LAW OF SUCCESSION

FOR LAW 1ST STUDENTS OF MEKELLE UNIVERSITY

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What do you expect from this course?

INTRODUCTION

Introduction

- Background and Context
- Description of the Course
- General Course Objectives
- Goals and Scope of the Material
- Contents and Organization

INTRODUCTION

Background and Context:

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

INTRODUCTION . . . CONTINUED

General Course Objectives:

- Discuss the meaning, time, place, and manner of opening of succession;
- Identify those things that make up the inheritance of a dead person and those that do not;
- Enumerate the kinds of successions recognized by law;
- Elaborate the meaning of capacity to succeed and the conditions required therefore;
- Discuss the meaning of intestate succession;
- Enumerate, in order of their preference, the persons called to the succession of a person who had died intestate;

INTRODUCTION . . . CONTINUED

General Course Objectives . . . Continued

- Discuss about the power of a person to dispose of her property after her death;
- Name the kinds of wills recognized by the Law, and discuss the validity requirements attached to each;
- State the legal methods to prove the existence and contents of a will;
- Elaborate the possible grounds for the partial or full invalidation of a will;
- Internalize the meaning of liquidation of a succession;
- Explain the appointment and the powers and duties of a liquidator;
- Identify the types and modes of payment of debts of a succession;
- Discuss the meaning and execution of partition;
- Understand the nature of conventions relating to an inheritance and explain the rationale for the prohibition of pacts on future successions; and
- Fully appreciate and help enforce the rights of women and children with respect to succession.

INTRODUCTION . . . CONTINUED

Contents and Organization:

- **CHAPTER ONE - Devolution OF SUCCESSION**
  - ***1. 1. General Considerations of the Devolution of Successions***
    - ***1. 1. 1. The Concept of Succession***
    - ***1. 1. 2. Opening of a Succession***
    - ***1. 1. 3. Things making up a Succession***
    - ***1. 1. 4. Capacity to Succeed***
  - 1.2. ***Intestate Succession***
    - ***1. 2. 1. Devolution according to the Degree of Relation***
    - ***1. 2. 2. Rule "paterna-paternis, materna maternis***
    - ***1. 2. 3. Escheat***
    - ***1. 2. 4. Representation and Renunciation***
  - ***1.3. Wills***
    - ***1.3.1. Conditions for the Validity of Wills***
    - ***1. 3. 2. Form and Proof of Wills***
    - ***1. 3. 3. Revocation and Lapse of Wills***
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    - ***1. 3. 5. Conditional Legacies***
    - ***1. 3. 6. Charges***
    - ***1. 3. 7. Substitutio vulgaris***
    - ***1. 3. 8. Entails***
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- **CHAPTER TWO – LIQUIDATION OF SUCCESSION**
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    - 2. 2. 2. The Manner of Appointment of the Liquidator
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      - 2. 5. 7. Payment of Singular Legacies
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INTRODUCTION . . . CONTINUED

Contents and Organization . . . Continued

- **CHAPTER THREE – PARTITION OF SUCCESSION**
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  - **3. 2. Community of Hereditary Estate**
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    - 3. 6. 2. Partitions made by Donations
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INTRODUCTION . . . CONTINUED

Glossary

- **Bona vacantia**- property that has no owner.
- **Executor-** The person appointed by the will to administer the estate.
- ***Inter vivos-*** Refers to something that occurs during life. In the succession law context, it is most often used to distinguish between gifts or transactions during a person's life and those that occur in accordance with their will.
- **Intestacy-** Occurs when a person dies without having made a valid will, or where their will fails to effectively dispose of all of their property.
- **Issue-** A person's children, grandchildren, great-grandchildren and other direct descendants down this line.
- **Lineal relatives-** Blood relatives who are related by a direct line of ancestry, either ancestors or descendants.
- **Next of kin**- A person's closest blood relatives.

INTRODUCTION . . . CONTINUED

Glossary . . . Continued

Residuary estate- The remainder of the estate after debts and liabilities are paid, and specific gifts and legacies are distributed.

Testamentary capacity- The mental capacity required to make a valid will.

Assets: anything of value that belongs to you.

Beneficiary: A person who qualifies to benefit from a deceased's person estate, either as an heir or legatee.

Bequest: The gift of personal property under the terms of a will.

Estate: The deceased's estate consists of all the assets (belongings) and liabilities (debts) as at the time of death. This also includes any contractual obligations capable in law of being transferred into the deceased's estate

Executor: The Executor is the person who administers your Estate.

INTRODUCTION . . . CONTINUED

Glossary . . . Continued

Heirs: Heirs are the people to whom you want to leave your assets. You can choose whoever you want - your immediate family, grandchildren, nephews or nieces or adopted children and loved ones. If such person inherits in terms of a will, they are known as a testamentary heir. If there is no valid will or the will does not appoint a valid heir, the heirs nominated as per the laws of intestate succession, are known as heirs *ab intestate.*

Inheritance: The residue of the estate that goes to the heirs.

Intestate: When you die without a will and your property is distributed according to the laws of intestate succession.

Legacy: A specific item such as Money or property bequeathed to another in a will.

Legatee: A legatee is a person to whom the testator has bequeathed a specific

INTRODUCTION . . . CONTINUED

Glossary . . . Continued

Next of Kin: A term used to describe blood relatives.

Residue: This refers to what is left of the deceased's estate after funeral expenses, costs of administration and liquidation, taxes and debts have been paid.

Revoke: To cancel or remove something.

Spouse: The person to whom you are married to

Testate: When you die with a will

Testator: The Testator (male) or Testatrix (female) is the person drawing up a Will. It is his or her Estate that is to be distributed in terms of the Will. Any person of the age of 16 years or over may make a Will.

Will: A legal declaration of how a person wishes his or her possessions to be disposed of after death.

CHAPTER ONE – DEVOLUTION OF SUCCESSION

Subtopics of this Chapter:

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

CHAPTER ONE – DEVOLUTION OF SUCCESSION

Objective of this Chapter:

Upon completion of this chapter, you will be expected to:

- Identify the transferable rights of the deceased;
- Advise people the things that make up inheritance;
- Determine persons with capacity to succeed the deceased;
- Prepare a tree of relationship that elaborates intestate successions;
- Explain the importance of the concept of representation;
- Disqualify wills that are not made according to the requirements of the law;
- Evaluate whether the reasons for disherision given by the testator are justifiable or not.

[Teaching Material **of Justice and Legal System Research Institute, 2009, Hereinafter "Teaching Material"]**

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.1. General Matters of Devolution

1. 1. 1. The Concept of Succession

What is succession?

"the entitlement by one or more persons to the legal patrimonial relationships of a deceased person and the consequent restitution of the assets that used to belong to that person." [Timor Civil Code Art 1888]

1. The act or right of legally or officially taking over a predecessor's office, rank, or duties.

2. The acquisition of rights or property by inheritance under the laws of descent and distribution. [Blacks Law Dictionary 9th Ed]

Passing of property or legal rights after death. [The law.com]

Three types of succession:

- Testate; Intestate; or Hybrid. [Civil Code, Art 829]

In principle testate, when no valid will, intestate succession

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 2. Opening of Succession

Opening of succession refers to the time when and place where the rights and obligations of the deceased are transferred to successors due to her death.

It opens at the place of the deceased's principal residence at the time of her death. [Civil Code: Art, 826(1); 177(2)]

- Why do we determine this?
  - It determines the time of transfer of rights and duties to heirs
  - It determines capacity
  - jurisdiction

Once succession is opened it forms a distinct estate- inheritance estate

Just when the succession opens, all the rights and obligations of a deceased pass to her heirs and legatees unless they are personal. [Civil Code: Art, 826(2)]

Mention some non-transferable rights and obligations?

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 3. Things making up a Succession

What are the things that make up a succession?

All the property left by the deceased at her death form the inheritance estate, save the non-inheritable ones

Identify among the following inheritable properties :

- Chattels
- Land
- Building
- Life insurance
- Pensions
- Indemnity payments
- Patents
- Copy rights
- Shares
- Claims
  - See Civil Code Arts 827 & 828

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 3. Things making up a Succession . . . Continued

Life insurance-

- A life insurance is a contract whereby the insurer undertakes against the payment of . . . premiums to pay to. . . the beneficiary a specified sum on the . . . death of the subscriber . . . . [Commercial Code Art 691]
- Life insurance becomes inheritance estate where a beneficiary is not designated or made for the benefit of the heirs. [Civil Code Art, 827]
- Who is the beneficiary of life insurance? Look at Commercial Code Art 701.

Pensions and Indemnity Payments-

- pensions
- Indemnity payments
  - See Civil Code Art 828

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 4. Capacity to Succeed

Who have the capacity to succeed?

Two conditions of capacity:

- Surviving the deceased; and
- Not being unworthy. [Civil Code, Art 830]

A. Survival of heir

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

- Commorients-
  - Post-mortem examination
  - Simultaneous death. [Civil Code, Art 832]
- Death of heir-
  - What happens when an heir dies?
  - Succession by heir. [Civil Code, Art 833]
- Conceived child- A Posthumous Heir
  - Can a merely conceived child succeed? [Civil Code Art 834 cum with 2-4]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 4. Capacity to Succeed . . . Continued

B. Unworthiness

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

- Conditions of unworthiness:

1- Crimes of unworthiness.[Civ Code Art 838, 839]

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

2- Deceitful acts. [Civ Code Art 840]

- Interference in the will power
- Interference in documentation

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

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 5. Equality to Succeed

Equality before the law [FDRE Constitution Art 25]

Equality in Succession:

- **No discrimination based on age, sex or nationality** [Civil Code Art 837]
  - No primogeniture
  - Do you know any culture that discriminates women in owning or inheriting property?
  - Women shall also enjoy equal treatment in the inheritance of property [FDRE Cons Art 35(7);
  - No discrimination based on nationality but ownership of immovables by foreigners is restricted. [Civil Code Art 390-392]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 5. Equality to Succeed . . . Continued

- **No discrimination on the basis of religion**.
  - No discrimination based on religion, [FDRE Cons Art 25]
  - Islam inheritance doesn’t allow Muslims to be succeeded by non-muslims and vice versa
  - Adjudication of personal and family matters according to religious or customary laws [FDRE Cons 34(5)]

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

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1. 1. General Principles of Devolution . . . Continued

1. 1. 6. Acceptance or Repudiation of Succession

Succession is not a forced task; a person called to succeed can either accept or repudiate it

You either fully accept it fully or repudiate it

However, this “in full” requirement does not apply to discrete and separable legacies.

Acceptance and repudiation are irrevocable

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.1 Introduction

Intestate succession is also called legitimate succession

Intestate succession is “[t]he method used to distribute property owned by a person who dies without a valid will.” [Black’s Law Dictionary 9th Ed.]

The principle is testate succession, intestate succession is an exception.

When does an intestate succession apply?

- If the deceased did not leave a will; or
- If the will left by the deceases is invalid; or
- If there are assets which were not bequeathed by a will; or
- If the legatee is incapable to succeed; or
- If the legatee renounces the will.

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.1 Introduction . . . Continued

Why do people die intestate?

- Lack of property
- Unaware of Importance
- Indifference
- Cost
- Time and Effort
- Complexity [of execution]
- Admission of Mortality
- Reluctance to Reveal Private Facts

[Gerry W. Beyer, 'THE BASICS OF TEXAS INTESTATE SUCCESSION LAW']

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.2. Scheme of Devolution: Comparative Perspective

Basic Matters of the Scheme

The "presumed will" theory

- Intestate succession follows the presumed will of the deceased
- According to Grotious, every transmission of property depends on the will of man. The will is express in contracts and testaments. It is presumed in successions *ab intestat, (Intestate)*
- whether it's in a testamentary succession or in a succession *ab intestat, it is always the will of the* deceased that disposes of property and that calls his heirs. In the former case, it is express; in the second, it is only tacit or presumed. [J.-R. Trahan]

The "natural duty" theory

- Of course, there are certain principles of justice that must be followed independently of his will
- Thus, it is not the affections or the presumed will of the deceased that the legislator ought to take as the rule. It is rather the deceased's will such as it ought to be--his will conformed to his duty. [J.-R. Trahan]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.2. Scheme of Devolution: Comparative Perspective

Basic Matters of the Scheme

The scheme of devolution is based on degrees of “consanguinity” or “kinship” (genetic relationship) to the intestate.

“Issue” (lineal descendants) of the intestate will take ahead of living ancestors and collateral relatives such as aunts, uncles and cousins.

A relative of closer degree will take ahead of a relative of more remote degree

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.2. Scheme of Devolution: Comparative Perspective . . . Continued

Historical background of intestate succession of real property in Texas:

- Male heirs to the exclusion of females
- Primogeniture- the oldest son would take the land to the exclusion of others
- In the absence of male heir, female heir. No primogeniture? [Gerry W. Beyer]

- Why priority to males?

- English Administration of Estates Act in 1925 abolished primogeniture and male preference.

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.2. Scheme of Devolution: Comparative Perspective . . . Continued

Customary law of Tanzania:

- 1st degree- first son
- 2nd degree- other sons according to their age
- 3rd degree- daughters according to their age.
- **[The law of succession.ACD DR R.W. TENGA'S TEACHING MATERIALS PDF BY GEORGE KAZI.]**

  - It's discriminatory on the grounds of age and sex

- Do you think such customary law can have legal effect in Ethiopia? Art 9(1) & 34(5) of FDRE Const

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.2. Scheme of Devolution: Comparative Perspective . . . Continued

Islamic Law of Inheritance

Husband

- **1/2** In the absence of any offspring with him or ex-husband
- **1/4** In the presence of offspring

Wife

- **1/4** In the absence of the deceased's offspring (with her or ex-wife)
- **1/8** In the presence of offspring

Daughter

- **1/2 – Alone, in the absence of son**
- **2/3 – 2 or more, in the absence of son**

Sons, a portion equal to that of two daughters

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession

1.2.2. Scheme of Devolution: Comparative Perspective . . . Continued

Timor Intestate Succession

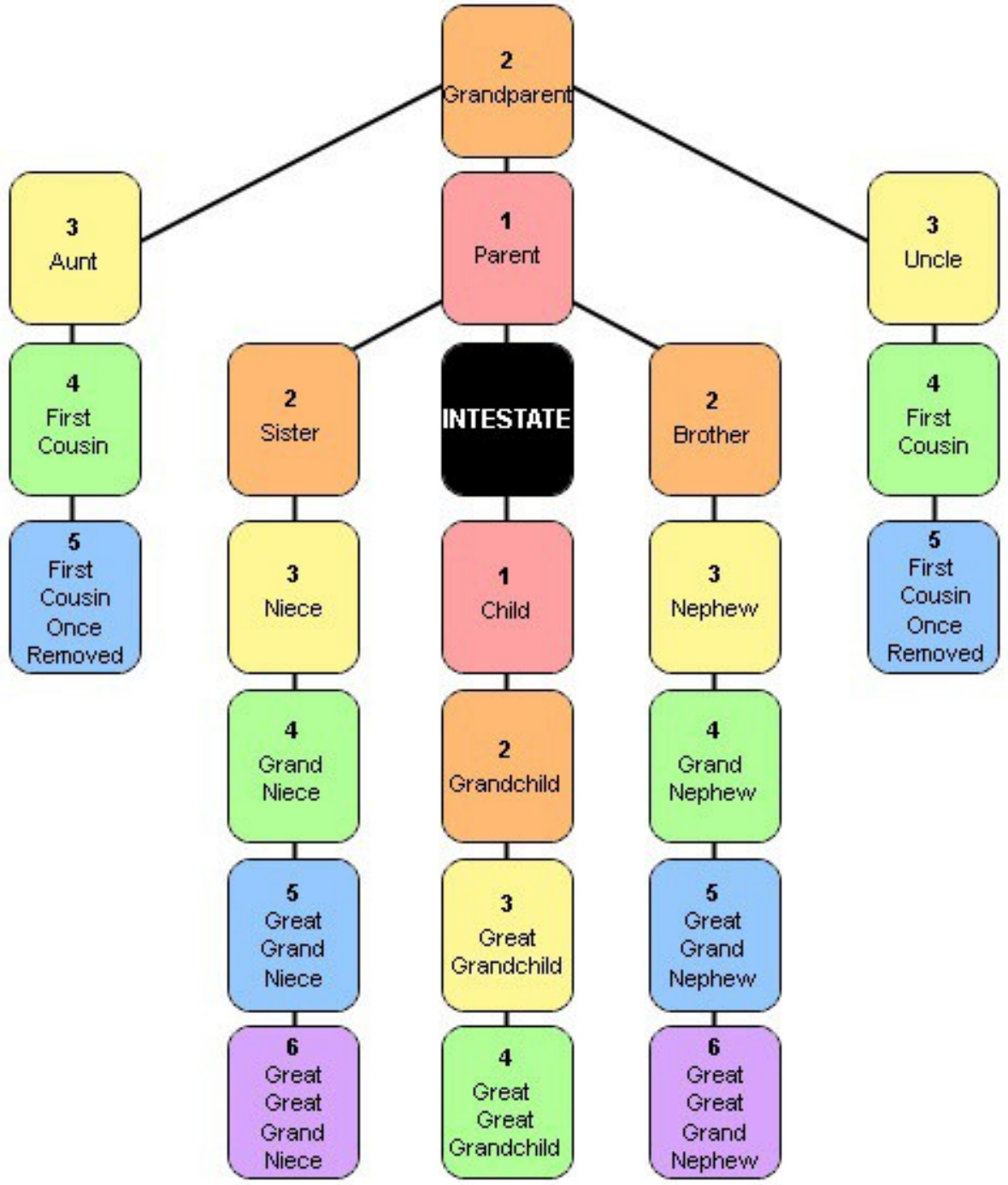
The order for calling heirs…is the following:

- (a) Spouse and descendants; [equal share]
- (b) Spouse and ascendants; [spouse takes 2/3]
- (c) Siblings and their descendants;
- (d) Other collaterals up to the fourth degree;
- (e) The State. [Article 2000 of Timor Civil Code]

Compulsory inheritance- for issues, spouse and ascendants

- [Article 2020 of Timor Civil Code]

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CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.3. Devolution Under Ethiopian Law of Succession

- It is like the law of gravity

A. First Degree Heirs- Issues (Descendants)[Civil Code Art 842(1)]

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

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

- Each of the parents shall receive a moiety of the inheritance. [Civil Code Art 844(1)]

- What if one of the parents is not alive? [Civil Code Art 844(2)(3)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.3. Devolution According to Degree of Relationship . . . Continued

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

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

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

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

- **Escheat-** The State.
  - A *bona vacantia* is by default the property of the state [Civil Code Art 852; 1194]
  - Why not beyond 4th degree?

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.4. *“paterna paternis materna maternis”*

Rule "paterna paternis materna maternis“

This rule is based on the Medieval Europe fundamental maxim, which says:

- goods should always return whence they had come. [J.-R. Trahan, A PRÉCIS OF THE LAW OF INTESTATE SUCCESSIONS]

An immovable obtained by way of succession or donation from the maternal line can not go to the paternal line and vise versa.

- [look at Civil Code Art 849-851]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.4. *“paterna paternis materna maternis” . . . Continued*

Five conditions for the rule:

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

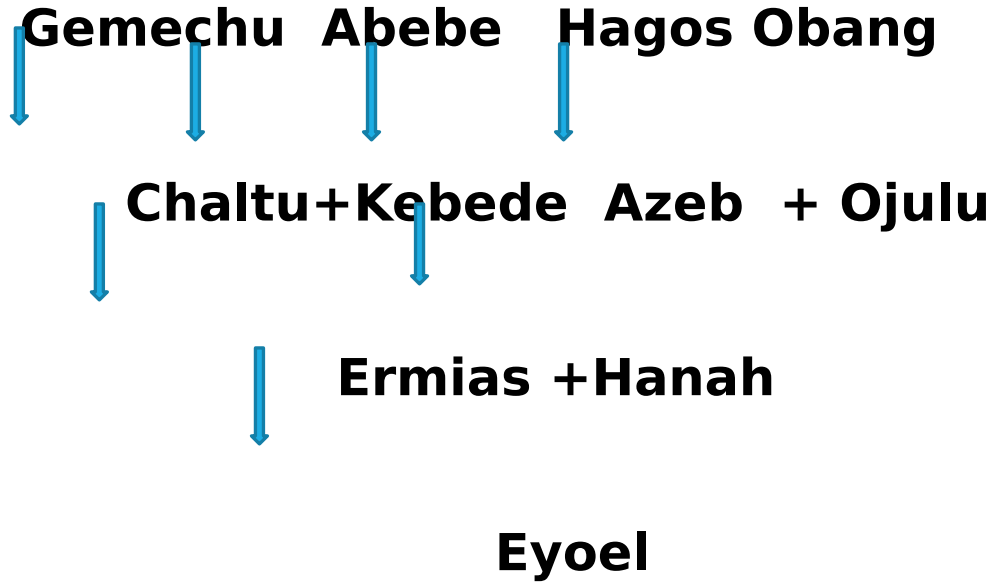
legal measures to prevent the immovable patrimony from leaving the family circle.

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.4. *“paterna paternis materna maternis” . . . Continued*

Hypothetical Case



Eyoel got 2 immovables that was originated in Obo Gemechu

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.5. Representation

Representation is an exception to the rule of survival

A predeceased heir can be represented by descendants to succeed

A legatee by singular title can not be represented unless there is no heir. [Civil Code Art 908]

In case of representation, partition is made *per stripes* [Civil Code Art 853(1)]

The person whose succession has been renounced may be represented. [Civil Code Art 854(2)]

Zemzem's mother W/ro Wude is a very rich woman. Zemzem has a daughter called Tenaye. Assume that Zemzem died on Meskerem 14th of 1999 E.C. Tenaye renounced Zemzem's succession. Just a year after the death of Zemenay, W/ro Wude died. Now Tenaye can succeed W/ro Wude by representing her mother Zemzem.

An unworthy heir can not be represented. [Civil Code Art 854(2)]

Bond of legal relationship between the deceased and the heir necessary. [Civil Code Art 854(2)]

- E.g., an adopted child her adoption has been opposed by parents of her adopter can not succeed by representation the opposing parent. [See Family Code Art 182]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

1.2.6. The case of Adoption

The rights of three parties are at issue:

- (1) the adopted child;
  - an adopted child shall, for all purposes, be deemed to be the child of the adopter. [*Article 181 of Family Code]*
  - Exception? [Article 182(1) of Family Code]
- (2) the adoptive parents; and
- (3) the biological parents.
  - The adopted child's bond with her natural family remains valid [Article 183(1) of Family Code]
  - What if there is conflict of interest b/n the adoptive and natural family of the child? [Article 183(2) of Family Code]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

FSC Cassation Court Decisions on Succession Vol. 19 File no. 110040, p. 292

(ስለ ምትክነት)

አመልካቾች ለአዲስ አበባ ከተማ የመጀመሪያ ደረጃ ፍ/ቤት- ኣባታቸው ሻለቃ አክሎግ ኣድማሱን ተክተው የሴት አያታቸውን ወ/ሮ ደብረወርቅ ሀብተሚካኤልን እንዲወርሱ ወራሽነት እንዲረጋገጥላቸው አመለከቱ።

የአዲስ አበባ ከተማ የመ/ደ/ፍ/ቤት ውሳኔ- አባተቸው በ1981 አያታቸው ደግሞ 1978 ዓ.ም የሞቱ ስለሆነ አመልካቾች አባታቸውን ቀድመው የሞቱትን አያታቸውን በተተኪነት መውረስ አይችሉም።

የአዲስ አበባ ከተማ ይግባኝ ሰሚና /ፍ/ቤት ሰበር ችሎት ውሳኔ- የአመልካቾችን ጥያቄ በቁ. 337 የፍ/ብ/ስ/ስ/ሕግ መሰረት ሰረዙት

የፌ/ጠ/ፍ/ቤት ሰበር ሰሚ ችሎት ውሳኔ- የአመልካቾችን ወላጅ አባት የኣያታቸውን የመጀመርያ ደረጃ ወራሽ በመሆን እናታቸውን የወረሱ ስለሆነ የምትክነት ጉዳይ ሊነሳ አይችልም። አመልካቾች በምትክነት አያታቸውን መውረስ የሚችሉት አባታአው ከአያታቸው ቀድመው ቢሞቱ ነበር። ይሁን እንጅ አመልካቾች አባታቸው ከእናታቸው የወረሱትን ለመውረስ የሚከለክላቸው የለም።

የተለየ ሀሳብ- ከአውራሹ በኃላ የሞተን ወራሽ ተተኪ ወራሾች መሆናቸው ተረጋግጦ ማስረጃ እንዲሰጣቸው አመልካቾችን ያቀረቡት ዳኝነት ተቀባይነት የሚያጣበት ምክንያት አይኖርም።

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.2. Intestate Succession . . . Continued

FSC Cassation Court Decisions on Succession Vol. 20 File no. 113529, p. 295 (ስለ ያለ ኑዛዜ ወራሽነት)

አመልካቾች በፌ/የመ/ደ/ፍ/ቤት የሚች የአባታቸው እናት አያታቸው ወ/ሮ ላቀች ቸርነት ውርስ እንዲጣራላቸው ተጠሪን ከሰሱ።

የፌ/የመ/ደ/ፍ/ቤት ውሳኔ- የአመልካቾችን አባት ከእናታቸው ወ/ሮ ላቀች ቸርነት ቆይተው ነገር ግን ወራሽነታቸውን ሳያረጋግጡ ስለሞቱ ከወ/ሮ ላቀች ውርስ የሚካፈሉበት ምክንያት የለም።

የፌ/ከፍ/ፍ/ቤት ውሳኔ- ይግባኙን ዘጋው።

የፌ/ጠ/ፍ/ቤት ሰበር ሰሚ ችሎት ውሳኔ- የአመልካቾች አባት እናታቸው ሲሞቱ በህይወት የነበሩና ለመውረስ ያልተገቡ ልተባሉ ስለሆኑ በቀ. 826(1)፣ 830 እና 833 የፍ/ብ/ህ መሰረት እናታቸውን የመውረስ መብት አላቸው። የአመልካቾች አባት በህይወት እያለ የእናታቸውን የወራሽነት የምስክር ወረቀት ስላላወጡ ብቻ አይወርሱም ሊባል አይችልም።

HOME-TAKE EXAM

Date: 17th March 2018

Law of Succession Hometake Exam (15%)

Instructor: Awet Lijalem

Instructions:

This is a Home take exam; reference to any material and discussion with anybody is possible but reproduction of answers will result in automatic invalidation of the exam paper.

You are allowed to put only your ID Number on the Answer Sheet.

A proper understanding of the question is half way to its answer.

You must Support your answer by relevant legal provisions.

Good and legible hand writing is a rewarding factor; of course computer typed answer is more rewarding one.

Page Limit- One Page only.

Submission date- **Saturday March 31st 2018, at 9:00 am (ቅዳሜ መጋቢት 22 ቀን 2010 ዓ.ም ከጠዋቱ 3፡00 ሰዓት)**

Non-observance of the Instructions may have negative consequences.

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession

- ***Power to make a Will***
- ***The Concept of a Will***
- ***Conditions for the Validity of Wills***
- ***Form and Proof of Wills***
- ***Revocation and Lapse of Wills***
- ***Content and Interpretation of Wills***
- ***Conditional Legacies***
- ***Charges***
- ***Substitutio vulgaris***
- ***Entails***
- ***Disherison***

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession

1.3.1. Power to Make a Will

Property

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

Private property-

- property- protected from public appropriation over which the owner has exclusive and absolute rights. [Black's Law Dictionary, 9th Ed.]
- any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of a person. [Art 40(2) of FDRE Cons]

Ownership of Individual Property

- Every Ethiopian citizen has the right to the ownership of private property.
- Unless prescribed otherwise by law on account of public interest,
- This right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise. [Art 40(1) of FDRE Cons]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.1. Power to Make a Will . . . Continued

- **Ownership of Individual Property . . . Continued**

Definition of Ownership

- The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others [Black's Law Dictionary 9th Ed]
- (1) Ownership is the widest right that may be had on a corporal thing.
- (2) Such right may neither be divided nor restricted except in accordance with the law. [Civil Code Art. 1205]

Scope of right:

- (1) Without prejudice to such restriction as are prescribed by law, the owner may use his property and exploit it as he thinks fit.
- (2) He may dispose of his property for consideration or gratuitously, inter vivos or mortis causa. [Civil Code Art. 1205]

Usus, fructus and abusus

The right to dispose of ones property, freely, by will

Restriction: e.g., Old Law of Bizkaia- a person can transfer her immovable property by will to descendants and other near relatives only.

- The power to make a will- ownership

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession

1.3.2. The Concept of a Will

A will is a juridical act

Juristic act – is an act which is intended to create or alter rights and/ or obligations

Unilateral vs. Multilateral juridical acts

Testate succession is succession that is made according to the will of the deceased

A male who makes a Will is called testator and a female testatrix.

Bequest: The gift of personal property under the terms of a

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession

1.3.2. The Concept of a Will

What is a Will?

- Oxford Advanced Learners Dictionary 8th Ed.
  - A legal document that says what is to happen to somebody's money and property after they die.

- Blacks Law Dic 9th Ed.:
  - 2. The legal expression of an individual's wishes about the disposition of his or her property after death; esp., a document by which a person directs his or her estate to be distributed upon death. [p- 1735]

  - "A will is the disposition of real and personal property to take effect after the death of the testator. When the will operates upon personal property, it is sometimes called a *testament*, *and when upon real estate, a devise; but the more general and the more popular denomination of the instrument, embracing equally real and personal estate, is that of last will and testament*."

    *4 James Kent, Commentaries on American Law *501 (George Comstock ed., 11 th ed.1866).* [p- 1736]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.2. The Concept of a Will . . . Continued

What is a Will? . . . Continued

According to Section 2(h) of the Indian Succession Act 1925:

- “A Will is a legal declaration of the intention of the testator, with respect to his property which he desires to be carried into effect after his death.”

A legal declaration of how a person wishes his or her possessions to be disposed of after death.

A Will is a formal legal document which sets out in writing what will happen to our property upon our death. A Will comes into effect after we die

[Rhodes University Law Clinic]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.2. The Concept of a Will . . .continued

Characteristics of a will

- It's a unilateral juridical act;
- It's strictly personal act;
- It has an effect only after the death of the testator;
- Its ambulatory and revocable during the lifetime of the testator;
- It follows a very strict formality to be valid; why?
- Wills, donations and contracts: compare and contrast

Contents of a Will:

- Bequeathing legacies by universal or singular title
- Disherision of heirs at law
- Constituting trust or endowment
- Directions of funeral
- Other juridical acts that have effect after death, [Civil Code Art 909]
  - Give other examples ? Appointment of tutor and guardian for a minor, Disposition of a body after death, Appointment of a liquidator . . .

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.2. The Concept of a Will . . .continued

Advantages of a will:

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

[Rhodes University Law Clinic]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will

1.3.3.1. Essential Conditions of a Will

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

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

A. Personal Nature of a Will

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

- An act of a Will is strictly personal; it can neither be made nor be entrusted to be determined to be made by third party. [Civil Code 857]

- Joint Wills has no effect.
  - Joint will may influence the true intention of a testator
  - It may create difficulty in freely altering or revoking by the testator in her lifetime. [Civil Code 858]

- Undertaking relating to Wills has no effect.
  - A contract to make or not to make a Will has no effect
  - A person can freely make, modify or revoke a will regardless of any contrary undertaking. [Civil Code 859]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

B. Capacity to Make a Will

- Testamentary capacity is the legal status of being capable of executing a Will.

In *Banks v. Goodfellow, a commonly cited English case, John Banks, the testator* clearly suffered from a chronic and serious mental disorder but was deemed capable with respect to the execution of his Will because his delusions did not affect the distribution of his assets. This judgment remains the test in most common law jurisdictions today.

The *Banks v. Goodfellow Criteria:*

- Understanding of the nature of the act (Will making) and its effects
- Knowledge of the nature and extent of one's assets.
- Knowledge of persons who have a reasonable claim to be beneficiaries.
- Understanding of the impact of the distribution of the assets of the estate.
- A confirmation that the testator is free of any delusions that influence the disposition of the assets.
- Ability to express wishes clearly and consistently in an orderly plan of disposition.
  - [R.C. Jiloha **MENTAL CAPACITY/TESTAMENTARY CAPACITY]**

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will

1.3.3.1. Essential Conditions of a Will

B. Capacity to Make a Will . . . Continued

- Since a Will is strictly personal, even minors and judicially interdicted persons can not make it through their guardians

- **i. Minors-**
  - A tutor can not make a will on behalf of the minor [Family Code Art 295(1)]
  - Minors can make a will after the age of 16 [Family Code Art 295(2)]
  - A Will made by a minor before the age of 16 is invalid even though not revoked by the minor after she reached the age of majority [Family Code Art 295(3)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

B. Capacity to Make a Will . . . Continued

ii. Judicially Interdicted Persons-

- A will made before her interdiction is valid. [Civil Code Art 368(2)]
- The court has the power to invalidate, either totally or partially, a will made by an interdicted person before her interdiction. [Civil Code Art 368 (3)]. Why?
- A will made by an interdicted person after her interdiction is invalid, unless the court maintains it totally or partially. [Civil Code Art 368(1) cum 862(1)]
- 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 must not exceed ten thousands Birr; and
  - The heirs-at-law of the interdicted person should get a minimum of 3/4 of the succession. [Civil Code Art 862(2)(3)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

B. Capacity to Make a Will . . . Continued

iii. Insanity-

- Insane persons are those persons who, due to retarded development or mental disease or senility, can not properly understand the importance of their actions [Civil Code Art 339(1)].

- Notoriously insane
  - Inmate of mental institutions
  - Restriction of liberty by family in rural commune [Civil Code Art 341 & 342].

- A will made by an insane person shall be valid unless the testator was notoriously insane at the time of making the will [Civil Code Art 341 & 863].

iv. Legally interdicted persons- they are under no disability for the purpose of making a will [Civil Code Art 341 % 864].

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will

- Any juridical act requires consent as an essential condition for its validity
- A will must be made by the free and full consent of the testator
- It must be her own decision to dispose off her property
- Conditions that vitiates consent may result in invalidation of a will
  - Can you identify some?
    - Violence
    - Undue influence
    - Fraud
    - Error

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will . . . Continued

- **Acts vitiating consent:**
  - **i. Violence-**
    - What is violence?
      - an action using force [P.H. Collin's Dictionary of Law, 4th ed]
      - The use of physical force, usu. accompanied by fury, vehemence, or outrage; esp., physical force unlawfully exercised with the intent to harm [Black's Law Dictionary, 9th Ed]
    - Violence obviously vitiates the freedom of making, modifying or revoking a will.
    - A will made under violence has no effect [Civil Code Art 867(1)].
    - In such a case the provisions of contract shall be applicable by analogy [Civil Code Art 867(2); 1706-1709; 1808-1818].
      - Duress, Art 1706
      - Threat to exercise a right, Art 1708
      - Reverential fear, Art 1709

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will . . . Continued

- **Acts vitiating consent:**

ii. Undue Influence-

- What is undue influence?
  - Also termed implied coercion; moral coercion
  - The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective
  - Today the gist of the doctrine is unfair persuasion rather than coercion. Euphoria rather than fear is often, but certainly not always, the state of mind of the party unduly influenced. [Black's Law Dictionary, 9th Ed]

- Undue influence has been defined by one of the courts as: " …the opportunity of the beneficiary of the influenced bequest to mould the mind of the testator to suit his or her purpose." [R.C. Jiloha]

- So, undue influence means an influence which is excessive.

- A beneficiary or some other person may unduly influence a testator to make a will.

❖Do you think a will can be invalidated on the ground of undue influence?

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will . . . Continued

- **Acts vitiating consent:**
  - ii. Undue Influence . . . continued
    - In principle, undue influence is not a ground for invalidating a will [Civil Code Art 868].
    - Exception: the court may reduce or invalidate the will on the following grounds:
      - A will made in favor of a guardian or a tutor [Civil Code Art 869]
      - A will made in favor of a physician or a clergyperson [Civil Code Art 870]
      - A will made in favor of a notary or a witness [Civil Code Art 871]
      - A will made in favor of a spouse [Civil Code Art 872]
      - A will made in favor of intermediaries [Civil Code Art 873]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will . . . Continued

- **Acts vitiating consent:**
  - ii. Undue Influence . . . continued
    - Application for invalidation on undue influence:
      - In case of a will made in favor of a spouse, descendants [Civil Code Art 874(1)]
      - In other cases, by descendants, ascendants or a spouse [Civil Code Art 874(2)]
      - Period of limitation, 3 months from request of execution [Civil Code Art 874(3)]
    - Power of the Court
      - Invalidation or reduction of a will based on undue influence is discretionary power of the court
      - But it has to give a reasoned decision why it reduced or invalidated [Civil Code Art 875]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will . . . Continued

- **Acts vitiating consent:**
  - iii. Fraud-
    - What is fraud? [Black's Law Dictionary, 9th Ed]:
      - 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.
      - *2. A misrepresentation made recklessly without belief in its truth to induce another person to act.*
    - It is a deceitful act employed to gain something
    - Fraud vs. undue influence
    - Do you think a will cane be invalidated on the ground of a fraudulent act?
      - No. See Art 876 of Civil Code

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

C. Consent to a Will . . . Continued

- **Acts vitiating consent:**
  - iv. Error
    - What is error? [Black's Law Dictionary, 9th Ed]:
      - An assertion or belief that does not conform to objective reality;
      - a belief that what is false is true or that what is true is false; MISTAKE.
    - Is an error a ground to invalidate a will?
      - A will made under a mistake may be invalidated
      - Mistake should be decisive and fundamental [Civil Code Art 877 cum with Art. 1697-1702].
      - [877; Art. 1697 and 1803-1818].

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

D. Object of a Will

- A will is invalid unless it specifies its object and beneficiary in a sufficiently clear manner [Civil Code Art 865].
- A will is invalid if its object is illicit- immoral or illegal [Civil Code Art 865(1)].
  - Can you identify a will with illicit object?
- A provision of a will is invalid if it can not be enforced [Civil Code Art 865(2)].

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.1. Essential Conditions of a Will . . . Continued

Nullity of a Will:

- The nullity of a provision of a will may not result in the nullity of the entire will unless the rest provisions can not be executed due to such nullity [Civil Code Art 878].

❖Give an example of such condition?

- Nullity of conditions or burdens:
  - Do you think a will is automatically invalidated if the condition or burden attached to it is impossible or illicit?
  - No, it won't. I
  - In such cases, the will is valid without the performance of the condition or burden attached to it. [Civil Code Art 879].

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

A. Forms of a Will

- **What is a form?**
  - The outer shape or structure of something, as distinguished from its substance or matter [Black's Law Dictionary, 9th Ed].
  - In a written contract, where is the contract?
- A will follows a strict formality to be valid, why?
  - to prevent people from committing fraud and misrepresenting the true intention of the testator. [Rhodes University Law Clinic]
- A will can be made in three forms:
  - public will;
  - holographic will; and
  - oral will. [Civil Code Art 880]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

A. Forms of a Will . . . Continued

- **i- Public Will-**

  - A public will is a will that is read in the presence of the testator and of four witnesses. [Civil Code Art 881(1)]

  - It is invalid unless immediately signed by the testator and the witnesses who heard when read. [Civil Code Art 881(2)]

  - Number and capacity of witnesses. [Civil Code Art 882 & 883]
    - Two witnesses enough when one is a registrar or notary on duty
    - Witnesses should understand the content of the will

- Can a beneficiary be a witness of the will?

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

A. Forms of a Will . . . Continued

ii- Holographic Will-

- It is a will that is totally written by the testator herself [Civil Code Art 884(1)]
- It is invalid unless expressly says it is a will and each of its leaves dated and signed by the testator. [Civil Code Art 884(2)(3)]
- A typewritten holographic will shall indicate this fact on each of its leaves by handwritten note. [Civil Code Art 885]
- A holographic will made by a testator who can not understand the will is invalid. [Civil Code Art 886]

How can this happen?

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

Forms of a Will . . . Continued

Conditions applicable for both public and holographic wills:

- Date, month and year [Civil Code Art 887]
  - Why time important?
  - Falseness of time.
- Will per relationem [Civil Code Art 888]
  - Per relationem - Referring to external source
- Erasures, cancellations, words written over or additions [Civil Code Art 889 & 890]
- Deposits of a will [Civil Code Art 891]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

A. Forms of a Will . . . Continued

iii- Oral Will (*nuncupative will)*-

- A testator may feel that her death is imminent, e.g., due to accident
- She may in such case declare verbally her last will in the presence of just two witnesses [Civil Code Art 892]
- Contents of oral will:
  - Instructions of funeral
  - Legacy up to 500 Birr
  - Instructions regarding guardian and tutor of minors [Civil Code Art 893]
- What if it contains more than this? [Civil Code Art 894]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

A. Forms of a Will . . . Continued

iii- Oral Will- continued

Exercise

Comment the following oral will made by Ato Asrat!

I, W/ro Tewabech Hailu, hereby make the following oral will, in the presence of two witnesses, for I'm feeling I'm dying soon:

- I give my beautiful daughter, Qonjit, my car if she marries Dr. Adhanom, who cared me and treated me with due care
- I give half of my whole estate to my beloved son, Anteneh.
- My other children should take the rest of my property in equal proportion.
- To my spiritual father, I bequest Birr 3000.
- My funeral should take place at the monastery of Debre Libanos.
- I appoint W/ro Ayelech as a guardian for my minor child, Mimi

What will happen if a testator leaves many wills? [Civil Code Art 895]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.2. Forms and Proof of Wills

B. Proof of Wills

- Burden of proof-
  - What is burden of proof?
    - An obligation to prove ones allegations
  - whoever claims rights under a will shall prove the existence and content of a will [Civil Code Art 896]
  - Manner of proof:
    - Public or holographic will- by producing the will or its authenticated copy from notary or registrar [Civil Code Art 897(1)]
    - Can they be proved by other means?
    - What if somebody destroys it? [Civil Code Art 897(2)(3)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.3. Revocation and Lapse of Wills

❖**Revocation vs.Lapse of Wills**

A. Revocation of Wills

What is Revocation of Wills?

- Invalidation of a will by the testator, either by destroying the will or by executing a new one. [Black's Law Dictionary, 9th Ed].
- A testator is free to revoke her will at any time

Various ways of revocation:

- Express revocation [Civil Code Art 898]
  - Express revocation
  - Making a will that can not be executed together
- Destruction or cancellation [Civil Code Art 899]
  - Proof intention
  - Proof of the act to be done by the testator
- Disposition of the bequest [Civil Code Art 900]

What is the effect of revocation?

- It makes the revoked will invalid
- It can not make a previous will revive [Civil Code Art 901]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.3. Revocation and Lapse of Wills

B. Lapse of Wills

- What is Lapse of Wills?
  - It is the termination of a will due to the occurrence or non-occurrence of some condition.
  - This takes place by the operation of the law

i. Lapse of Oral will-

- lapses if the testator lives more than 3 months after its making [Civil Code Art 902]

ii. Lapse of holographic will-

- shall lapse if not deposited within a notary or registrar within 7 years after its making [Civil Code Art 903]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.3. Revocation and Lapse of Wills

B. Lapse of Wills . . . Continued

iii. Birth of a Child

- if a child is born after a will is made and the child accepts it, it shall render the will lapse [Civil Code Art 904]

- The court may, totally or partially, maintain it following the intention of the testator [Civil Code Art 904(1)]. Example?

- But the child shall get ¾ of her share in any way [Civil Code Art 904(2)]

iv. Dissolution of Marriage

- Legacies made in favor of a spouse shall lapse where the marriage is dissolved by any cause other than death [Civil Code Art 906]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.3. Conditions of a Will . . . Continued

1.3.3.3. Revocation and Lapse of Wills

B. Lapse of Wills . . . Continued

v. Death, Unworthiness or Renunciation

- Death before the testator, unworthiness or renunciation by the legatee renders the will lapse. [Civil Code Art 907]

- In case of death, representation shall take place where:
  - The legacy is by universal title
  - The legacy is to devolve upon the state. [Civil Code Art 907]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.4. Interpretation of Wills

What is interpretation?

- The process of determining what something is, esp. the law or a legal document, means;
- The ascertainment of meaning to be given to words or other manifestations of intention. [Black's Law Dictionary, 9th Ed]
- Basic principle: No interpretation where the law is clear

A. General Rules in Interpreting a will:

- A will drafted by unprofessional is highly subject to interpretation
- Presumed intention of the testator is the key element here [Civil Code Art 910(1)]
- We can get it from the will or from other relevant sources
- No interpretation where the will is clear [Civil Code Art 910(2)]
- General expressions like, my heirs, my immovable property, my wife [Civil Code Art 911]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.4. Interpretation of Wills

B. Universal vs. Singular Legacies:

- Universal legacy A legacy to receive the whole or part of the property of a testator, whether in full or bare ownership [Civil Code Art 912(1)]
- Any legacy not a universal legacy is singular legacy [Civil Code Art 912(2)]
  - A legacy of a specific thing , e.g., my car, my laptop,
- Legacy to an heir is a mere form of partition [Civil Code Art 913]
- Save to the contrary, universal legatee shall be assimilated to an heir at law [Civil Code Art 915(1)]
- Tacit disherision:
  - Universal legacy results in the disherision of heirs other than descendants [Civil Code Art 939(1)]
  - The universal legatee shall be deemed as a child of the deceased [Civil Code Art 939(1)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.4. Interpretation of Wills . . . Continued

B. Universal vs. Singular Legacies . . . Continued

Exercise

Identify whether Ato Hagos' beneficiaries are universal or singular legatees:

- My elder son Elias shall take 40% of my estate and in addition to the 40%; he shall take my wristwatch.
- My little daughter Shewit shall take 40% of my estate.
- Let the mule be given to my spiritual father Aba Mathewos.
- The maidservant who has served me for the past 25 years shall take 20000 Birr.
- A Girls' Hostel which is Called Berimayda and found in Samire shall take 10% of my hereditary estate.
- I give my pistol to my brother, Hadush.

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.5. Conditional Legacies

i. Conditional Legacies in General

- Conditional legacies are valid
- They can be suspensive [condition precedent] or resolutive [condition subsequent] [Civil Code Art 916]
- Suspensive or condition precedent- the legatee shall wait until some time lapses or some condition occurs.
  - E.g., A testator may testify that Ayantu will take the property when she marriess, untill then it will stay with my wife, Gemechisa.
- Resolutive or condition subsequent- the legatee shall automatically seize the property but she will get it back when a certain condition happens.
  - E.g., A testator may state on his will that as far as his wife remained widowed she will use the property but if she remarries, it will be for his sister, Abebech.

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.5. Conditional Legacies . . . Continued

i. Conditional Legacies in General . . . Continued

- A condition to marry or not to marry a specific person is valid. [Civil Code Art 917(1)]
- A condition not to marry or remarry in general terms is not valid. [Civil Code Art 917(2)]
  - What would be the effect? Why?
- A usufruct or pension so long as a person doesn't marry or remarry is possible. [Civil Code Art 917(3)]

Presumption of resolutive condition [Civil Code Art 918]

Security [Civil Code Art 919]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.5. Conditional Legacies . . . Continued

ii. Charges

- A charge is an obligation imposed by the testator which must be performed to receive the legacy.
- It may be imposed in the nature of to give something to, or to do something for, a person or persons. [Civil Code Art 920]
- The value of the charge can not be more than the value of the gift. [Civil Code Art 920; 921]
- Non-performance of charges?
  - Payment may be demanded but dissolution can not be demanded unless expressly ordered by the testator. [Civil Code Art 923]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.5. Conditional Legacies . . . Continued

iii. *Substitutio vulgaris*

- This was common in Roman Law

- *Roman law. The nomination of a person to take the place of a previously named heir who has refused or failed to accept an inheritance.*
- *Also termed common substitution; vulgar substitution.* [Black's Law Dictionary, 9th Ed].

- A *substitio vulgaris* is a condition by which the testator specifies a person to take the legacy in case the first legatee can not, or doesn't want to, take it. [Civil Code Art 928(1)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.5. Conditional Legacies . . . Continued

iv. Entails

- This was also common in Roman Law
- The testator has the power to order that her heir and/or legatee shall hand over the legacy to one or more persons after a certain condition happens [Civil Code Art 929(1)]

- The conditions may be:
  - On the expiry of a certain period,
  - Upon the death of the heir or the legatee; and,
  - On the accomplishment of a certain condition,

- Holder in tail vs. Person called to succeed [Civil Code Art 929(2)&(3)]
- Beneficiary
  - Capacity- [Civil Code Art 930(1)&(2)]
  - Ascendants or heirs of the holder in tail [Civil Code Art 930(3)]
- The holder in tail has a usufruct right only [Civil Code Art 931(1)]
- Right of the person called to succeed to bring an action [Civil Code Art 933]
- *Refusal by holder in tail.* [Civil Code Art 934]
- *Default of person called to succeed.* [Civil Code Art 935]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.6. Disherison

Definition

- Also called disinheritance or disinherison
- The act by which an owner of an estate deprives a would-be heir of the expectancy to inherit the estate. [Black's Law Dictionary, 9th Ed].
- A person has to disinherit her heirs.
  - Do you think recognizing the power of disherison is proper?
  - It usually serves as a means of punishment for the misbehaviour of her heirs
- Limitation of power of disherison [Civil Code Art 940]
- Effect of disherison: [Civil Code Art 937(2)]

CHAPTER ONE – DEVOLUTION OF SUCCESSION . . . CONTINUED

1.3. Testate Succession . . . Continued

1.3.6. Disherison . . . Continued

Express vs. Tacit disherison

i. Express disherison

- Ascendants can only be disinherited by express disherison [Civil Code Art 937(1)]
- Justification necessary [Civil Code Art 938(1)]
- Power of the Court in ascertaining the justification [Civil Code Art 938(2)&(3)]
- Examples:
  - Her child didn't take care of her during her illness
  - The daughter refused to marry a specified person
  - Son used to disobey any order of the deceased

ii. Tacit disherison

- Appointment of universal legatee [Civil Code Art 939(1)]
- Status of the universal legatee [Civil Code Art 939(3)]
- Ascendants can only be disinherited by express disherison [Civil Code Art 937(1)]

End of Chapter One