it be correct to say that since one of witnesses is beneficiary under the will, is attested by only one witness and hence not properly executed?

a) No, it will not be correct to say that the will is not properly executed. However, the benefit given to the witness shall stand cancelled.

12) Mr. A is appointed as an Executor under a will. He is also a beneficiary under the will (i.e. he gets some property under the will). Can Mr. A lawfully accept the property given under the will?

a) An Executor can be beneficiary under the will and he can lawfully accept whatever he receives under the will.

13) Under what circumstances a Will can be declared illegal?

a) Few of the circumstances under which a Will can be declared illegal are as follow:

a) If a Will is made under the influence of liquor or drugs.

b) If a person signs on blank paper and some other person makes will on that blank paper and person who has signed such blank paper has no knowledge about such will.

c) If a will is made by a person under threat of physical injury or death by other person.

d) If the original pages of the will are removed/ changed or replaced by someone.

14) Can a tenant of the premises give away his tenanted premises by way of will? In case, he can not, than why?

a) A tenant of the premises can not give away his tenanted premises by way of will because there are clear provisions in the Bombay Rent Act about transfer of tenancy rights after death of a tenant. Moreover, since a tenant can not transfer his tenancy rights during his life time, how can he make provision for their transfer after his death.

15) How are the tenancy rights transferred after death of a tenant?

a) As per the provisions of the Bombay Rent Act, the tenancy rights of residential premises are transferred in the following manner after the death of tenant:

a) If a member of the tenant's family was residing with the tenant at the time of his death, then tenancy rights are transferred to him/her;

b) If none of the family members of the tenant was residing with him at the time of his death, than one of the legal heirs of the tenant as agreed upon by all other legal heirs gets the tenancy rights;

c) If there is no agreement as referred in the earlier paragraph, than the court decides about the legal

heir to whom the tenancy rights are to be transferred.

NOMINEE (SOME IMPORTANT FACTS)

1) Who is nominee?

a) Nominee is a person who has been appointed by you to receive your assets after your death.

2) What is 'nomination'?

a) Nomination is a process whereby a person is authorized to receive your assets after your death.

3) Does he automatically become owner of my properties / assets after my death?

a) No. He does not become owner of your properties / assets after your death. He is only a trustee / custodian of your properties / assets.

4) What are the rights / duties of a Nominee?

a) It is the job / duty of a nominee to distribute the assets of a deceased person according to his will or if the will is not prepared, according to the personal succession law (such as Hindu Succession Act) of the deceased person.

- 5) Are there any exceptions to above rule that 'Nominee is not the owner and he is only a trustee / custodian of the assets' for the Legal Heirs?
- a) Yes. There are only two exceptions. One is under EPF i.e. Employee's Provident Fund Act, wherein the nominee is the owner of the amount lying to the credit of the Provident Fund Account. Under this act, only family members can be appointed as the nominee. If you do not have family, then other person may be appointed. However, as soon as you have family, the earlier nominee is to be replaced by a family member/s. You can appoint more than one family members as your nominees and distribute the amount in any proportion as you wish. Second exception is the equity shares held by you in the Companies. Under the Companies Act, a person appointed by you shall become the owner of the equity shares on your death.

- 6) Any precaution to be taken while appointing a nominee?
- a) Yes. You have to be careful while appointing a nominee particularly in case of 'EPF Account' and 'Equity Shares' held by you in the Company because even your legal heirs will not be able to challenge the ownership of the nominee in above two cases i.e. EPF Account and Shares in the company.

7) What about the amount lying in the Bank Accounts and FDs etc?

a) In these cases also, the nominee is simply the trustee / custodian for the legal heirs and he does not have ownership right over the amount in the bank / FDs.

8) Some people say that there is a Supreme Court Order declaring the nominee as the owner of the flat in co-operative Society. What is the fact?

a) The Supreme Court order needs to be read carefully. It permits the society to register the name of nominee in the share certificate issued by the society, it does not make him owner. A nominee must transfer the flat to the legal heirs of the deceased.

RECOVERY OF YOUR DUES / LOANS GIVEN BY YOU.

1. If I have given loan to some one or if I have to receive money from someone for supply of goods, how can I recover?
 - a. If your claim is supported by proper documents, it is advisable to file 'Summary Suit' for recovery of your money from the Debtor.

2. But, this Summary Suit will take lot of time, is it not?
 - a. This is a Civil suit, but as compared to other civil suits, it will not take more time. If your debtor (a person from whom you have to receive money) does not raise any objection, than you shall get the decree in few hearings only.

3. What will be the status if the debtor has given me a cheque and the said cheque has bounced?
 - a. There would be two scenarios in this case. **Number 1.** If you have to receive money for supply of goods / services and the cheque given by your purchaser / debtor has bounced, then you can file a case popularly known as '138 case' or 'cheque bouncing case'. This is a complaint filed in the criminal court under the Negotiable Instruments Act and you can recover your money within reasonably short time. **Number 2.** If you had given loan to someone and

the cheque issued by your debtor for repayment of loan has bounced, then you shall not succeed in 138 case if your debtor proves that 'giving loan was your business' and you do not have money lending license. However, the outcome will change, if the loan given by you was 'a friendly loan' and it was not your business to give loans to people.

4. When you say that I should have proper documents for claiming amount, what documents should I prepare while supplying goods to my customers?
 - a. You should try to have the following or majority of the following documents : (i) Purchase Order from your customer; (ii) Delivery Challan or proof of delivery of goods to your customers duly signed by him; (iii) Your Invoice duly received by your customer; (iv) Any type or sort of confirmation from your buyer that he has no dispute as regards quantity, quality and rates of goods supplied to him, will be advisable. (Proof of delivery or delivery challan shall take care of quantity part. Purchase Order shall take care of rate of goods. Inspection Report / Acceptance of Invoice without any objection shall take care of your quality part also); (v) If your customer does not pay on due date, please follow up with him in writing / through letter /e-mail / WhatsApp / text messages etc. for your payment; (vi) If he does not pay even after sending

the above reminders, then send him a legal notice for payment.

VEHICLE ACCIDENTS AND CLAIMS RELATED THERETO.

Q:1. What are the various types of insurance cover available pertaining to vehicle accident?

A:1. Take a hypothetical case of you meeting with an accident. The following consequences might result.

You:

- a) On your demise, your legal heirs get the amount mentioned as Capital Sum Assured in the policy, provided you have taken Comprehensive Insurance Policy.
- b) If you are seriously injured which results into your total or partial disablement, then you get certain percentage of Capital Sum Assured mentioned in the policy provided you have taken Comprehensive Insurance Policy.
- c) If you are not seriously injured, but you have suffered fractures etc and need to be hospitalized for few days / weeks and thereafter you resume your work. In such a scenario, you do not get anything if these injuries are not covered in the policy. The best option for you is to stake claim under your mediclaim or other policies offering similar benefits OR if you have met with an accident with another vehicle, you are a third party for the owner of that vehicle and you can claim your medical expenses and compensation from the Insurance company which has insured that other vehicle.

YOUR CAR: If your car is damaged, you do get the reimbursements of repairing charges depending on the parts replaced and age of your car, provided you have taken Comprehensive Insurance Policy.

YOU INJURE A PEDESTRIAN OR DRIVER OF ANOTHER VEHICLE:

When you injure a pedestrian or driver of another vehicle, you incur a civil liability (financial liability) to give him compensation. You are required to reimburse medical expenses incurred by the insured person and even the loss of income suffered by him during his hospitalization. This liability of yours is popularly known as Third Party Liability. You can get insurance cover against this liability from insurance company. In fact, it is compulsory to take this insurance cover. This cover is available under both the policies i.e. Liability only policy and Comprehensive Insurance Policy.

Q:2. While walking on the road if a vehicle dashes me resulting into injuries and subsequent hospitalization, how can I recover medical expenses incurred by me?

A:2. You are a third party as far as the vehicle owner and his insurance company is concerned. You are eligible to get reimburse of medical expenses and loss of your income during your stay in the hospital from the insurance company of the vehicle involved in the accident.

Q:3. What is the procedure to be followed to get about above claim? Where do I have to file my application and what are the documents to be attached with the claim application?

A:3. You have to file claim with MACT. i.e. Motor Accidents Claims Tribunal. MACT deals with matters related to **compensation of motor accidents** victims or their next of kin. The Tribunal deals with claims relating to loss of life/ property and injury cases resulting from Motor Accidents.

MACT Courts are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

Victim himself or his advocate in case of personal injury can file the claim. In case of minor applicant his/her advocate can file the claim. If the victim had died, then his/her Legal heirs themselves or through advocate can file the claim. If the property is damaged then the owner of the vehicle/property can file the claim.

The following documents should be enclosed along with the petition / application for claim.

1. Copy of the FIR registered in connection which said accident, if any.
2. Copy of the MLC / Post Mortem Report / Death Report as the case may be.

3. The documents of the identity of the claimants and of the deceased in a death case.
4. Original bills of expenses incurred on the treatment along with treatment record.
5. Documents of the educational qualification of the deceased, if any.
6. Disability Certificate, if already obtained, in an injury case.
7. The proof of income of the deceased / injured.
8. Documents about the age of the victim.
9. The cover note of the third party insurance policy, if any.
10. An affidavit detailing the relationship of the claimants with the deceased.

Q:4. If my car driven by my driver meets with an accident, will I be responsible for any liability arising out of the said accident?

A:4. Yes, you, being the employer of the driver, shall be responsible for his actions. Your driver has only vicarious liability.

Q:5. While driving my vehicle, without any of my fault, an accident takes place and a pedestrian dies or is severely injured, will he still get money from the insurance company and what will be my liability?

A:5. Under such circumstances, the victim or his legal heirs are given interim relief (payment) without verifying as to who was at fault. If a pedestrian dies, his legal heirs get Rs. 50,000/- as interim compensation without verifying as to who was at fault. This is also known as payment on 'No Fault' basis. Similarly, if a pedestrian is grievously injured, he gets Rs. 25,000/- as interim compensation. To get this compensation, what is required to be established is (a) Accident was by the offending vehicle; (b) Offending vehicle was insured; (c) Death or grievous injuries have been caused. After making this interim payment, the claim petition will be taken up by the MACT. It may be noted that the insurance companies can escape their liability to make payment on the following grounds alone i.e. (a) Use of vehicle for hire and reward which is not permitted for such vehicle (b) Use of vehicle for organizing racing and speed testing; (c) Use of transport vehicle not allowed by permit (d) Driver not holding valid driving license or have been disqualified for holding such license. (e) Policy taken is void as the same is obtained by non-disclosure of material fact (f) if the vehicle is used outside the geographical limits mentioned in the policy. (g) Other circumstances mentioned in the policy which specifically exclude the liability of the insurance company. Only under above circumstances, the insurance company shall not be liable to make payment. However, when the Insurance Company is not liable to

make payment, you are liable to make payment to the victim/ his legal heirs.