LAW OF SUCCESSION

INTRODUCTION

- **Background and Context:**
  - Rights and duties are held by the human person from birth to death [Civil Code Art 1]
  - Law of Succession is all about the devolution of the private rights and duties of a deceased person
  - The law of succession deals with the rules which apply to the division or distribution of the estate of a person when they die.
  - It belongs to the private law category

Description of the Course

- The Course is a study of how Law of Successions regulates the devolution of the succession of a deceased person.
- These rights and duties are generally of proprietary nature.
- The successors are mostly the deceased's next of kin. Why?
- It is intertwined with many other branches of law including the laws of family, property, contracts, and the constitution.

- It strives to strike a balance between: freedom of the deceased to dispose of her property vs. rights of successors and creditors
- Succession: testate vs. intestate
- Liquidation of succession
- Partition of property of inheritance

General Course Objectives:

- Discuss the meaning, time, place, and manner of opening of succession;
- Identify those things that make up the inheritance of a dead person and those that do not;
- Enumerate the kinds of successions recognized by law;
- Elaborate the meaning of capacity to succeed and the conditions required therefore;

- Discuss the meaning of intestate succession;
- Enumerate, in order of their preference, the persons called to the succession of a person who had died intestate;
- Discuss about the power of a person to dispose of her property after her death;
- Name the kinds of wills recognized by the Law, and discuss the validity requirements attached to each;

- Elaborate the possible grounds for the partial or full invalidation of a will;
- State the legal methods to prove the existence and contents of a will;
- Internalize the meaning of liquidation of a succession;
- Explain the appointment and the powers and duties of a liquidator;
- Identify the types and modes of payment of debts of a succession;
- Discuss the meaning and execution of partition;

- Understand the nature of conventions relating to an inheritance and explain the rationale for the prohibition of pacts on future successions; and
- Fully appreciate and help enforce the rights of women and children with respect to succession.

CHAPTER ONE
DEVOLUTION OF SUCCESSION

Subtopics of this Chapter:

- **General Principles of Devolution**
- **Intestate Succession**
- **Testate Succession (Wills) 0939314935**

I. General Matters of Devolution

❖ The Concept of Succession

➢ What is succession?

- "the entitlement by one or more persons to the legal patrimonial relationships of a deceased person and the consequent restitution of the assets that used to belong to that person." (Civil Code Art 1888)
- The act or right of legally or officially taking over a predecessor's office, rank, or duties.

- The acquisition of rights or property by inheritance under the laws of descent and distribution.[Blacks Law Dictionary 9th Ed]
- Passing of property or legal rights after death. [The law.com]
- Three types of succession:
- Testate; Intestate; or Hybrid. [Civil Code, Art 829]
- In principle testate, when no valid will, intestate succession

❖ Opening of Succession

- Opening of succession refers to the time when and place where the rights and obligations of the deceased are transferred to successors due to her/his death.
- It opens at the place of the deceased's principal residence at the time of her death. [Civil Code: Art, 826(1); 177(2)]
  - Why do we determine this?
    - It determines the time of transfer of rights and duties to heirs
    - It determines capacity
    - jurisdiction

- Once succession is opened it forms a distinct estate- inheritance estate
- Just when the succession opens, all the rights and obligations of a deceased pass to her heirs and legatees unless they are personal. [Art, 826(2)]
- Mention some non-transferable rights and obligations?

❖ **Things making up a Succession**

- What are the things that make up a succession?
- All the property left by the deceased at her death form the inheritance estate, save the non-inheritable ones

- Identify among the following inheritable properties :
  - Chattels
  - Land
  - Building
  - Life insurance Com. Code Art 691, 701, Civ. code Art, 827
  - Pensions Art 828
  - Indemnity payments
  - Patents
  - Copy rights
  - Shares
  - Claims, see Arts 827 & 828

❖ Capacity to Succeed Art 830

- Who have the capacity to succeed?
- Two conditions of capacity:
- Surviving the deceased; and
- Not being unworthy.

A. Survival of heir

- A person should be alive at the death of the deceased to succeed
- Death and declaration of absence. [Art 831]

- **Commorients-** Simultaneous death. [Art 832]
- Post-mortem examination
- **Death of heir-**

➢ **What happens when an heir dies?**

- Succession by heir. [Art 833]
- Conceived child- A Posthumous Heir
- Can a merely conceived child succeed? [Art 834 cum with 2-4]

B. Unworthiness

- Being not unworthy - the other element of capacity to succeed

- **Conditions of unworthiness:**
- **Crimes of unworthiness.**[Art 838, 839]

- Sentence of Murder and attempted murder of a spouse or close relative
- Sentence for False accusation or perjury that entails > or =10 rigorous imprisonment or capital punishment
- Before death of the deceased

- **Deceitful acts.** [Art 840]

- Interference in the will power
- Interference in documentation

- **Pardon by the deceased.** [Art 841]
  - In a will
  - Implied approval

Equality to Succeed

- Equality before the law [FDRE Constitution Art 25]
- **Equality in Succession:**
  - **No discrimination based on age, sex or nationality** [Art 837]
- No primogeniture
- Do you know any culture that discriminates women in owning or inheriting property?

- Women shall also enjoy equal treatment in the inheritance of property [FDRE Const Art 35(7);
- **No discrimination based on nationality** but ownership of immovable by foreigners is restricted. [Civil Code Art 390-392]
- **No discrimination on the basis of religion**. [FDRE Cons Art 25]
- Islam inheritance doesn't allow Muslims to be succeeded by non-muslims and vice versa
- Adjudication of personal and family matters according to religious or customary laws [FDRE Cons 34(5)]

- **No discrimination based on the source of filiations**
- Children born out of wedlock shall have the same rights as children born of wedlock. [FDRE Cons Art 36(4)]
- Equality of legitimate or illegitimate or adopted children in succession. [Art 836]

❖ **Acceptance or Repudiation of Succession**

- Succession is not a forced task; a person called to succeed can either accept or repudiate it
- You either fully accept it fully or repudiate it
- However, this “in full” requirement does not apply to discrete and separable legacies.
- Acceptance and repudiation are irrevocable

II. Intestate Succession

❖ Introduction

- Intestate succession is also called legitimate succession
- Intestate succession is “[the method used to distribute property owned by a person who dies without a valid will.” [Black’s Law Dictionary 9th Ed.]
- The principle is testate succession, intestate succession is an exception.

➢ When does an intestate succession apply?

- If the deceased did not leave a will; or
- If the will left by the deceased is invalid; or

- If there are assets which were not bequeathed by a will; or
- If the legatee is incapable to succeed; or
- If the legatee renounces the will.

❖ **Devolution Under Ethiopian Law of Succession**

- It is like the law of gravity

A. First Degree Heirs- Issues (Descendants) Art 842(1)

- Equality of share or Per Capita [no primogeniture] [Art 842(2)]
- **Representation.** [Art 842(3)]

B. Second Degree Heirs- Parents. [Art 843]

- Each of the parents shall receive a moiety of the inheritance. [Art 844(1)]
- What if one of the parents is not alive? [Art 844(2)(3)]

C. Third Degree Heirs- Grand parents. [Art 845(1)]

- Each of the grandparents on the paternal line and maternal line shall receive a moiety of the inheritance. [Art 845(2)]

D. Fourth Degree- Great-Grand Parents [Art 847&848]

- Each of the great grandparents on the paternal line and maternal line shall receive a moiety of the inheritance.

❖ **Escheat- The State**.

- A bona vacantia is by default the property of the state [Art 852; 1194]
- Why not beyond 4th degree?
- Spousal share?

❖**“paterna paternis materna maternis”**

- Rule "paterna paternis materna maternis“
- This rule is based on the Medieval Europe fundamental maxim, which says:
- goods should always return whence they had come.

- An immovable obtained by way of succession or donation from the maternal line can not go to the paternal line and vise versa. [Art 849-851]

➢ **Five conditions for the rule:**

- The deceased must die intestate.
- Her own descendants must not survive the deceased.
- The property must be an immovable one. (Art. 849 (1) & (2))
- The property must be acquired by the deceased from either paternal or maternal lines by way of succession or donation. (Art. 849 (1) & (2))
- There must be an heir in the line from which the property has originated. (Art. 851)

- legal measures to prevent the immovable patrimony from leaving the family circle.

➢ **Representation**

- Representation is an exception to the rule of survival
- A predeceased heir can be represented by descendants to succeed
- A legatee by singular title can not be represented unless there is no heir. [Art 908]
- In case of representation, partition is made per stripes [Art 853(1)]
- The person whose succession has been renounced may be represented. [Art 854(2)]

- An unworthy heir can not be represented. [Art 854(2)]
- Bond of legal relationship between the deceased and the heir necessary. [Art 854(2)]
- **E.g.,** an adopted child her adoption has been opposed by parents of her adopter can not succeed by representation the opposing parent. [See Family Code Art 182]

➢ **The case of Adoption**

- The rights of three parties are at issue:

1. the adopted child;

- an adopted child shall, for all purposes, be deemed to be the child of the adopter. [Article 181 of Family Code]

- Exception? [Article 182(1) of Family Code]

2. the adoptive parents; and
3. the biological parents.

- The adopted child's bond with her natural family remains valid [Article 183(1) of Family Code]
- What if there is conflict of interest b/n the adoptive and natural family of the child? [Article 183(2) of Family Code]

III. Testate Succession

❖Power to Make a Will

- The power to make a will- ownership

➢Property

- A thing or things that are owned by somebody. [Oxford Advanced Learner's Dictionary]
- The right to possess, use, and enjoy a determinate thing. [Black's Law Dictionary, 9th Ed.]

➢Private property-

- property- protected from public appropriation over which the owner has exclusive and absolute rights. [Black's Law Dictionary, 9th Ed.]

❖ The Concept of a Will

- A will is a juridical act
- Unilateral vs. Multilateral juridical acts
- Testate succession is succession that is made according to the will of the deceased
- A male who makes a Will is called testator and a female testatrix.
- **Bequest: The gift of personal property under the terms of a will.**

What is a Will?

- A legal document that says what is to happen to somebody's money and property after they die. *Oxford Advanced Learners Dictionary 8th Ed*.
- 2. The legal expression of an individual's wishes about the disposition of his or her property after death; esp., a document by which a person directs his or her estate to be distributed upon death. [p- 1735) *Blacks Law Dic 9th Ed.*

Characteristics of a will

- It’s a unilateral juridical act;
- It’s strictly personal act;
- It has an effect only after the death of the testator;

- Its ambulatory and revocable during the lifetime of the testator;
- **It follows a very strict formality to be valid; why?**
- compare and contrast Wills, donations and contracts

➢ **Contents of a Will:**

- Bequeathing legacies by universal or singular title
- Disherision of heirs at law
- Constituting trust or endowment
- Directions of funeral
- Other juridical acts that have effect after death, [Art 909]

- Give other examples ? Appointment of tutor and guardian for a minor, Disposition of a body after death, Appointment of a liquidator . . .

➢ **Advantages of a will:**

- Decide who will get what from your estate and in what proportions
- Make financial provisions for your heirs and minor children
- Decide who you wish to act as your Executor or Executors
- Decide who you wish to act as the Guardian of your minor children
- State how you want to be buried and if you have any specific requests regarding your burial.
- Donate items or money to a Charity or any specific person.

❖ Conditions of a Will

Essential Conditions of a Will

- What are the Essential Conditions of a Will?
- Personal nature
- Capacity
- Consent
- Object

➢ Personal Nature of a Will

- A Will can not be made through agency. [Civil Code Art 2199]

- An act of a Will is strictly personal; it can neither be made nor be entrusted to be determined to be made by third party. [Aet 857]
- Joint Wills has no effect.
- Joint will may influence the true intention of a testator
- It may create difficulty in freely altering or revoking by the testator in her lifetime. [Art 858]
- Undertaking relating to Wills has no effect.
- A contract to make or not to make a Will has no effect
- A person can freely make, modify or revoke a will regardless of any contrary undertaking. [Art 859]

➢ Capacity to Make a Will

- Testamentary capacity is the legal status of being capable of executing a Will.
- **Minor-** since a Will is strictly personal, even minors and judicially interdicted persons can not make it through their guardians. [Family Code Art 295(2)]
- **Judicially Interdicted Persons- Art 368(2)]**
- **Insanity-** [Art 341 & 863]

➢ Consent to a Will

- Any juridical act requires consent as an essential condition for its validity

- **Violence-** Violence obviously vitiates the freedom of making, modifying or revoking a will.
- [Civil Code Art 867(2); 1706-1709; 1808-1818
- **Undue Influence-** In principle, undue influence is not a ground for invalidating a will [Art 868].
- Fraud- Do you think a will cane be invalidated on the ground of a fraudulent act?
- No. See Art 876 of Civil Code
- **Error**
- What is error? Is an error a ground to invalidate a will?
- A will made under a mistake may be invalidated

- Mistake should be decisive and fundamental [Art 877 cum with Art. 1697-1702].

➢ Object of a Will

- A will is invalid unless it specifies its object and beneficiary in a sufficiently clear manner [Art 865].
- **Nullity of a Will:** nullity [Art 878].
- Nullity of conditions or burdens:
- Do you think a will is automatically invalidated if the condition or burden attached to it is impossible