



Law of successions Laws(1023)

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Objectives of this Chapter:



By the end of this chapter you will be able to discuss:

What succession & Law of Succession are,

- Necessity (Purposes) of Law of Succession,
- Time when & place where Succession opens; & why?;
- Rights & duties making up inheritance;
- Conditions to Succession: Survival and worthiness;
- Scenarios when one may lose his/her right to succession;

Objectives cont'd...



- Two type of succession: testate & intestate, & their differences.
- when intestacy arises under Ethiopian Law of Succession;
- Heirs-at-law (legal heirs) as per their degree to succeed;
- Rule of paterna paternis, materna maternis: conditions, its current applicability (Cassation decisions);
- Succession by representation: conditions

Objectives cont'd...



- Define Testate Succession and the rationale underpinning it;
- Define Will & its validity requirements;
- Kind of Will: Public, Holographic & Oral
- The differences among them;
- Basic features of Will;
- Revocation of Will: meaning, type & effects;
- Lapse of Will: meaning, causes and effects;
- differences between revocation and Lapse of Will;

Objectives cont'd...

- Contents and interpretation of Will;
- Universal and singular legacies/legatees: differences and legal effects;
- Conditional legacies: meaning, type and their effects;
- Charges: meaning and its effects
- Entails: meaning and its legal effects;
- Dishersion: meaning, type & effects

1.1 Devolution of Succession



- What is Succession and Law of Succession?
- Succession:-
- Is the transfer of the whole estate of a person to one or more living persons;
- Is the transfer of the rights and obligations of the deceased which don't terminate upon his/her death to his/her heirs and/or legatees, (pls see art 826 Civil Code)

Definition cont...



- Law of Succession :
- Is branch of private/Civil Law. Why ? b/se governs private interests (both heirs/legatee and one to be inherited are individuals .
- is **a collection of rules** to regulate the manner as to how the rights and duties of the deceased transfer to his/her survivors (heirs & legatees)
- Q. What do you understand from the definitions? Discuss among yourselves.

1.1.1 The Concept of patrimony



- The above definitions lead us to discuss **the concept of patrimony and estate.**
- The literal meaning of patrimony is **the estate that descended from the father to his descendants.** However, this **does not exclude** the estate that descends from the **mother to her descendants and/or from other ancestors in the paternal as well as in the maternal line.**

Patrimony cont..

- In the law of property, patrimony may have a different meaning.
- As it is discussed in M. Planiol, **a person's rights and obligations appreciable in money looked upon as a whole** are called **his/her patrimony**.
- There is a link between **a person and patrimony**. This link can be expressed in the following **four ways**: (See Marcel Planiol, Treatise on the Civil Code, Volume 1, Part II, pp 265ff)

Patrimony cont...



- 1) Only persons have patrimony with the exclusion of other beings. Persons are beings that are **capable of having rights or owing obligations**.
- 2) Every person necessarily has a patrimony, irrespective of the fact that **the person has no property at all**. Patrimony is linked to the **personality of the person**.
- 3) Patrimony is **a unit**. All the **property and all the charges** of a person **form a single mass**. However, this principle of unity of patrimony is subject to exceptions. One example of the exceptions is — an heir seems to have two patrimonies.

Patrimony cont...



- 4) Patrimony is **inseparable from the person**.
Therefore, there can't be a total transfer of property of the person while he/she is still alive.
- A person can dispose only part of the constituent elements of his/her patrimony, one after the other.
 - His/her patrimony, **considered as a universality**, is the consequence of his/her own personality and necessarily remains attached to his/her personality.

Patrimony cont...



- Transmission of patrimony in its totality takes place only after the person's death. At that moment, the deceased's patrimony is attributed to his/her successors.
- Based on these principles of patrimony, **that a person should not have the right to regulate his/her estate after his/her death,** as death has brought a complete separation of the person and patrimony.

1.1.2 Opening of Successions (Art 826(1))



- is the authorization of the heirs & Legatees to takeover the **transferable** rights and obligations of the deceased;
- **Time** : Upon death;
- **Place**: principal residence of the deceased at a time of his death;
- **Residence** is the place where a person normally resides (**See Art 174 C.C**)

Opening cont...

- Article 826 of the C. C. states that the succession of the person **opens at the place he/she had his/her principal residence at the time of his/her death.**
- According to Article 174 of the 1960 C.C, **the residence of the person is the place where he normally resides.**
- The normality of residence will show that the person's **socio-economic life in the society.**
- When a person has many residences, one of such residences may be considered as **a principal residence of such person.**
- For the purpose of opening of the succession of the deceased, it is appropriate to consider **the principal residence of the deceased the place where he/she has most of his/her inheritable property.**

Opening cont...

- Eg. Ato Taye has his business in Hawassa City. After he encountered a severe illness, he went to Addis Ababa for treatment. If Ato Taye dies in Addis Ababa, even if his place of death is Addis Ababa, his succession shall open at Hawassa.
- What is its legal importance?
- It helps to determine **local jurisdiction** of a court, **Place of marriage, place where summon is served** (C.P.C Art 94 ff), **Place of performance of Contract** (Art 1755 C.C) etc.
- The succession of the deceased shall open just **at the time of his/her death**.
- In the above example, Ato Taye died on August 29th just at 3:00 O'clock in the afternoon; Ato Taye's succession has opened at the moment when his death occurred. That is 3:00 O'clock.

Opening cont...

- Opening of succession is quite different from opening of will (Article 965 ECC).
- The succession of the deceased is opened **just at the time of his/her death**. Opening of a will is quite different in that it is **usually made sometime after the death of the deceased**.
- If an heir dies **after the opening of the succession**, but **before the opening of the will** such an heir is said to have died **after getting the right in the succession**.
- In such circumstances, **the succession will pass to the heir of the heir who died after opening of the succession**, but before opening of the will.

1.1.3 Things making up an Estate (inheritance) (Art 826(2), 827,828 C.C)

- Duties & rights which terminate with death don't make up inheritance, e.g. **personal rights: civil and political rights, right to work, right to life, etc**

- All of the property which were **owned or possessed by the deceased** on the day of his/her death shall constitute his/her inheritance.

- All the inheritable property left by the deceased at the time of his/her death are called the ***hereditary estate***.

- Or Rights and duties making up inheritance is called **hereditary estate**.

Things making up cont'd

- Some of the principal relations between the deceased and third parties which can serve as **source of rights and duties of the deceased like:**
 - contractual relations the deceased had with third parties; contract of insurance between the deceased;
 - rights which arise from court proceedings between the deceased and third parties;
 - and those rights generally referred to as property rights - those rights we create and exercise against things, corporeal (movable or immovable) or incorporeal.
- The hereditary estates include **rights and duties of economic nature and are not limited to corporeal (tangible) things.** They also include **incorporeal (intangible) things such as the works of the mind or literary rights.**

Exercise



Identify the inheritable property from the following list

- Life insurance
- Pension allowance
- Indemnity payments
- Land
- Personal chattels
- Copy right
- Patent right

A) Money paid for life insurance

-it depends (Art 827 C.C and Art 701, 705 Commercial Code)

- ***Art 691. – Definition***

- A life insurance is a contract whereby **the insurer** undertakes against **the payment of one or more premiums** to pay to the subscriber or to the beneficiary a specified sum on certain conditions dependent upon **the life or death of the subscriber or third party insured.**

Life insurance cont'd.. .



- From the definition of life insurance it can be seen that:
 - 1) Life insurance is a contract.
 - 2) The contract is made between the insurer (insurance company e.g. the Ethiopian Insurance Corporation) and the subscriber (a person who buys the life insurance policy and makes a periodical payment of premiums to the insurer).
- The insurer undertakes or commits itself to pay the agreed amount of money to **the beneficiary upon death of the subscriber.**

When does money paid for life insurance make up hereditary estate?



- **Important conditions:**

- a) If there is no beneficiary at all.

- 2) If the contract of life insurance is made to the benefit of her heirs without any other indication.

- In other cases it doesn't make up inheritance.

- **For example:** Assume Wro. Genet has bought a life insurance policy from the Ethiopian Insurance Corporation. The money to be collected from the insurer may or may not form part of the inheritance of Wro. Genet.

Life insurance cont'd....



- The following conditions are important to make the insurance money to constitute the inheritance. In the above case:-
 - If she designates **no beneficiary at all**. In this case, she simply pays the premiums for the life insurance to the insurance company without indicating any beneficiary.
 - If she concludes the contract of life insurance to **the benefit of her heirs without any other indication**.

Life insurance cont'd....

- Art. 701 of the Commercial Code provides for the beneficiary of the life insurance as follows:

- **Art. 701.— Beneficiary of insurance policy**

1) An insurance policy for the event of death may be made to the benefit of specified beneficiaries.

2) The following persons shall be deemed to be specified beneficiaries notwithstanding that they are not mentioned by name:

a) The subscriber's spouse, even where the marriage took place after the policy was entered into.

b) The subscriber's children, whether or not born at the time when the policy is entered.

*How do you understand Art. 701(2) of the Commercial Code?

b) Pension and indemnities -828

- **Pension**(regulated by 'Public Servants' Pensions Proclamation № 345/2003 and the amendment Proclamation № 424/2004);
- is not part of inheritance. Why?
- b/se its purpose is **to support the civil servant when s/he is unable to work(retired) and his dependants.**
- The purpose of pension is, to support the pensioner when he/she is unable to earn his/her livelihood through his/her work or
- to support those who were **dependent on the pensioner only spouse and very close relatives** upon his/her pension allowance.

Pension and indemnity cont'd...



- The spouse or the relative of the pensioner has no right to pass the pension allowance to which he/she is entitled to his/her heirs when he/she (the spouse or the relative) dies.
- Therefore, pension allowance does not constitute the hereditary estate of the deceased.

Pension and indemnity cont'd...



- Indemnity is money to be paid to the spouse or relatives of the deceased person. (see Art 2113 C.C)
- don't constitute the inheritance; why?
- Is the right of persons sustained injury.

Example:

- Assume that a car hits Dawit and killed him. The driver or the owner of the car may be obliged to pay compensation to the **spouse or relatives** of Dawit. These persons sustained injury because of the death of Dawit.
- The one who caused the death of the person may pay **compensation or indemnity** to these persons.

Pension and indemnity cont'd...



- However, such money cannot form part of the inheritance of the deceased.
- **For instance**, if the person who is entitled to receive the indemnity payment dies, the money cannot go to his heirs.

Things making up cont'd

- c) **Criminal liability**: non-transferable;
- d) Right to usufruct, alimony are non-transferable.
- e) Same holds true for maintenance claim.

1.1.4 Capacity (conditions) to succeed (Art 830 -841 C.C)



- Two conditions (830 C.C):
 - A. **Survival** (830): is objective condition- b/se the heir and/or legatee shall lose his right to succeed the deceased for reasons outside his wish/will.
 - B. **Worthiness** (831): is subjective condition-b/se it occurs with a willful act of the heir and/or legatee.
- A person **should be worthy of succession** and **survives the decedent** to qualify as heir/legatee.

1. The condition of Survivorship (831, 832, 833, 834 C.C)

- How do we prove death or survival (civil status of a person)? See Art 47 ff C.C
 - by record of civil status,
 - Acts of notoriety, or
 - Possession of status (witnesses)
- Absence of the heir/legatee and its effect on his/her right to succession (read Art 831 (2) cum 164 C.C)

Survivorship continue...



- **Art 164- Succession devolving on absentee**
- (1) where, after the date of the last news, a succession opens to which the absentee would have been called if he were alive, such succession shall devolve without taking into account the portion which may eventually be assigned to the absentee.
- (2) the heirs and legatees may be obliged by court to furnish a guarantee or other security for safeguarding the rights of the absentee.

Simultaneous death (832 C.C)



- Governed by the rule of **Commorientes**,
- This Latin word signifies **those who die at the same time**, as, for example, by shipwreck. When several persons die by the same accident, and there is no evidence as to who survived, the presumption of law is, they all died at the same time.

Simultaneous death cont'd...



- Consider that “Frewoyini” is a mother and “Senait” is her daughter. If “Frewoyini” and “Senait” die together, we may face some difficulties in conducting the successions of these persons.
- Based on the rule of **Commorientes**, **both of them died at the same time.**

Simultaneous death cont'd...

- In some countries **muscular strength, age** etc are taken into account to determine who died first in such scenario.
- **For instance**, according to Australian law, the elder person is presumed to have died before the younger one. The same is true with England and Wales laws.
- For example, if Ato Abebe and his 2 years child involved in Plane crash, it is presumed that the child died before his father Abebe.
- What about in our case? See Art 832 and discuss among yourselves.

Simultaneous death cont'd...

- The Ethiopian law assumes that such persons have died simultaneously (at the same time) and hence no one has survived the other.
- So what the legal effect of simultaneous death?
- when the succession of each of these persons is considered, he/she will be seen as the last survivor.

Simultaneous death cont'd...



- Assume that A & B (persons who have the reciprocal right to succeed each other e.g mother & a son) died in an accident and it was impossible to identify which of them died next to the other.
- **Let's now consider the succession of A.**
- In this case, A shall be seen as the last survivor.
- That is, B has died before A.
- Since, B died before A, he did not survive A.
- Therefore, B has no capacity to succeed A.

Simultaneous death cont'd...



- Let's again consider the succession of B now.
- At this time, B will be considered as the last survivor. This means, A died before B. Therefore, A has no capacity to succeed B.
- As the final analysis, the effect of the assumption made by law is — these persons have not survived one another and they cannot succeed each other.

c) Death of Heir

- If the heir is alive at the time of the death of the deceased (i.e., at the time of opening of his succession) **he/she fulfills the requirement of survivorship.**
- Therefore, an **heir who dies even after a short period** from the death of **the deceased will not lose his capacity to succeed.**
- In this case, the heir is said to have died **after getting the right to succeed the deceased.**
- What will happen to his/her share from the succession of the deceased? According to Art. 833, **all the rights of the heir in the succession of the deceased shall pass to the heirs of the heir.**

Death of Heir cont'd...



- **Example**
- Ayele and Alemitu have three children namely; Tsegaye, Genet and Lombesso.
- The elder son Tsegaye died a week after death of Ato Ayele. In this case Tsegaye died after getting the rights to succeed his father Ayele.
- Tsegaye died after securing a right to succeed his father's inheritance. As Tsegaye is dead now, his heirs will take his portion from the succession of Ayele.
- By assuming Tsegaye has no descendants, his mother, Alemitu will take what should accrue to Tsegaye.

d) Unborn child/Merely conceived child (Article 834)

- As it is indicated in Article 1 of the Civil Code, the human person is the subject of rights from **its birth to its death**.
- However, this rule has an exception in that **a merely conceived child** could be considered born **whenever his interest so requires**.
- To attribute personality to a merely conceived child, **it must be born alive and show its vigor for survival by its viability**.
- “A child shall be deemed to be viable where **he lives for forty-eight hours after his birth...**” (Article 4(1) of the Civil Code)

Unborn child cont'd...

- When the father of a merely conceived child dies, the law considers that the interest of the child requires his consideration as a person.
- In such a case, his/her interest requires that he/she **is a person subject to rights.**
- Hence, although he/she is an unborn child, **the law allows him/her to participate in the succession.**
- However, his rights in the succession shall be **realized after his/her**

E) Legitimate, illegitimate, and adopted child.



- See Arts 836 & 837 C.C
- **Art 36(4) FDRE Constitution** provides: “***children born out of wedlock shall have the same rights as children born of wedlock.***”
- Also the Ethiopian law of succession **makes no distinction** based on the status of a child whether such child is **born in marriage, outside a wedlock marriage or he/she is an adopted child.**
- However, **the establishment of the paternity of an illegitimate child** is duly obligatory before he claims to succeed the deceased, if the deceased is supposed father.

Cont'd.....



- An adopted child, for all intents and purposes, is **assimilated to a natural child**.
- The only exception is, **adoption cannot be effective against the ascendants and collaterals of the adopter who opposed the adoption**. (Art. 182 of the Revised Family Law of 2000, (or the corresponding provisions in the Regional Revised Family Codes) .
- Therefore, the Ethiopian law does not make any **distinction among children of the deceased** based on the fact that they are legitimate or otherwise.

F) Sex, age & nationality of heir

- In most of the customs in Ethiopia, male children are favored to succeed their parents.
- In some customs, **female children are totally precluded** from succeeding their parents. Particularly this was true as far as **succeeding land** was concerned.
- The FDRE Constitution has recognized the property rights of women.
- Art 35(7) of the FDRE Constitution provides as follows:
 - “Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.”

Cont'd....

- The Federal Rural Land Administration and Land Use Proclamation № 456 of 2005 under, Art 5 (1)(c) prescribes that—**“Women who want to engage in agriculture shall have the right to get and use rural land.”**
- Also Art 6(4) of the same Proclamation provides that—**“Where land is jointly held by husband and wife or by other persons, the holding certificate shall be prepared in the name of all joint holders.”**
- Similar rules have been adopted by the Regional States’ land laws.
- **For instance**, the Southern Nations, Nationalities and Peoples Regional State’s Rural Land Administration and Utilization Proclamation № 110 of 2007 in its preamble stated that:
 - *WHEREAS, it is believed that ensuring women’s land holding right is necessary for agricultural production and productivity and ...”*

Cont'd....

- With respect to age, **as long as there is no valid will** left by the deceased that discriminates the heirs based on their ages, **the rights of the heirs to inherit the deceased cannot be affected by their age.**
- **For example**, if the deceased has a 50 year old son and a 5 year old daughter, both of them have the right to succeed him.
- Moreover, there is no primogeniture right under the Ethiopian law. That is, **the eldest child has no special privilege** in the succession of parents.
- The same is true with respect to **nationality of the heir**. But this rule is subject to the provisions of the Civil Code which restrict ownership of immovable property by foreigners. (See Articles 390 — 393)

2. Unworthiness: (838 - 841 C.C)



- An heir and/or a legatee can become unworthy because of **his criminal actions**.
- Worthiness describes the **emotional & sentimental value of the person**.
- A person who loses his/her emotional and sentimental value is unworthy of succession.
- Relates to the **subjective merits of a case**;
 - is pronounced as a penalty for serious offences vs. the person & memory of the decedent;
 - Applies only in case of intestate successions;

Unworthiness cont..



- Rationale (purposes):
- The rationale behind this rule is that a person may **not profit from his/her own crime.**
- The first crime that could make an heir **unworthy** is:
 - a) intentional murder of (838(a))
 - The deceased himself,
 - The deceased's descendant,
 - The deceased's ascendant or
 - The deceased's spouse.

What are the requirement under Art 838(a)?



- Must be **intentional murder**; so one isn't unworthy for negligent murder of one of these persons;
- He/she must be **convicted/sentenced** of such crime.

So mere accusation or prosecution for this crime isn't sufficient to be declared unworthy to succeed.

- **Before the death** of the deceased(839); eg. Suppose 'A' intentionally killed his step mother after the death of his father, is he unworthy to succeed his father under Art 838(a)? No; but why?
- **Pardon** as per Art 841(1): expressly in a Will or making Will in favor of the offender.

Unworthiness cont..

- A very common way of pardoning an heir is **expressing the pardon in a will.**
- If the deceased made a will after the offence was committed, he/she could express his/her forgiveness in the will, to make the heir beneficiary of the will.
- If the had given a legacy to the offender after the occurrence of the offence with full knowledge of the commission of the offence, **that would taken as another way of pardoning the offender.**

Unworthiness cont... the other reason for unworthiness is



- B) **attempt to kill** one of these persons(838(b))
- An attempt to kill a person is committing an act with the desire to kill a person but fail to do so because of an external cause.
- That is, the killing was prevented not by the wish of the one who has planned to kill a person, but by an external factor, such as shooting with a gun which is not loaded, s/he missed the target because s/he did not aim straight, etc.

Causes of unworthiness cont... the 3rd cause is (838(c))



- C) **a false accusation** against the persons enumerated under Art 838(c)
- To make the heir or legatee unworthy, **the false accusation must entail the condemnation of any of such persons to capital punishment or rigorous imprisonment for more than ten years.**

The fourth cause of unworthiness...



- **D) Perjury (838(C))**
- Someone commits perjury when he/she stands as a false witness against somebody;
- As the result of the false testimony of an heir or legatee, if one of the persons enumerated under Art 838 (a) of the Civil Code is condemned to a capital punishment or rigorous imprisonment for more than ten years, the heir or the legatee will become unworthy to succeed the deceased.
- **E) interference with the right or power of the testator in making a will (840)**
- **Conditions:**
- within 3 months before death; and
- if there is pardon.

Cause of unworthiness ...



- **Exercise**
- Ato Worku usually beats his wife Sosina. Wro. Sosina has suffered a lot with her husband's behavior.
- As time went by, his beating became more and more hard. Six months ago she went to her friend, Kedija's house together with her four kids.
- As Kedija's income was so little, she was unable to support her guests for more than few days.
- Sosina had no choice than going back to her husband. One night, Worku intimidated Sosina with a knife.
- While he was about to stab her, she threw a big stone and hit his head. Worku died of a severe bleeding within an hour.
- Assume that Sosina was beneficiary in the will made by Worku. Can She succeed or should she be declared unworthy? Give reasons.

1.2 Intestate Succession(842-855c.c



- The distribution of the estate will be in accordance with **the operation of the law** rather than **the volition of the deceased**.

Need for intestacy arises where;

- ▮ **no will at all, or**
- ▮ **the Will doesn't cover all estate, or**
- ▮ **the Will is invalidated.**
- Rule of Intestate Succession applies **the principle of preference and exclusion.**
- **Relatives exclude non-relatives; Close relatives exclude distant relatives.**

Intestate succession cont'd...



- In Ethiopia, most of the successions are intestate.
- In the intestate succession, the law follows “the presumed will of the deceased.”
- This type of succession is older and more historic than succession by will.

1.2. 1 **Devolution according to the degree of relativity**

- The provisions of intestate succession are based on the idea that — **had the deceased made a will he/she would have distributed his/her estate by following the degree of relationship.**
- Founded on the **ties of blood** & regulated by the **degree of relationships;**
- 1st degree r/ship- descendants(art 842 CC)
- 2nd degree r/ship- Parents(843)
- 3rd degree r/ship-grandparents(845 &
- 4th degree r/ship-great grand parents (847
- Vacant estate- goes to government pocket (852CC); is also sometimes referred to as escheate;

1st degree r/ship

- Children or other descendants are **number one candidates to succeed a person** (See Art. 842(1)).
- All children of the person who died intestate **have equal rights in the succession irrespective of their age, sex, etc. differences.**
- If one of the children of the deceased is a **predeceased child**, that is, if he/she died before the death of the deceased, **he/she would lose his/her capacity to succeed**, as discussed earlier.
- The reason is he **did not fulfill one important requirement**, which is surviving the deceased.
- Although a predeceased heir lost his/her capacity to succeed the deceased, **his/her own descendants will represent him.**
- Therefore, **representation could be taken as an exception to the rule of survivorship.**

2nd degree relationship

- If the deceased is not survived by his/her children or other descendants, **the father and the mother of the deceased will be called to his/her succession.**
- They are in the **second order in the line of the relatives of the deceased.**
- The father and mother of the deceased **will take equal share** of the whole estate of the deceased.
- In the case where one of the parents has died before the deceased, **such parent shall be represented by his/her children (or other descendants).**
- Note:- the children (first degree descendants) of the parents of the deceased are his/her brothers and sisters, of full or of half blood.

Cont'd....

- In the paternal line, **we find the father of the deceased and his (the father's) descendants.**
- In the maternal line, **we get the mother of the deceased and her descendants.**
- In a situation where the father predeceased the deceased and where descendants do not survive him, there is **nobody to take the estate of the deceased in the paternal line at that level.** In this case, the heirs of the **maternal line take the whole estate of the deceased.**

3rd degree relationship

- A person has four grandparents, **two on the paternal line and two on the maternal line.**
- If the deceased is survived by **all of the four grandparents**, half of the hereditary estate shall be devolved on the **paternal grandparents** and the rest half will go to the **maternal grandparents**. Each of them shall be entitled to **one-fourth of the hereditary estate.**
- If one of them predeceased the deceased and is survived by descendants, **he/she will be represented by such descendants.**
- If a predeceased grandparent is not survived by descendants, **his/her portion shall devolve upon the other grandparent of the same line.**
- **For instance**, if the **paternal grandfather** predeceased the deceased and if he is not survived by descendants, the property that was destined to him or to his representatives will now be **transferred to the paternal grandmother.**

Cont'd....

- In this circumstance, the maternal grandmother, instead of taking only one-fourth of the hereditary estate, **she is entitled to receive half of the hereditary estate (if she is alive).**
- If this paternal grandmother also predeceased the deceased, her own **descendants will represent her.**
- If her descendants do not survive her, there is nobody to receive the property on the paternal line of third relationship.
- Therefore, **the whole hereditary estate will devolve upon the maternal grandparents.**
- There are two maternal grandparents and each of them will be entitled to receive **half of the hereditary estate.**

4th degree relationship

- A person has **eight great-grandparents**, four on the paternal line and the other four on the maternal line.
- The distribution of the estate follows the **same pattern as that of the case of parents and grandparents.**

1.2.2 Paterna paternis materna maternis (art 849, 850 and 851)



- Regarding intestate succession, **the closest relative of the deceased would succeed him/her**. This rule has an **exception**. The exception is — **although there are closer relatives of the deceased, a certain property may devolve upon far distant relatives**.
- The law calls this exception as **paterna paternis materna maternis**.
- Its purpose is **reservation of family property**;

Example

- Ato Tefera acquired a house from his paternal grandfather by way of succession. Tefera is a young unmarried man and he has no descendants.
- Tefera's father, Ato Tola, died on Tirr 30, 2000 E. C. Ato Tola's only child was Tefera. Nearl a year after death of his father, Tefera Died on Tir 20, 2001 E. C. Wro. Abozench, Tefera's mother, has survived her son. As Tefera was not survived by descendants, his parents will be called to his succession. But, his father predeceased him and the predeceased heir (Tefera's father died without leaving other descendants. Therefore, the mother will be called to the succession.
- However, there immovable property which is originated from the paternal line. **With respect to the chattels, Wro. Abozench can succeed her son.** But she cannot succeed the house.
- Although Wro Abozench is a closer relative of her deceased son, the house will go to the heirs of the third relationship of the paternal line. **Because the deceased obtained the house from the paternal line by way of succession.**

Cont'd....

- To apply the rule *paterna paternis materna maternis*, the following five conditions must all exist together. If one of them is missing, it cannot be applicable.
- The five conditions are:
 1. **The deceased must die intestate.** (The exceptional rule cannot be applied if there is a will)
 2. **His/her own descendants must not survive the deceased.** (If there are descendants, Art. 842 shall apply)
 3. **The property must be an immovable one.** (Art. 849 (1) & (2))

Cont'd....



4. The property must be acquired by the deceased from either paternal or maternal lines by way of succession or donation. (Art. 849 (1) & (2))

5. There must be an heir in the line from which the property has originated. (Art. 851)

Decisions of FSC Cassation

Vol. 10, C/C/N 41893, in the case b/n W/ro Yodit H. Vs W/rt Genet G (3 persons);

1.2.4 Escheat

- Property which is **bona vacantia** (ownerless or vacant property) **belongs to the State** and it is via this principle that the Government is taking the property of the deceased that has no heir up to **the 4th relationship. (See Article 852)**
- The State takes the property of the deceased **not by way of succession**, but because such property has no one to claim it.
- This condition is usually said to be **Escheat**. Escheat is **reversion of property to the state in the absence of legal heirs or claimants.**

1.2.4 Representation and renunciation



- **Representation**
- There are two modes of succession, **succeeding directly and succeeding through representation.**
- As a rule, **the heir must survive the deceased.** But this rule is excepted by **representation.**
- Representation is an exception to the requirement of surviving the deceased.
- According to this exceptional rule of representation, the descendants of a predeceased heir can take part in the succession by taking the part of the predeceased heir.
- When representation is effected it is **per stripes, not per capita.** That is, the descendants of the predeceased heir shall take what would be taken by the predeceased heir, had he/she been alive.

Representation cont'd...

- **Example**

- Molite died intestate and she left 900,000 Birr as a hereditary estate. She had three children, Biruk, Etagegn and Marta. Biruk predeceased Molite. Biruk himself was survived by three children; Merry, Mercy and Micky. As Biruk is survived by descendants, he shall be represented by them. Biruk's children would receive what would have been taken by Biruk. That is, they shall be entitled to 300,000 Birr and each of them has an equal share in the succession.
- Molite's grandchildren will only take **proportionately among themselves the share** that their deceased parent (Biruk) would have taken if he were alive. This is a **per stripes representation**.

Renunciation

- Renunciation is a refusal to **accept the succession**. A person may renounce the succession for various reasons. E.g. Being in a better economic position
- The heir who has renounced the succession **shall never be seen as the heir of the deceased**. He/she has forfeited his/her right in the succession and hence **he/she will not be represented by his/her descendants**.
- The reason is **the one who has no right in the succession shall not transfer to his/her descendants what he/she does not have**.
- However, as it is prescribed in Art. 854(2), **the person whose succession has been renounced may be represented**.

Renunciation cont'd....

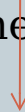
- **Example**

- Tsige's mother W/ro Rahel is a very rich woman. Tsige has a daughter called Lakech. Assume that Tsige died on Meskerem 14th of 2014 E.C. Lakech renounced Tsige's succession. Just a year after the death of Tsige, W/ro Rahel died. Now Lakech can succeed W/ro Rahel by representing her mother Tsige.

Rahel
(Grandmother)



Tsige
(Mother)



Lakech
(Daughter)
(Lakech renounced Tsige's succession)

Renunciation cont'd....

- To succeed the deceased through representation, **there has to be bond of legal relationship between the deceased and the one who claims to succeed the deceased. (See Arts 855 & 856)**
- For instance, assume that Ato Tona adopts a child by name Tanga. Tona's father Gaga opposed the adoption made by his son. Tanga cannot succeed Gaga by representing his adoptive father, Tona.
- The heir who is declared **unworthy cannot be represented by his/her descendants**, as such heir has already lost his/her right to succeed the deceased, he/she **has nothing to transfer to his/her descendants.**

1.3 Testate succession

- A will is a **juridical act** that shall have a legal effect after the death of the testator or the will maker.
- A will is the instrument, which expresses **the last wish of the testator**.
- Some people say that a will remains only a draft during the testator's life, indicating its **ambulatory nature**.
- Ambulatory means that the will is of **no effect until the testator's death**, and a **competent testator may change or revoke** it at any time before his/her death.

Features of will



- A. is unilateral and personal juridical act (art 857;
- B. is private juridical act, that is why joint will is prohibited (858);
- C. is revocable juridical act: is revocable during the life of the testator;
 - ▮ revocable nature of will prevents one from making an agreement regarding the disposition he has made and the beneficiaries designated. (see art 1116 C.C) ; e.g. Ato Ali borrowed money from Bayu and agreed that payment will be effected from the properties that would consist his inheritance by way of legacy. Is void contract

Features of will cont'd...



D. is Posthumous in nature;

- Is effective upon death;
- Hence, any contract or unilateral undertaking of a person relating his potential inheritance, & who is still alive is void; (see art 1114C.C)
- E.g. if A concludes k of loan with B in which A agreed to effect the loan from the money would get from the succession of his father who is at the verge of death is void.

Features of will cont'd...



E- Will is ambulatory:

- shows that will is operative after death,
- and it has also another connotation; i.e.
- General terms, such as “my properties”, “my movable or immovable properties”, “my children”, etc is deemed to refer to those properties, movable or immovable properties, and children w/c s/he has had, not at the time of making Will but at the time of his death,

Will vs. Donation



- Will is different from donation in that donation is a **contract** whereby a person, the donor, gives some of his property or assumes an obligation with the intention of gratifying another person, the donee.
- While will is a **unilateral juridical** act which is different from contract, in which the latter needs at least two parties. Since donation is a contract, it needs the acceptance by the donee.
- The most significant difference, however, between donation and will is **the time in which they are effected. Donation shall take place while both the donor and the donee are alive**, while will is ambulatory and hence becomes effective after death of the testator.

Elements of Valid Will



- **Capacity(Art. 860-864 ECC):** minors, judicial int., legal int.(However, as per art 295 RFC 16 yrs boy/girl has testamentary capacity to make will).
- **Object:** lawful and moral(Art 865.866).
- **Consent:** violence, undue influence, fraud, error;

Consent



- Violence(Art 867 of ECC)
- The testator has to make a will only by his/her free volition.
- Violence vitiates the freedom of making, modifying and revoking a will.
- The violence may not necessarily be directed toward the testator. It may happen against one of the testator's **descendants, ascendants or against the testator's spouse.**
- In this case, the violence or the duress may put under threat the **life, honor or property of the testator or one of the above persons.**
- Articles 1706-1709 and 1808-1818 are the provisions of the general contracts and they shall apply by analogy to treat the cases of violence

Consent cont'd...

- Undue influence (Art 868 of ECC)
- As per the above provision undue influence **is not a ground to invalidate a will**. Because, it is of **psychological than physical**.
- Someone may exert an excessive influence on the testator to have a will **made, modified or revoked** to the benefit of oneself.
- Although such influence affects the mind of the testator, **it is not considered as a serious threat**.
- However, there are exceptions.
- (Read Arts 870 and also 871—876)

Consent cont'd....

- Fraud(Art 876)
- Fraud is a deceitful act. However, it is not a ground to invalidate a will, if the will benefits the fraudster (the person who commits fraud).
- Here you should distinguish between fraud and undue influence. In the case of undue influence, the **testator seeks others' help**. In the case of fraud, **the testator may not necessarily be in a weak position**.
- Although the promise of the fraudster deceives the testator, it is not possible to invalidate the will that benefits the fraudster.
- E.g. a man who is tied by the bond of a marriage may tell to a woman that he is a widower and married her on that ground. If the woman makes a will to the benefit of the man hoping that the man is only her husband, this may not be a ground to invalidate a will.

Consent cont'd...

- Error(Art 877)

- When a will is made as a result of error, the provisions of the Civil Code relating to invalidation of contracts shall apply. (Refer Arts 1697 — 1705 and 1808 — 1818 ECC)
- Generally, the mistake which led the testator to make the will in such a manner must be **fundamental**.
- The error must be of a kind that, **had the testator known the truth, he/she would not have made a will in such a manner**.
- Moreover, the mistake must be clear from the wording of the will itself or from another document to which the will refers.
- Only one or two of provisions of a will might have been affected by error and others may be good. The court may **invalidate only such defective provisions by leaving others to be effective(Art 878)**.

Consent cont'd...

- The testator may impose certain condition or burden on the beneficiary of the succession.
- The beneficiary will receive the legacy when he/she accomplishes the burden or the condition imposed upon him by the testator.
- However, the law does not bind the beneficiary or the legatee to accomplish the burden **if the condition is impossible to perform or it is illegal or immoral.**
- That is, if there is an imposition of impossible, illegal or immoral condition or burden, the legatee can receive what is prescribed by the will to him/her without accomplishing what the testator ordered. E.g. Flying from one Mt to another without device
- (Refer art 878-879)

Form of Will: (Art 880 ffg.)



- There are three types of wills.
 1. Public Will
 2. Holographic Will
 3. Oral Will
- All of them are required to be made by following the **formal requirements prescribed by the law.**
- Failure to fulfil these formal requirements may cause **the invalidation of the will as a whole.**
- The law is **so strict** as far as fulfilment of the formal requirements is concerned. Reason:- the testator is **not in the position to defend him/her when the will is opened.**

Forms of will cont'd...



1) Public Will: requirements

- a-writing,
- b- attestation,
- c- signature,
- * Cassation decision
- (C.R.N 498551) v. no; issue: non-fulfilment of formal requirements of PW (art 882)

Forms of will cont'd...



2) Holographic Will: is a private Will

- requirements
- a- written entirely by the testator, and
- b- signed on each sheet,
- c- mentioning the animus testandi of the testator; i.e. intention to make will.

Common nature of PW & HW



- both are made in writing; date of will is made has to be included;
- 2. both may be rendered void if it is impossible to understand their contents;
- 3. both should be deposited

3) **Oral Will:** requirements

- imminent death, 2 witnesses;
- Made verbally, not > 500birr,

Proof of will (art 896 and 897)



- By producing the will itself.
- The one who claims a right in a will has to prove one or both of the following two things.
- First, he/she has to prove the existence of the will. That is, he/she has to show a will made by the testator.
- Second, he/she has to prove the contents of a will. In other words, the claimant has to show the fact that he/she is beneficiary of the will.



- Both presupposes existence of **valid will**.
- Both have **the same effects**.
- **Revocation:**(Articles 898 to 901, Civil Code)
 - setting aside of Will validly made by an act of testator's volition;
- There are 2 types of revocation: **express and tacit**
- **Express revocation:** clearly declaring that a will is revoked in the same form; (898(1)).
- **Tacit revocation**
 - 1. Inconsistency b/n two Will (895(3), 898(2));
 - 2. Destruction or cancellation of a will (899);
 - 3. alienation of bequeathed property (900)

Revocation cont'd.....

- There are various ways in which a will may be voluntarily revoked:
 - A. By another will.
 - B. By an express intention to revoke, made in the same manner as a will, i.e., this must comply with the formalities set out by the law.
 - C. By destruction.
 - D. By alienation of the thing bequeathed

Revocation cont'd.....



a. Another will

- The testator may, in his will include words like: **‘I hereby revoke all former wills and testaments made by me’**.
- The testator may revoke **specific clauses of a will**, while leaving the rest of it intact.
- **A new will** usually impliedly revokes **a previous will**.
- But sometimes, it may be disputable whether it was the intention to supplement the previous will.
- This may be the case if the two wills are not inconsistent. The second will may thus operate as a kind of codicil. A codicil is a formal document which varies, but does not revoke, a will.

Revocation cont'd.....



b. An intention to revoke

- A will may be revoked by any **other written instrument**, provided it is executed with the same formalities as are required for a will.
- **For instance**, the testator may revoke wholly or some of the provisions of a previously made will not by a new will but by a document made by following similar formalities.
- Even if such document is not a will it has a power to revoke a valid will.

Revocation cont'd.....



c. Destruction

- A will may be revoked '**by the burning, tearing or otherwise destroying** . . . with the intention of revoking the same'.
- Some formal act of destruction seems to be necessary, although the whole of the will need not be destroyed.
- Merely throwing the will in a waste-paper basket is not sufficient, even if the testator indicates to a third person that he/she considers it to be an act of revocation.

Revocation cont'd.....

d. Alienation of the thing bequeathed

- By alienating the thing bequeathed, the testator can revoke the will he/she has made.
- **For instance**, Mr A in his will made last year, assume he gave a cow to his friend. Now, if the testator sells or donates the cow to some other person, it means that he has revoked his/her will.
- Here note that the thing bequeathed may come back to the possession of the testator at a later date. However, that does not cause the revival of the will which was already revoked.
(See Art 900)

Lapse of Will

- Cause is **external factor unlike revocation**
- Lapse of will takes place by **the operation of the law.**
- There are **a number of reasons** for the lapse of a will by the operation of the law. The reasons depend on the type of the will.
- Therefore, various types of wills have various reasons for their lapse.
- 1. non-deposition of a will within the time provided;
- 2. birth of child.
- 3. divorce.
- 4. prior death of the legatee (908)

Lapse of a will cont'd...

1. Failure to deposit a holograph will

- As per Art 903 of the ECC, a holograph will shall lapse where it is not deposited with a notary or in a court registry within seven years since it has been made.
- No such imposition exists for a public will.
- **Exercise**
- Why do think does the law impose lapse for holograph will while there is no lapse for a public will for reason that it is not deposited with a notary or court registry?

Lapse of a will cont'd...



2. Birth of child(Art 904)

- Another reason for the lapse of a will is birth of a child. If a child is born after a will is made (whether a public or a holograph will) such a will, **shall lapse if the newly born child accepts the succession.**
- As provided under Art 905 of the ECC, although the law provides that the will shall lapse if a child is born to the testator after making such a will, there is a situation where such will **could be maintained totally or partially by the court.**
- The court may maintain the will **irrespective of the birth of the child**, if it had been of the opinion that the testator would have maintained the will despite the birth of the child.

Lapse of a will cont'd...

- **For instance**, if the testator made a will while his wife was expecting a child, it would be clear that the testator had intended to maintain the legacies ordered in the provisions of the will even if a child was going to be born to him.
- When the will, which the testator makes before the birth of the child, is active either wholly or partially, the newly born child **should receive, at least, three-fourths (75%) of the share** he would receive in the intestate succession.

Lapse of a will cont'd...

3. Dissolution of marriage

- According to Article 906 of the ECC, legacies made in favor of a spouse of the testator shall lapse where the marriage of the testator with that spouse is dissolved through **divorce or court order** when the marriage is concluded without observing the conditions for the validity of marriage.
- However, such a legacy cannot lapse where the marriage is **dissolved by death**.
- If the marriage dissolves through divorce, the reason that has caused the making of the will to the benefit of the spouse is already lost.
- Unless such a will lapses, it may seriously **affect the interests of the relatives of the testator**.
- Exercise

Lapse of a will cont'd...



- **Exercise**

- Ato Tegene made a public will 6 months before his death. One of the provisions of the will gave 5000 Birr to his ex-wife, W/ro Hiwot. Their marriage was dissolved by divorce 5 years ago. The new wife and some of the relatives of Ato Tegene challenged the will on the ground that a provision made to the benefit of a divorced wife shall lapse and she has no right to succeed the deceased. Can Hiwot succeed Ato Tegene ?

Lapse of a will cont'd...



4. Death, unworthiness, or renunciation by a legatee

- Art 907 lays down the rule of lapse of legacies.
 - When the legatee dies before the testator, the legatee has no capacity to succeed the testator since he does not fulfill the requirement of survivorship.
 - When the legatee cannot succeed the testator, When a legatee is condemned as unworthy, anything destined to his benefit shall lapse.
 - When the legatee does not want to take the legacy. The law passes the legacy when anyone renounces the succession of the testator, as it does not consider him as the legatee of the testator.

Lapse of a will cont'd...

- According to Art 908(a), the legatee who died before the testator would be represented if he/she is a legatee by universal title (or a universal legatee).
- There is a very narrow chance for the existence of representation in the case where the legatee is a legatee by singular title (or a singular legatee). According to Art 908 (b), where the singular legatee dies before the testator, the descendants of the singular legatee shall represent him only when the legacy destined to such singular legatee devolves upon the state as a result of failure of the singular legatee to receive the legacy.
- If a relative survived the testator (from the nearest relative — a child — up to a far apart relative at the fourth relationship), such a relative would receive the legacy.
- In the absence of any relative up to the fourth relationship, the legacy shall devolve upon the state.
- Instead of **devolving the property upon the state**, the law favors the representatives of the predeceased legatee to **inherit the deceased by way of representation**.

Contents and interpretation of wills

a) Contents of wills

- Art 909 lists down the contents of a will. But this **should not be seen as an exhaustive list**. It only gives us illustration.
- However, it does not mean that he/she has no power to declare dispositions that are not listed in Art 909. You can infer this from Art 909 (e).
- The only limitation with respect to the contents of a will is, **the testator cannot declare in his will anything illegal and/or immoral**.

Cont'd...

- **B) Interpretation of wills**((See Art. 910 and 911)).
- The **intention of the testator** is a key element as far as interpretation of a will if there is doubt in the will . We, therefore, have to seek **the intention of the testator**.
- The will itself may reveal this or it may be obtained from other circumstantial evidence.
- Courts, especially the Supreme Court may construe (or interpret) a will.
- Words in a will, as in any other document, are **construed in their context**.
- The essential task of the court **is to give effect to the intention of the testator**. But this intention is to be deduced from the words used.
- It is not permissible to re-write the will simply because the court suspects that the testator's words did not really specify his/her real intentions.
- In order to understand the language employed by the testator, however, it is possible **to 'sit in his/her armchair'**.

Cont'd...



- The general rule is that words must be construed in **their usual, or literal, sense**.
- There are also well-developed '**canons**' or **rules of statutory interpretation**, which assist a court in construing laws made by the Parliament.
- As a general rule, these canons may be applied to the construction of any document, including a will.
- But, since the ordinary testator is unlikely to have the same drafting skills as a Parliamentary draftsman, **the courts must use these canons with more care when they apply them to interpret wills**.

Types of legacy



- Types of Legacy: Universal and singular
- ***I) Legacies by universal title:-*** It is difficult to distinguish between **universal legacies and singular legacies**. The law itself does not clearly give the meaning these terms.
- However, Art. 912(1) will shed light on the meanings and four aspects of universal legacies.
 1. When the **testator gives his/her whole estate to one person**, the property given to the beneficiary is a universal legacy and the beneficiary is a universal legatee.
 2. When the **testator gives his/her whole estate to two or more persons**, the whole estate given to these persons is a universal legacy and such persons are universal legatees.

Types of legacy cont'd...



3. When the testator gives **a portion of his/her estate to one person**, such a portion of the hereditary estate is a universal legacy and the beneficiary of the portion of the hereditary estate is a universal legatee.
 4. When the testator gives **a portion of his/her estate to two or more persons**, such portion of the hereditary estate is a universal legacy and the persons appointed to receive such a portion are said to be universal legatees.
- So a universal legatee is **the one who is called to the succession to receive a certain portion of the hereditary estate, not a particular thing from the succession.**
 - Therefore, **a universal legatee does not know what thing he/she is going to receive from the succession.**

Types of legacy cont'd...



- ***II) Legacies by singular title***
- What is a singular and legacy and who is a singular legatee?
- According to Art 912(2), any other disposition (that is, outside the ones discussed above) is a singular legacy.
- Singular legacies are **minor testamentary dispositions usually given to non-relatives.**
- When a single item, such as **a bicycle, a television, an overcoat, a watch, a radio**, etc., is given to someone, the property is a singular legacy and the one who is in a position to receive such a property in kind is a singular legatee.

Types of legacy cont'd...



- Fitawrari Bakalo, in his testamentary disposition made the following persons beneficiaries.
 1. My elder son Elias shall take 40% of my estate and in addition to the 40%; he shall take my wristwatch.
 2. My little daughter Mary shall take 40% of my estate.
 3. Let the mule be given to my spiritual father Aba Mathewos.
 4. The maidservant who has served me for the past 25 years shall take 200,000 Birr.
 5. An environmental organization called Green Hill Movement shall take 10% of my hereditary estate.

Types of legacy cont'd...



- Elias, Mary and Green Hill Movement are universal legatees since they are allowed to receive the hereditary estate in a certain proportion.
- Besides, Elias is a singular legatee since he is given a wristwatch in addition to the 40% portion of the hereditary estate. That is, Elias has two capacities in this will. Aba Mathewos, who is to receive a mule, is also a singular legatee. The last singular legatee is the maidservant, who is allowed to receive 2000 Birr.
- A legacy may be given to the legatee **in full ownership or only the bare ownership right** may be given to the legatee.
- In the latter case, the legatee shall be entitled to use or derive the fruit from the legacy without having the right to alienate (sell or donate) it to third persons.

Cont'd....



- ***III) Legacies and rules of partition(Art. 913)***
- **Example**
- Assume that Ato Habtamu made the following will.

“My elder daughter Ayantu shall take the ISUZU pickup car.”
- Assume also that this is the whole content of the will of Ato Habtamu.
- Let us consider that Ato Habtamu has other two children (other than Ayantu). This will does not give to Ayantu the pickup car, in addition to what she partakes with her siblings.
- Rather, the will shall be interpreted that the pickup car shall fall in the portion allocated to Ayantu.
- The children of Ato Habtamu have equal portions in the successions as there are no other dispositions in the will.
- A problem may arise here is, the value of the ISUZU car may

Cont'd....



- **For instance**, if the total hereditary estate is about Birr 600, 000, including the ISUZU car, each of the co-heirs is entitled to receive Birr 200,000. If the value of the car is Birr 225,000, Ayantu should equalize her share with others by sharing Birr 25,000.
- **Note**:- the testator could give an exclusive right to one of his/her heirs, on a certain property, **in addition to what such an heir shares with other co-heirs**. However, if this is the intention of the testator, **he/she should express it clearly**.

Effects of universal legacies(Art.915)

- When a person is in a position to receive a universal legacy, he/she becomes **a universal legatee**.
- The appointment of a universal legatee does not follow any special formality. That is, a public or holograph will that normally fulfills the formal requirements could appoint a universal legatee. **No special will with special formalities is required to appoint a universal legatee (Art. 914).**
- When someone is appointed as a universal legatee, **he/she is assimilated to an heir-at-law**.
- It means that a universal legatee who is a non-heir (such as a friend, a servant, a spiritual father, a spouse, etc.) **shall be treated in all respects in relation to the succession in the same manner as the legal heirs of the testator**.
- The rights and responsibilities of such universal legatees will be similar to that of the legal heir to the testator.

1.3.5 Conditional Legacies(Art 916-919)



- The testator may make his succession **to depend on certain conditions**. The conditions are of two types. They are **suspensive and resolute conditions**.
- Suspensive conditions are **condition precedent** and resolute conditions are **condition subsequent**.
- **Suspensive condition** — In the case of suspensive condition or condition precedent, the **legatee shall wait until a certain time lapses or until a certain circumstance occurs**.
- **For example**, the testator may order a legacy in favour of Fasika. However, Fasika may be in a position to receive the property upon the expiry of five years and until that time, the property would remain in the hands of specifically designated persons. The testator may even say that, Fasika shall receive the property when someone dies. Hence, the legatee shall be entitled to take the property upon death of that specified person.

Cont'd....

- **Resolutive condition** — Resolutive condition or condition subsequent is a situation where the legatee brings back what he received from the succession when a certain condition is fulfilled.
- That is, in the case of resolutive condition, the legatee is **automatically entitled to receive the bequest**, unlike the case of suspensive condition.
- **For example**, the testator may not be happy with the flirting of his daughter with Zelalem. (Zelalem is member of a gang of robbers). The testator may order a conditional legacy to stop his daughter from marrying such a person.
- He may say in his will that, “my daughter shall receive four cows so long as she does not marry Zelalem”.
- In this case, the testator’s daughter can enjoy the bequest until she decides to marry Zelalem. Whenever she marries Zelalem, she shall restitute what she received from the succession.

Cont'd....

- Art 917 states that the testator may impose a condition of marrying or not marrying of a specific person. However, the testator has no right of imposing, **in general terms, not marrying or not remarrying.**
- The testator cannot even impose on the legatee a condition such as not marrying or not remarrying a person who belongs to a certain **race, nationality, member of a religious group, etc.**
- All persons who have attained the marriageable age have a **constitutionally guaranteed right to marry and found a family.**
- The imposition of marrying or not marrying a specific person does not affect this constitutional right. (The FDRE Constitution in Article 34 (1)) .

Cont'd...

- However, the testator may impose a condition of not marrying or not remarrying (See the Amharic version of the Civil Code), by giving **to the legatee a usufruct right on a certain property or by giving him/her a certain amount of pension.**
- The condition of not to marry seems to affect the rights of individuals. Nevertheless, the condition of not to remarry is usually practiced.
- **For instance**, the testator may order his wife not to remarry by giving her a usufruct right on a certain property or by giving her a pension in the form of annuity or any other appropriate

Charges (*Articles 920 – 923*)

- Charge is the order of a testator against his/her heirs and/or legatees in which **he/she binds them to take some responsibility or take care of one or more persons.**
- However, the testator cannot bind the heirs and/or legatees to **give or to do something to specified persons more than the value of the legacy.**
- **Example**
- The testator may order that Ato Tekola would take his (the testator's) taxicab whose value is 60,000 birr. The testator also orders that Ato Tekola shall make a monthly payment to his old mother W/ro Tsige 500 Birr. Ato Tekola is obliged to make the payment to W/ro Tsige up to the extent of the value of the taxicab. **In case Ato Tekola fails to pay the said amount, W/ro Tsige has the right to claim payment.** But W/ro Tsige cannot demand the **dissolution of the legacy** made to Ato Tekola unless the testator orders this clearly in his/her will.

1.3.8 Substitutio Vulgaris(Art 928)



- *Substitutio vulgaris* was very common in Roman wills.
- An **alternative heir** was appointed in the event that the person instituted as **the primary heir failed to become the heir** (e.g. because he/she died before the testator or refused the inheritance).
- According to the Ethiopian Civil Code, Substitutio vulgaris is the situation where the testator orders another person to take the legacy in cases where the appointed **universal or singular legatee fails to appear and receive what the testator allocates to him/her**.

1.3.8 Entails(Art.929-936)



- The concept similar to entail existed in **Roman law**. It was also common in **many parts of Europe**.
- It is a **restriction of inheritance to a limited class of descendants for at least several generations**.
- It is mainly **linked with real estate**.
- The object of entail is to **preserve large estates in land from the disintegration**.
- In Ethiopia, the testator has the power to order that his/her heir and/or his/her legatee shall **hand over the legacy to one or more persons after such heir and/or legatee has benefited with the legacy**.

Cont'd...

- The testator may order the heir and/or legatee to **transfer the legacy (or even portion of it) to the specified person(s) upon the following conditions:**

- 1) On the expiry of a certain period, for example, after 5 years from the opening of the succession;
- 2) Upon the death of the heir or the legatee; and,
- 3) On the accomplishment of a certain condition, for instance, when the testator's little daughter gets married.

Entail is not widely practiced in the life of the society. Therefore, instead of discussing it, in detail, please read articles dealing with entail.(Art. 931-936)

1.3.9 Disherison(Art. 937 -940)



- Disherison is **an order passed by the testator** to exclude his/her heirs from the succession.
- It usually serves as **a means of punishment for the misbehavior of his/her heirs.**
- At present time, in many countries the power of the testator to disinherit his/her heirs has been reduced or **there are many conditions to be fulfilled to disinherit, especially a child.**
- In many jurisdictions in the US, the powers of the testator to disinherit heirs, including children is still effective.
- The situation is different in most European jurisdictions.
- In Ethiopia, **the law allows the testator to disinherit one or more of his/her heirs.**
- It seems that the law considered that the testator's **only power as far as punishing disobedient children is disinheriting such children.**

Disherison

- The testator may disinherit his/her heir either **expressly or tacitly**.
- Express disherison is a kind of disherison in which the testator excludes his/her heir from the succession in an **explicit manner by stating clearly that he/she has disinherited the heir**.
- The testator may disinherit all of his/her heirs (descendants and other heirs) expressly and appoint a universal legatee.
- **For instance**, Ato Tasew may disinherit all his children and other heirs and he may appoint his friend Kassa as a universal legatee.
- In such a case, Kassa is called to receive the whole estate of Ato Tasew without any contender.
- If the testator disinherits all his/her heirs and if he/she does not appoint someone as a universal legatee, **there shall be no one to take his/her hereditary estate**.
- In such circumstances, the law has devised a mechanism to enable the descendants of such disinherited heirs to take the property of the testator by way of representation (See Art 937).

Cont'd....

- **Descendants** can only be disinherited expressly. That is, no descendant may be disinherited tacitly.
- Moreover, the testator shall clearly state a **justifiable reason** why he/she has decided to disinherit his/her descendants.
- The law makes such imposition on the testator with the view **to protect the interest of the descendants in succeeding their ascendants.**
- It is stated above that the testator must give **justifiable reason(s) to disinherit one or more of his/her descendants.**
- The law **does not list down what things are justifiable and not justifiable.** A justifiable reason is a **subjective standard.** It is believed that it should impress a **reasonable person.**
- The testator is expected to attribute some acts of the heir that have dissatisfied him/her. If the acts done by the heir were **not illegal and/or not immoral**, it would be difficult to the testator to give justifiable reasons.
- The court has a power to examine and decide whether the reason given by the testator is **justifiable or not.**

Cont'd.....

- Although the court has the power to ascertain whether the reason given is justifiable or not, **it cannot ascertain whether the given reason is true or false.** Any statement that the testator gives is a true statement.
- Therefore, **the heir cannot claim** that the statement of **the testator is untrue.**
- Consider that Mr. "A" belongs to a faith called "B". "A" brought up his son "D" by teaching strictly the tenets of religion "B". "A" is a known benevolent and humane person in the vicinity. As "A" got older he wanted his only son to get married and replace him in his humanitarian and other kindly works. "D" has fallen in love with a woman from faith "C" and lastly "A" learned this fact from some people. "A" asked his son "D" why he chose to marry a woman from another religion. "D" 's response was just love. "D" concluded marriage with the woman irrespective of the opposition and discontent of his father. "A" had decided to disinherit his son on the basis that his son married a woman who does not belong to his faith.
- Does the reason given by "A" justify disinheritance? Why/Why not?

Cont'd....

● Exercise

● Why do you think does the law consider any statement given by the testator as a true statement?

● It is clear that the succession of the testator shall open after he/she is dead.

● A dead person cannot express anything and he/she cannot defend himself/herself if someone claims that the statement of the testator is false.

● Therefore, it is not possible to pass a decision by hearing only one party. Because of this, the law simply presumes that any reason given by the testator is a true statement.

● Moreover, **the law trusts parents (or ascendants more than any other persons regarding matters relating to their children (or descendants)).**

● Therefore, the law takes for granted what has been stated by the testator as a true statement.

● When the testator does not make someone beneficiary in his/her will, we say that he/she has tacitly disinherited such a person. However, this kind of tacit disinheritance does not work against **descendant heirs**.

● It works only against **the heirs of second, third and fourth relationship**. This is a mechanism of protection given by the law to the descendant heirs (See Art 939 (1) & (2)).

Cont'd....

- If the testator appoints someone as a universal legatee to receive the whole property, that does not imply the disinheritance of the children of the testator.
- In such a case, the universal legatee is called to succeed the testator as if he/she is one of his children (See Art 939 (3)).
- **Example**
- W/ro Gelane has appointed in her last will Ato Bereket to take her hereditary estate as a whole. She has two children, Meskerem and Wodessa. She gave nothing to her children. As it is not allowed to tacitly disinherit children, Ato Bereket cannot take the whole property of the succession.
- Instead, he would be considered as one of the children of W/ro Gelane and shall partake the property together with them.

Cont'd....

- Disinheriting heirs is a **legally recognized power of the testator**.
- However, if the law considers that the provisions of the will are defective with respect to any matter, and if the heirs impugn/challenge the defective provision, then the provision that **disinherits the heirs shall be of no effect**.
- **For instance**, assume that one of the provisions of a will contains an illicit provision. If this same will contains a provision that disinherits one or more of the heirs of the testator, only by challenging the illicit provisions, **the disinherited heirs can get the invalidation of the disinheritance**.