

- Article 1 of the Civil Code declares that “the human person is the subject of rights [and duties] from its birth to its **death**”.
- Human person will no longer have rights or duties as of death. The same - albeit with certain slight qualifications - goes also for an absentee, whom the law assimilates to the dead, at the time when he is duly declared absent.
- The implication of the provision is that a person will permanently stop to have both rights and duties from the moment at which he is considered dead in terms of the language of the law.
- That does not, though, in any way mean that the rights and duties of such a person will die, or be disposed of with him - at least not in its modern sense.
- The vast majority of the rights and duties that the dead had acquired while alive will, however, pass to other persons - usually his surviving next of kin. Nevertheless, the devolution does not happen arbitrarily. The law systematically regulates how a person's estate is disposed of upon death.
- The **Law of Successions** is that branch of law which governs the manner in which, and, of course, to whom, the rights and duties of a dead person, technically referred to as the deceased, should pass.
- Those rights and duties that devolve by succession were acquired by the deceased during his lifetime. And they are generally of proprietary nature.

CHAPTER ONE: Devolution of successions

- It deals with the issues like, what constitutes the inheritable property of the decedent (or the deceased), what rights and powers does the testator (will maker) have, what rights and obligations of the heirs and/legatees have, the mechanisms of devolution of succession (via intestate and testate ways), the formalities of making a will, mechanisms of revocation and lapse of will, etc.

GENERAL CONSIDERATIONS OF THE DEVOLUTION OF A SUCCESSION

The Concept of Patrimony

- 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.
- In the law of property, patrimony may have a different meaning. 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:
 - Only persons have patrimony with the exclusion of other beings. Persons are beings that are capable of having rights or owing obligations.
 - 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.
 - 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 is inseparable from the person.

1.1.2. Opening of Succession

- As it is expressed in Article 826 of the Civil Code, 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 Civil Code, 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.

- The succession of the deceased shall open just at the time of his/her death.
- Some obligations of the deceased could pass to his heirs and/or legatees.

Things making up a Succession

- What transfer from the deceased to his/her heirs and legatees are those rights and duties of the deceased which arise from various relations which the deceased had with third parties during his/her lifetime.
- 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.
- All the inheritable property left by the deceased at the time of his/her death are called the hereditary estate. The hereditary estates are not limited to corporeal (tangible) things. They also include incorporeal (intangible) things such as the works of the mind or literary rights.

- **Life insurance**

- As prescribed in Article 827 of the Civil Code, life insurance could or could not constitute a hereditary estate.
 - Life insurance is a contract.
 - 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.
- Art. 701 of the Commercial Code provides for the beneficiary of the life insurance as follows:
 - The subscriber's spouse, even where the marriage

took place after the policy was entered into.

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

- **Pensions and Indemnities**

- The main purpose of pension scheme in Ethiopia is to support the person who was a public servant during the time when he/she is unable to work.
- In addition to this, the pension scheme has the purpose of supporting those persons who were maintained by the pensioner during his/her life time.
- **Pension** is money payable to the spouse, children or parents of the deceased person based on conditions specified under Proclamation № 345/2003. According to Art 35(1) of this Proclamation, if a person who is a government employee dies, the widow or the widower would be entitled to receive 50% of the pension to which the deceased was or would have been entitled. Pension money is not the estate left by the deceased at the time of his death. 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.
- **Indemnity** is money to be paid to the spouse or relatives of the deceased person. For instance, if the person who is entitled to receive the indemnity payment dies, the money cannot go to his heirs.
- A person's succession may be conducted in one of the two types of successions. As it is prescribed in Art. 829, succession could be either testate or intestate. It could also be the combination of the two types.
- **Testate succession** is a succession in which the estate of the deceased person shall pass to his heirs and/or legatees according to the order of the deceased in the will he/she made. If the deceased made a valid will, his/her succession would be conducted in accordance with the will. A person who left a will is called a testator.
- If the testator had no will at all, or his/her will is not valid, the succession of such person shall be conducted by the operation of the law. That is, in the case where there is no

will, or where the will is invalid, the law shall distribute his estate among his heirs.

- Sometimes it may happen that the succession is a combination of both intestate and testate. Many circumstances could lead to such a situation. For instance, property which was not included in the will may be discovered later; the will may be partially invalidated; the testator may appoint a universal legatee who is not a legal heir to take only some portion of the hereditary estate and with respect to the rest of the estate he/she may keep silent; etc.

1.1.4 Capacity to Succeed

- The law requires someone who alleges to have a right in the succession of the deceased to fulfill some requirements.
- The capacity to succeed depends mainly on two conditions. The first one is; the heir and/or legatee must survive the deceased person. The first condition is an objective condition and the heir and/or legatee shall lose his right to succeed the deceased for reasons outside his volition. This is such heir and/or legatee must not be unworthy. This is a subjective condition which occurs with a willful act of the heir and/or legatee. (Read Articles 830 & 831 of the Civil Code)

The Condition of Survivorship

- This condition requires the heir to be alive at the time of the death of the deceased.
- If the heir lives even for a very short time after the death of the deceased, we believe that he/she has survived the deceased. (Article 830)

Commorientes

- After an accident, death may not occur immediately and some persons die before others.
- When persons who have reciprocal rights to succeed each other die together, we could know by a post-mortem examination who survived whom. However, this examination is not always successful. It could be impossible to determine who died first and who died second by a post-mortem examination.
- **Art. 832. — Persons dying simultaneously:** Where two or more persons are dead and it is not possible to prove

which of such persons survived the other, the succession of each one of such persons shall be regulated as if he had been the last survivor without, however, receiving anything from the succession of the other persons.

Death of Heir

- According to Art 833, all the rights of the heir in the succession of the deceased shall pass to the heirs of the heir. Even if an heir dies sometime after death of the deceased, the heir is said to have died after getting the right to succeed the deceased.

Unworthiness

- An heir and/or a legatee can become unworthy because of his criminal actions. 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 his intentional murder of:
 - The deceased himself,
 - The deceased's descendant,
 - The deceased's ascendant or
 - The deceased's spouse.
- The heir and/or the legatee must be sentenced for his crime before he is considered unworthy.
- The second reason that makes a person unworthy is, his/her attempt to kill the persons enumerated under Article 838 (a).
- The third reason that makes an heir or legatee unworthy is a false accusation against the persons enumerated under Art 838(a). 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 reason that could make an heir or a legatee unworthy is perjury. 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.
- The fifth reason relates to the interference with the right or

power of the testator in making a will. The heir or the legatee in this case, by taking advantage of the physical state of the deceased, has prevented him from making, modifying or revoking a will. The deceased might have been sick for a long time and very weak physically. The heir or legatee may take the advantage of this weak condition of the deceased to prevent him/her from making, modifying or revoking a will. Such heir or legatee shall be condemned as unworthy.

- In order to be condemned as unworthy, the heir or legatee must have committed this latter offence only within three months before death of the deceased. If the offence is committed before this time, the law will not condemn the heir or the legatee as unworthy.
- If an heir or a legatee commits any of the offences which are listed under Art. 838 after the death of the deceased (which means after opening of the succession), he/she will not be deprived of his/her rights to succeed the deceased it is said here that the crime has no connection with the succession.
- Although the heir has committed the offences prescribed under Arts. 838 and 840, he/she would not lose his/her capacity as unworthy, if the deceased had given such heir an amnesty, or if he had forgiven him/her. The pardon may be either an expressed or an implied one. A very common way of pardoning an heir is expressing the pardon in a will.

Unborn child

- When the father of a merely conceived child dies, the law considers that the interest of the child requires his consideration as a person. Such a child shall not be treated as a non-existent being. 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 viability is proved.

Children born in marriage, outside marriage and adopted children

- 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. The establishment of the paternity of an illegitimate child is duly obligatory before he claims to succeed the deceased, if the deceased is putative father.

- An adopted child, for all intents and purposes, is assimilated to a natural child. The only exception for this rule is, as prescribed under Art. 182 of the Revised Family Law of 2000, (or the corresponding provisions in the Regional Revised Family Codes) adoption cannot be effective against the ascendants and collaterals of the adopter who opposed the adoption.

Sex, age and nationality of heir

- In most of the customs in Ethiopia, male children are favored to succeed their parents. In some nationalities, 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."
- With respect to age, it cannot be a ground to discriminate heirs. 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.
- 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. (Articles 390 — 393)

INTESTATE SUCCESSIONS

- In Ethiopia, most of the successions are intestate.
- When the deceased leaves no will at all or a court for various reasons invalidates the will made by him, it is said that the succession is intestate. In such a case, the distribution of the estate will be in accordance with the operation of the law rather than the volition of the deceased. 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.

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. That is, he/she would give his/her estate to his/her closest relatives in the first place. In the second place, relatives who are situated at a relatively distant position when compared with the relatives of the first degree shall succeed the deceased. Accordingly, the law considers the children of a person are his/her closest relatives.

- **First relationship**

- Children or other descendants are number one candidates to succeed a person (Art. 842(1)). If he/she died before the death of the deceased, he/she would lose his/her capacity to succeed. 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.

- **Second 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. In the case where his/her descendants survive him/her, all other heirs of the deceased will be excluded from the succession according to the rules of the intestate succession. His/her father and his/her mother are in the second order in the queue 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). In the case where both parents have survived the deceased, half of the hereditary estate of the deceased goes to the father and the other half goes to the mother. This is based on the principle that heirs of the paternal line the maternal line shall have equal shares in the inheritance of the deceased, so long as they are at equal distance from the deceased. 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.

- **Third 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. 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.

- **Fourth 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.

Paterna paternis-materna maternis

- Articles 842 to 848 describe the rule in which intestate succession is governed. That is, 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*.
- The exceptional rule of *paterna paternis materna maternis* is designed to allocate an immovable property that is obtained by the deceased from one of the lines by way of donation or succession to the heirs of the line from which the property is obtained.
- Art. 850 explains that the heir who is the closer relative of the deceased and should have succeeded the deceased, but lost his right as a result of *paterna paternis materna maternis*, will have a usufruct right on the immovable. A usufruct right is a right to use a property or to derive a fruit from that property.
- According to Art 851, to apply the rule *paterna paternis materna maternis*, there has to be an heir in the line from which the immovable property is obtained, if the immovable property is obtained. If the immovable property is acquired from the paternal line, there has to be an heir in that line. In case of absence of any heir in the paternal line, the immovable property shall devolve upon the maternal line. The converse is also true.
- 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:
 - The deceased must die intestate. (The exceptional rule cannot be applied if there is a will)
 - His/her own descendants must not survive the deceased. (If there are descendants, Art. 842 shall apply)
 - 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)

Escheat

- When there are no heirs of the deceased up to the 4th relationship, the property shall devolve on the State. This condition is usually said to be Escheat.
- Escheat is reversion of property to the state in the absence of legal heirs or claimants. The State takes the property of the deceased not by way of succession, but because such property has no one to claim it. 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. (Article 852)

Representation and renunciation

- **Representation**
- It can be said that there two modes of succession, succeeding directly and succeeding through representation. Heirs who are closest to the deceased are called to succeed directly and personally. However, the persons who are to be called to succeed directly and personally might have died before the opening of the succession, by leaving descendants behind them. In such a case, the law allows such descendants to be called to the succession.
- 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 foot 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.
- **Renunciation**
- An heir who is a successor may not necessarily be willing to participate in the succession. In such a case, he could renounce the succession.
- Renunciation is a refusal to accept the succession. A person may renounce the succession for various reasons. If he/she is

relatively in a better economic position, he may renounce the succession to the benefit of his co-heirs. 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.

- With the same logic as renunciation, 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. 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. (Arts 855 & 856)

WILLS

- A will is the most satisfactory means of arranging for the devolution of a person's property after death.
- While making a will, the testator makes a disposition of his/her property through a unilateral declaration of intention which does not require receipt by another party to become complete. The valid execution of a will requires that the testator possessed testamentary capacity at the time of execution and that the formal legal requirements were observed.
- A will is a juridical act that shall have a legal effect after the death of the testator or the will maker. It is an instrument by which a person makes a disposition of his/her property to take effect after his/her deceased, and which in its nature is ambulatory (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) and revocable during his/her lifetime. A will is the instrument, which expresses the last wish of the testator.
- There are different kinds of wills made by fulfilling the formal requirements that the law prescribes. The law is very strict with respect to the formality of making a will.

- 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.

Conditions for the validity of wills

• Personal nature of a will

- The testator should seek the assistance of no one else. He/she should make the will by himself/herself. No any other person may take part in the making of a will on behalf of the testator or by way of assisting him/her. Nor the testator could appoint another person to represent him/her as far as making, modifying or revoking a will is concerned. Except for will and other specifically stipulated juridical acts, another person may represent the testator. The following definition illustrates well this condition.
- The testator is not in a position to express his/her true wishes after his/her death. If someone is allowed to make a will on behalf of the testator, he/she can take advantage against the true intention of the testator very easily.
- According to Article 858 of the Civil Code, no two persons may make a will together using the same document. The law believes that the testator cannot express his/her free intention when he/she makes a joint will. That is, if the testator makes a joint will, such will could influence his/her free intention to some extent. A will is an instrument that the testator can repeatedly alter or revoke during his/her lifetime. It would be difficult for the testator to alter and revoke a will if he/she makes a will together with another person. In Ethiopia, even spouses cannot make a will together irrespective of the fact that they have community of property in marriage.
- A person may not bind himself/herself to make, to modify or to revoke a will to the advantage or disadvantage of any other person. That is, he/she cannot promise to make a will to the benefit of a relative, a friend or any other person. In addition, he/she cannot promise to make, modify or revoke a will to the disadvantage of any person.

• Capacity to make a will

- Testamentary capacity is a special form of legal capacity.

Minors

- According to the Revised Family Code of the Federal Government and that of Regional States, a minor can make a will once he/she attains the age of 16 years. Art 295
- Even if the minor does not revoke a will, he/she made before the age of 16, after he/she has attained 16 years that cannot be a reason to maintain such a will.

Judicially interdicted persons

According to Arts 861, 368 and 862.

- An interdicted person may not make a will after his interdiction.
- A will made by the interdicted person before his interdiction is valid.
- Although the will made by an interdicted person before his interdiction is valid, the court has the power to invalidate such will either totally or partially.
- Although the will made by an interdicted person after his interdiction, is invalid, the court has the power to maintain such will either totally or partially.
- When the court maintains a will made by the interdicted person after he/she is being interdicted, it shall consider the following points:
 - A legacy (money or property given to somebody through a will) must not exceed five thousands Birr and;
 - The heirs-at-law of the interdicted person (the heirs- at-law could be descendants or other relatives) should get a minimum of three-fourths of the succession. That is, the outsiders (non-relatives) can take a maximum of only one-fourth of the succession.

Insanity

- As indicated in Art. 863, a will made by an insane person is valid unless it is proved that the person was a notoriously insane person at the time of making the will.
- When a testator makes a will, he/she must be careful not to include provisions that are contrary to law or morality. Moreover, the provisions of the will must not be difficult or impossible to execute.

Provisions Difficult or Impossible to Execute

- Article 865 (1) tells us that a testamentary provision which fails to specify in a sufficiently clear manner its beneficiary or its object shall be of no effect. From this it is clear that the provisions of a will must clearly indicate who will be the beneficiary and what things or portion of things has been allocated to such beneficiary.

Illicit Provisions

- In Art 866 the word “object” is to mean the aim, purpose or goal of the will. If the purpose of the will is unlawful, its provision shall be of no legal effect. Moreover, the provisions of a will shall be of no effect if their purpose or aim is immoral.

Violence

- The testator has to make a will only by his/her free volition. That is, the testator should not make a will under a threat or under any condition that could affect his/her freedom in the making of a will. 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.

Undue influence

- According to the Ethiopian law of succession, undue influence is not a ground to invalidate a will. Undue influence is more 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 exceptional circumstances in which undue influence could be a ground to invalidate a will or reduce the amount indicated in the will. Especially, the exceptional circumstance is relevant when the one who exerts the undue influence has a special opportunity to exert pressure on the testator. Generally, the exceptional situations depend on two circumstances: (1) On the conditions of the testator; and, (2) on the identity of the person who exerts the undue influence on the testator.

- The conditions of the testator put him in a weak position in that he/she needs the help or assistance of other persons. The conditions that force him to seek the assistance of other persons could be his being a minor, sick, etc.
- The identity of the person who is exerting the undue influence is the one who, by taking the advantage of the conditions of the testator, gets benefit from the will of the testator. This person could be the guardian or tutor of a minor testator, or he/she could be a physician who prescribes or applies a medical treatment to the testator or he/she could be a clergyman who prays for the testator or gives him a spiritual assistance. A person, who takes part in the making of the will as a witness, interpreter, etc., can effectively exert undue influence on the testator and this situation is an exceptional one.
- According to Art 869 of the Civil Code, if a minor testator makes a will to the benefit of his/her guardian or tutor, the court may totally invalidate the will (the testamentary provision in relation to the undue influence) or may reduce the amount given to such guardian or tutor. A guardian or a tutor has a big opportunity to exert influence on a minor testator and get a benefit unduly. But this provision shall not be effective if the guardian or tutor is an ascendant of the testator.

Fraud

- It is not a ground to invalidate a will, if the will benefits the fraudster (the person who commits fraud). 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. For instance, the fraudster may promise to do something to the testator, if the testator makes a will to the benefit of such a fraudster. The fraudster may have no ability or capacity to perform his/her promise. Although the promise of the fraudster deceives the testator, it is not possible to invalidate the will that benefits the fraudster.

Error

- When a will is made as a result of error, the provisions of the Civil Code relating to invalidation of contracts shall apply. 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.

Form and proof of wills

Form of wills

- ***Public wills***

- A public will is a will that is read in the presence of the testator and of four witnesses. The testator can write the will in the presence of the witnesses. He/she can also write the will in the absence any person. Reading the will in the presence of the testator and of four witnesses is not sufficient. There must be an indication of the fulfillment of this requirement in the will itself. If the will does not contain such an indication, it could be invalidated. The testator and the four witnesses should put their signature immediately after the will is read. The reason is: a will becomes effective after the death of the testator. The testator is not in a position to defend his/her positions if someone makes some fraudulent act against the will. To narrow the possibility of making any fraudulent act against the will, the law lays down very strict formalities.
- The law in Art 882 prescribes that the number of witnesses could be reduced to two if one of them is a court registrar, a notary or a judge (See the Amharic version) in his/her official capacity.

- **Holograph will**

- Holograph will is a will that is totally made by the testator himself/herself in the absence of witnesses. Only literate persons may make a holograph will. It is the testator that writes a holograph will totally and if there is an additional word (even if it is a single word) written by the hand of another person, that is a sufficient cause to invalidate the will wholly. The testator must explicitly indicate, in the holograph will, that it is a will. Absence of such an indication is also a ground for the invalidation of the will. As a rule, the testator himself/herself should fully write a holograph will. If it is a handwritten will, it is possible to know for sure that it is written by the testator. The law requires a handwritten

indication of the fact that the testator writes the will using a machine. The handwritten indication should be included on every page of the will. This is to confirm that the machine written holograph will has been really made by the testator.

- With respect to Art 888, the will refers to another document. When the will refers to another document or when it is impossible or difficult to understand the will without referring to another document, such a document must have been written and signed by the testator.

- ***Oral will***

- Oral will is a will made verbally to two witnesses. Art 892 of the Civil Code, the testator does not make an oral will under normal circumstances. He/she makes such a will when he/she feels that he/she is going to die within short period of time, particularly after accidents, shocks or similar situations. It can be said that oral will is not a proper will. The testator cannot make any order of his wish by way of an oral will. The law has listed down the contents of an oral will. The testator cannot add other testamentary dispositions, which are not included in Art 893.
- The law allows the testator to make several wills during his/her lifetime. This is also the manifestation of his right to make, revoke or alter a will at any time. The contents of different wills made by the testator may or may not contradict each other. If the provisions of various wills contradict each other and cannot be enforced together the latest will shall prevail. (Art 895)

Proof of will

- 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.
- From Art 897, provides some important points:
 - The existence and contents of a will (whether a public or holograph will) shall be proved only by producing the original will itself or the copy of the original will, certified to be true by the court registrar. The court registrar could issue the copy of the original will, if

he/she had received the original will to be deposited in his/her archives. Otherwise, the claimant shall only present the original will.

- To benefit from the will, approval by presenting the will itself is obligatory and no any other means of evidence can be possible.
- If someone destroys or causes the destruction of a will by his/her fault or negligence, such a person may be obliged to pay compensation to the beneficiary of the will. To get compensation from the person who has destroyed or caused the destruction of the will by his/her fault or negligence, the beneficiary can prove the fact that he/she is a beneficiary by any means of evidence. For instance, he/she can prove that he/she is beneficiary of the will by producing witnesses.

Revocation and lapse of wills

Revocation of wills

- A will is always revocable, until the death of the testator. A testator may make an agreement with a beneficiary not to revoke the will. However, sometimes elderly people who have no descendants of their own may promise to leave some property to a person, on condition that the latter nurses the former. This promise cannot be enforced as the will is still able to be revoked.
- There are various ways in which a will may be voluntarily revoked:
 - **By another will:** The testator may, in his will include works 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. 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.
 - **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:** A will may be revoked by any other written instrument, provided it is executed with the same formalities as are required for a

will

- **By destruction:** A will may be revoked 'by the burning, tearing or otherwise destroying . . . with the intention of revoking the same'. 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.
- **By alienation of the thing bequeathed:**

Lapse of wills

- **Failure to deposit a holograph will**

- According to Art 903 of the Civil Code, 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.

- **Birth of 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. Art 905 of the Civil Code,

- **Dissolution of marriage**

- According to Article 906 of the Civil Code, 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.

- **Death, unworthiness, or renunciation by a legatee**

- Art 907 lays down the rule of lapse of legacies. According to Art 907, three factors cause the lapse of legacies.
 - When the legatee dies before the testator. In this case, 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. This has a relation with unworthiness. When a legatee is condemned as unworthy, anything destined to his benefit shall lapse.
 - When the legatee does not want to take the legacy. This has something to do with the

renunciation of the legatee to the succession of the testator. 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.

Contents and interpretation of wills

Contents of wills

- The testator can determine the contents a will he/she makes freely so long as the contents of his/her will do not violate the law or so long as they are not contrary to public moral. Art 909 lists down the contents of a will. But this should not be seen as an exhaustive list. It only gives us illustration. These enumerations may guide the testator. However, it does not mean that he/she has no power to declare dispositions that are not listed in Art 909. The only limitation with respect to the contents of a will is, the testator cannot declare in his will anything illegal and/or immoral.

Interpretation of wills

- In Ethiopia, there is no obligation for a will to be drafted or executed by a professional person.
- Courts, especially the Supreme Court may construe (or interpret) a will. 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'.
- The general rule is that words must be construed in their usual, or literal, sense. But this is subject to the 'special vocabulary' of the testator. And it also must yield to the special circumstances of the testator. Suppose a testator left a legacy to 'my wife'. He was not lawfully married, but lived with a woman in an irregular union, whom he was accustomed to call 'wife'. The lady would surely take the legacy, despite the fact that the word 'wife' was a misuse of the language.
- 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. (Articles 910 and 911)

- **Legacies by universal title**

Sometimes it is difficult to distinguish between universal legacies and singular legacies. Art 912 (1) provides four aspects of universal legacies.

- 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.
 - 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.
 - 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.
 - 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.
- 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.

- **Legacies by singular title**

- According to Art 912(2), any other disposition (that is, outside the ones discussed above) is a singular legacy.
- The general tendency of the law toward singular legacies is that, 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.

- 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.

- **Legacies and rules of partition**

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**

- 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. 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.

- **Conditional Legacies**

- The testator may make his succession to depend on certain conditions. The conditions are of two types.
 - **Suspensive condition** (condition precedent): the legatee shall wait until a certain time lapses or until a certain circumstance occurs.
 - **Resolutive condition** (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.

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.

Substitutio vulgaris

- *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. The causes for the disappearance of the appointed legatee could vary from case to case. (Article 928).

Entails

- 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 that is caused by equal inheritance by all the heirs and by the ordinary right of free alienation (disposal) of property interests. Many changes have been developed regarding entails in the law of successions. In some countries, (E.g. England) the law permits the holder of entailed property (either real or personal) to dispose of it by [deed](#); otherwise the entail persists. In the United States for the most part entails are either altogether prohibited or limited to a single generation.
- 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. 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:

- On the expiry of a certain period, for example, after 5 years from the opening of the succession;
 - Upon the death of the heir or the legatee; and,
 - On the accomplishment of a certain condition, for instance, when the testator's little daughter gets married.
- Once the legacy is transferred into the hands of the holder entail, the holder entail needs to expect to have only a usufruct right on the legacy. Since he/she is not a true successor, the law does not vest him with powers of an owner of the property. Therefore, the holder entail cannot alienate (sell or donate) the property to third parties. Moreover, the holder should not have any attachment with such property for his/her debts (Art. 931 (1)).
 - Courts are generally empowered to order the alienation or transfer of a property or its attachment, if such order is justifiable. However, in no case can the court authorize the alienation or attachment of the property in the hands of the holder entail. Because, the holder entail is obliged to utilize the property by taking all the necessary care not to cause a serious damage to the property and finally hand it over to the true successor upon the opening of the substitution (Art 932).
 - The testator has the right to regulate only until the property is transferred to the person who is called to succeed. Once the property is transferred to the person who is called to succeed the testator loses the right to pass any order concerning the property (Art 934).
 - In the case where the holder entail refuses to take the legacy or if he/she loses capacity to succeed, for instance, by being unworthy, the person called to succeed shall be called to take the legacy. However, the testator may vary such by an otherwise order (Art 935).

Disherison

- In the Ethiopian law of successions, the testator has wider rights to disinherit one or more of his/her heirs by the will he/she makes. His/her rights may even go to the extent of disinheriting all of his/her children.
- 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.

Some people argue that giving powers to the testator to the extent of disinheriting his/her heirs is not proper. 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.

- The testator may disinherit his/her heir either expressly or tacitly.
- Express disinheritance is a kind of disinheritance 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.
- 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.
- A justifiable reason is a subjective standard. It is believed that it should impress a reasonable person. It should be a reason that is sufficient to move the testator to the decision of disinheriting his/her descendant. 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. 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.
- When the testator does not make someone beneficiary in his/her will, we say that he/she has tacitly disinherited such a person. 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 (Art 939 (1) & (2)). 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 (Art 939 (3)).

- 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 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.