

FAQs relating WILLS

A Will is a legal declaration by a person of his/her intention and desire of how his/her asset is to be dealt with or disposed of after the person's death. If one does not prepare his/her WILL, then his/her property passes as per relevant succession laws.

FEW COMMON FAQs ARE STATED BELOW:

Question 1: Who can prepare a WILL?

Answer: Anyone over 18 years of age and of sound mind is eligible to prepare a Will.

Question 2: Once Will is prepared, it is final forever?

Answer: A Will can be changed at any time or withdrawn during the lifetime of the person making the Will (even if it is registered).

Question 3: If one die without a WILL, whether all the assets shall go to the spouse?

Answer: No, if one dies without a will, assets shall go to heirs as per respective succession laws.

Question 4: Is it compulsory for the WILL to be drafted in English language?

Answer: No. WILL can be drafted in any language known to the person making his/her WILL.

Question 5: Do you need to register a WILL?

Answer: No, a will need not be registered. However, it is advisable to get the will registered.

Question 6: Do you need Witness for a WILL?

Answer: Yes, every WILL prepared should be attested by atleast two witnesses. Please note that the beneficiaries cannot be named as witnesses.

Question 7: Does a WILL have to be printed on Stamp Paper?

Answer: Not required. A WILL can be prepared on a simple paper.

Question 8: Is Stamp duty payable on a WILL?

Answer: No stamp duty is payable on a WILL.

Question 9: If a person cannot sign the WILL, can he/she yet make a WILL?

Answer: Yes, he/she can affix his/her thumb impression on the WILL.

Question 10: Whether it is compulsory to have health certificate from Doctor at the time of making a WILL?

Answer: No, health certificate is not mandatory under the law. However, it is advisable to obtain to avoid any challenges to the WILL.

Question 11: How will one's property be inherited if he/she dies without preparing a Will?

Answer: The Law on succession in India is different for different communities.

- For Hindus, Sikhs, Buddhists and Jains, Hindu Succession Act, 1956 will be applicable.
- For Muslims, Muslim Personal Law will apply.
- For Christians, Parsis, Jews and any other communities other than those mentioned above, Indian Succession Act, 1925 will be applicable.

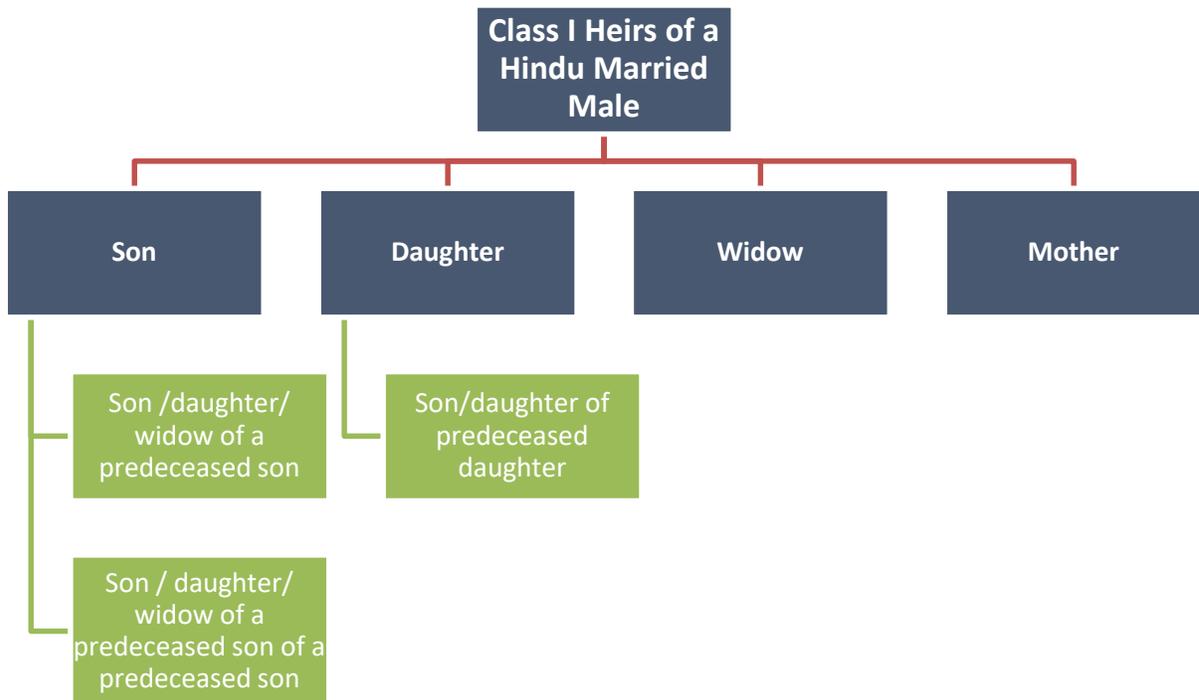
Question 12: What is the order of succession in case a Hindu male dies without a Will?

Answer:

- Firstly upon his Class 1 heirs.
- Secondly, if there is no Class 1 heir, then upon his Class II heirs.
- Thirdly, if there is no Class II heir, then upon his Agnates.
- Lastly, if there is no Agnate, then upon his Cognates.

Question 13: Who are the Class I heirs for a Hindu Male?

Answer:



All the above heirs take the property simultaneously i.e. equally. Heirs of each predeceased child will divide the received share between them.

Question 14: Who are the Class II heirs for a Hindu Male?

Answer: a. Hindu Married Male

1. Father
2. Son's daughter's children; Brothers; Sisters
3. Daughter's grandchildren
4. Children of siblings
5. Father's parents
6. Father's widow (step-mother), Brother's widow
7. Father's siblings
8. Mother's parents
9. Mother's siblings

b. Hindu Unmarried Male

1. Father
2. Brothers; Sisters
3. Children of siblings
4. Father's parents
5. Father's widow (step-mother), Brother's widow
6. Father's siblings
7. Mother's parents
8. Mother's siblings

Among the heirs specified in Class II, those in the first entry take the property simultaneously and in exclusion to those in the subsequent entries and so on and so forth.

Question 15: In absence of any Class I or Class II heirs, how will property pass on in case a Hindu male fails to make a Will?

Answer: In absence of Class I and Class II heirs, the property of a Hindu male who dies without a will devolves firstly upon his Agnates, and if there are no Agnates, then upon his Cognates.

Question 16: Who are Agnates?

Answer: Two people are called agnates of each other if they are related (by blood or adoption) wholly through males.

Example: A father's brother's daughter is an Agnate.

Question 17: Who are Cognates?

Answer: Two people are called cognates of each other if they are related (by blood or adoption) but not wholly through males.

Example: Father's Sister's Son is a Cognate.

Question 18: Does it matter that the daughter is married?

Answer: It does not matter whether the daughter is married or unmarried. She gets an absolute share equal to that of the son.

Question 19: Does subsequent remarriage of the widow divest her of her property?

Answer: The widow is permitted to receive this share even if she subsequently remarries.

Question 20: What if there are more than one widow?

Answer: If there are more than one such widow, then all of them taken together, take one share.

Question 21: Can a Hindu female make a will?

Answer: Yes, a Hindu female is eligible to make a will.

Question 22: Who are the Class I heirs for a Hindu Married Female?

Answer: The property devolves on the following heirs in the order specified below:

1. Firstly, upon her sons and daughters (including children of any predeceased children) and husband;
2. Secondly upon the heirs of her husband;
3. Thirdly, upon her parents;
4. Fourthly, upon the heirs of her father;
5. Lastly, upon the heirs of her mother.

The succession is in the order specified above. Thus, the heirs in the first entry take the property simultaneously and in exclusion to all others and so on and so forth.

For removal of doubts, the order of devolution of husband's/ father's/ mother's heirs would be as if it was her husband's/ father's/ mother's property and he/she had died without preparing a will.

Question 23: Who are the Class I heirs for a Hindu Unmarried Female?

Answer: The property devolves on the following heirs in the order specified below:

1. Firstly, upon her parents;
2. Secondly, upon the heirs of her father;
3. Lastly, upon the heirs of her mother.

The succession is in the order specified above. Thus, the heirs in the first entry take the property simultaneously and in exclusion to all others and so on and so forth.

Question 24: What is the exception to the order of succession specified above?

Answer: If a Hindu female dies without preparing a will, without leaving behind any children or children of any predeceased children:

Any property inherited by her from her parents shall devolve upon the heirs of her father. Likewise, the property inherited by her from her husband or her father-in-law shall devolve upon the heirs of her husband.

It is important to note that this applies only if female dies without leaving behind any children or children of predeceased children. If she has left behind any children, then they would take the property in preference to all other heirs.

Question 25: Is an ex-spouse entitled to the property?

Answer: A divorce leads to a total severance of a relationship. Hence, ex-spouse is not entitled to property of the deceased.

Question 26: What is the general assumption in case of simultaneous deaths of two persons together?

Answer: Where two persons have died together for eg. Husband and Wife while travelling together, then it shall be presumed that the elder person has died prior to the younger person.

Question 27: Does a child in womb have any right to succession?

Answer: As per Hindu Succession Act, 1956, a child who is in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

Question 28: When does an heir get disqualified from inheriting as per Hindu Succession Act, 1956?

Answer: Circumstance 1: Any person who commits murder or abets the commission of murder shall be disqualified from inheriting both the following:

- a. the property of the person murdered, or

b. any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder

Circumstance 2: In case if any Hindu converts/reconverts his/her religion to any other religion , then any children born to him/her after conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives . However, if the children or descendants are Hindus when the succession opens, then the disqualification would not apply.

However heirs shall not be disqualified from succeeding to the estate of an intestate merely because he/she suffers from any disease or deformity.

Question 29: Who shall be preferred prior amongst half blood and full blood heirs?

Answer: Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives

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