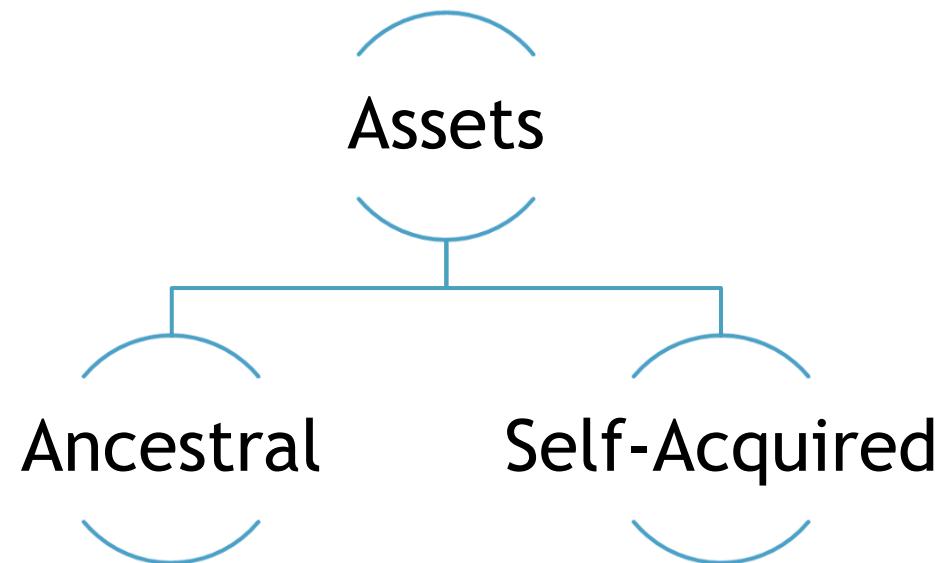




SAMISTI
L E G A L
Advocates & Legal Advisors

Introduction

- ▶ Estate Planning simply refers to passing down of your ‘assets’ from one generation to another.



Avoid complications
among successors

Curb down legal
battles

Need of Estate Planning

Minimizes expenses

Ensures the transfer
of property to right
beneficiary

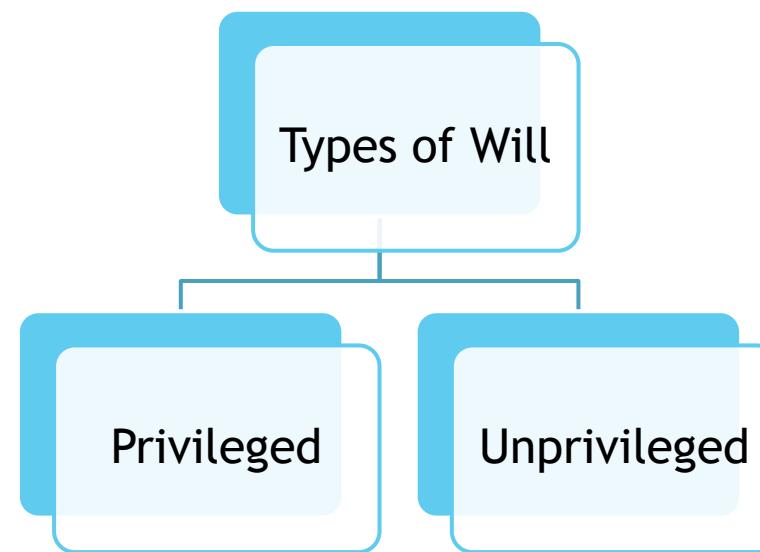
Methods of Estate Planning

By Will

Through Trust

By Will

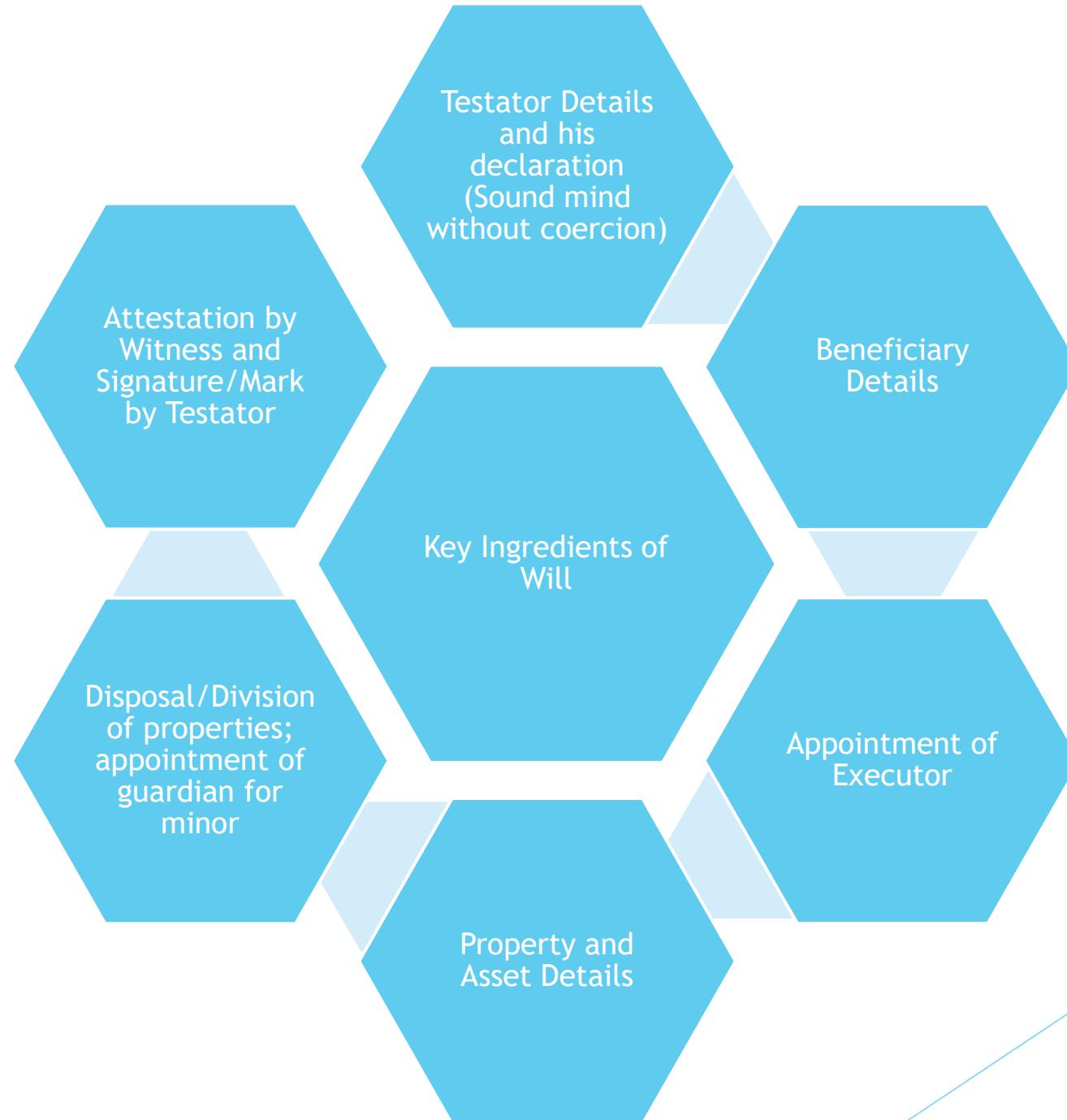
- ▶ Section 59: Any sound mind major can make a will.
- ▶ Section 60: Guardian may be appointed by will for minority.
- ▶ Section 62: Will may be modified by the creator, provided his mind shall be sound during such modification.
- ▶ Section 63: Will shall be signed or marked by the testator. If another person signs/impresses marks on behalf of the testator, the person shall do it at the presence of the testator and follow the testator's direction. Exceptions: Soldiers.
- ▶ Section 63: Will shall be attested by at least 2 witnesses.



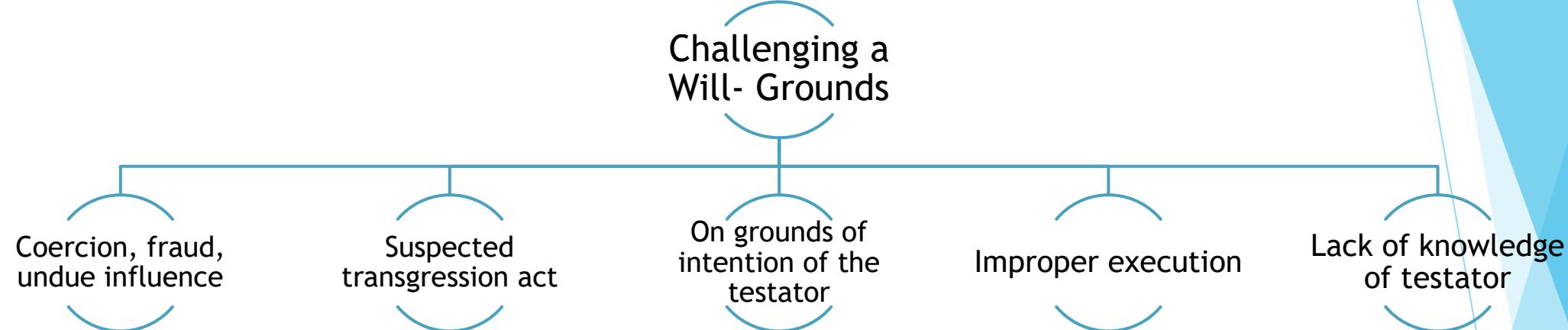
Privileged Will

- ▶ Generally, the testators are soldiers, mariners or air force who are in expedition.
- ▶ The will may be written by hand, where signature or attestation is not required.
- ▶ In case the Will is partly or wholly written by another person and is not signed by the testator, it needs to be established that the Will is written by direction of the testator and that the testator has acknowledged it.
- ▶ By word of mouth by soldier/mariner/airman before 2 witnesses.

- ▶ **Wills other than Privileged Wills are unprivileged Wills.**







Challenging a Will After Probate: Grounds

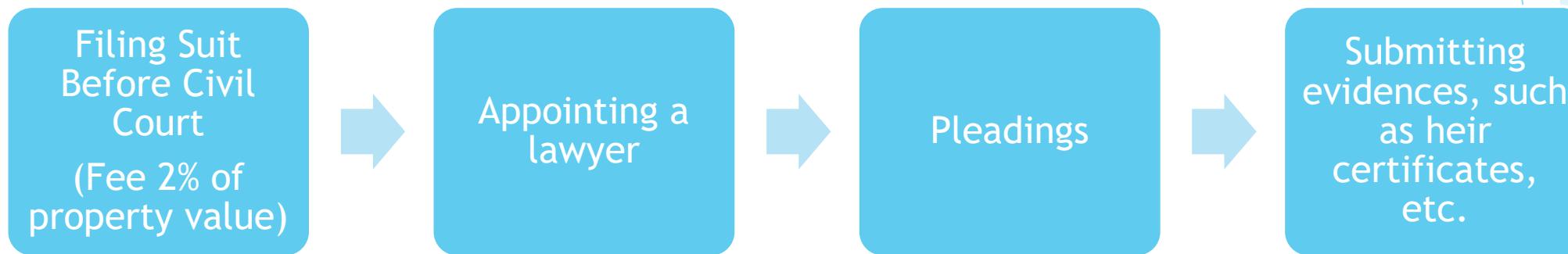
Change in situation

Misrepresentation
before Court to obtain
Probate

Concealment of facts

Defects in the
proceedings

Process of Challenging a Will



Validating Foreign Wills

- ▶ Section 382 of Indian Succession Act validates foreign wills/certificates.
- ▶ If a foreign will has already been proved and deposited in a competent court abroad, an Indian court is permitted to grant letters of administration (“LoA”) with a copy of the will annexed, this does away with the necessity of proof of the original will.
- ▶ Where a foreign will has not been proved, the Indian court is required to take evidence as to the due execution of the will according to the applicable law.

Through Trust

- ▶ A trust is an arrangement under which the settlor entrusts his property to the trustees, who hold it in a Fiduciary Capacity for the benefit of the beneficiaries. The basic constituents of a trust are Settlor, Trustees and Beneficiaries. The Basic tenets of Trust are transmutation of trust property, declaration of the purpose and the beneficiaries.
- ▶ Governed by The Trust Act.

Creating a Trust

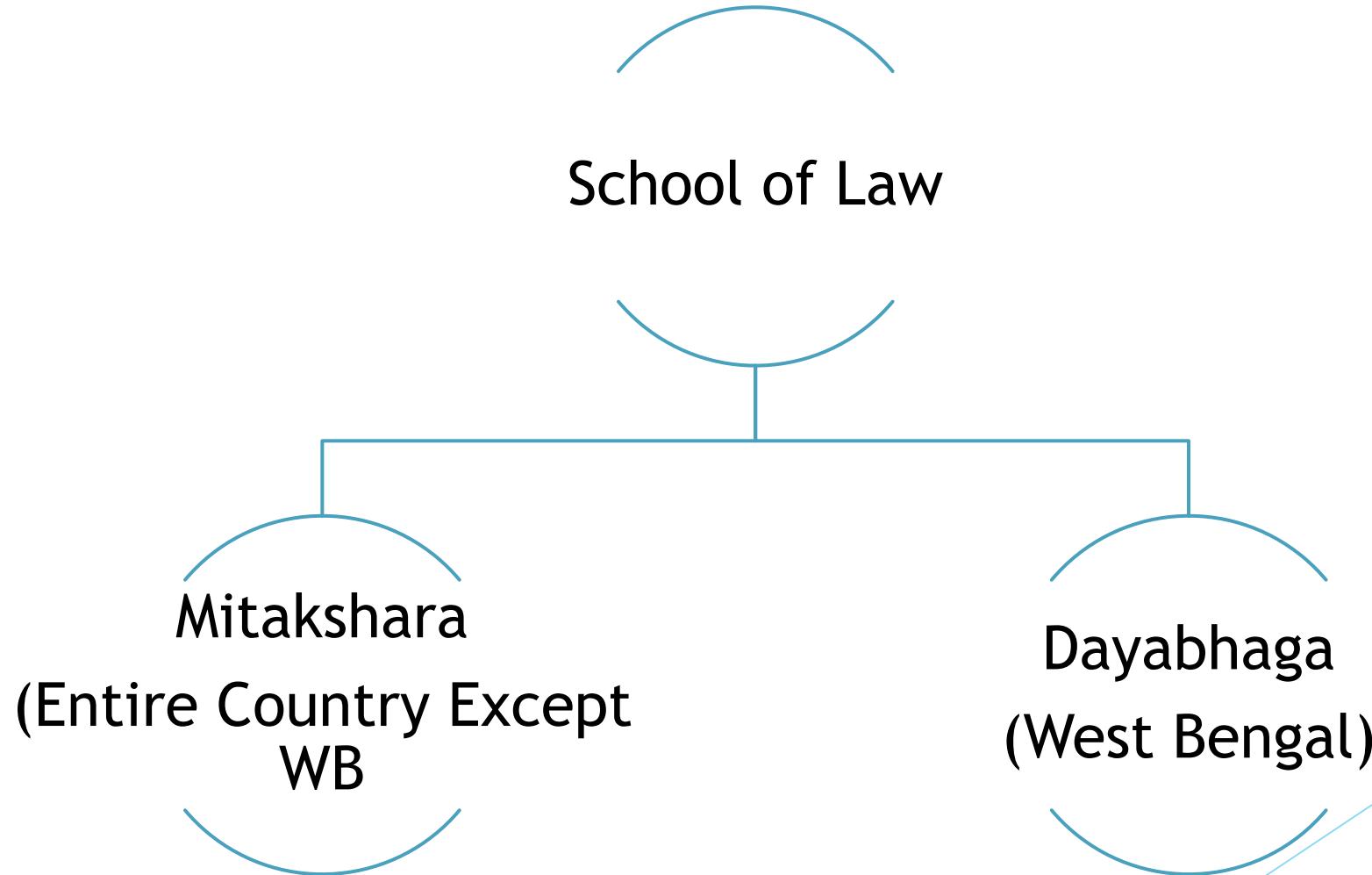
Uequivocal declaration of intention

Clearly defining the object

Appointment of beneficiary

Bequesting Intestate Properties

Hindu Law:



Bequesting of Property: Ancestral (Mitakshara): Hindu Law

- ▶ No definition and recognition of ancestral property under any enactments.
- ▶ ‘Four Generation Theory’
- ▶ Birth of ‘Right’ with the birth of ‘heir’
- ▶ Legacy opens from the demise of owner
- ▶ The only property that can be called ancestral property is that which has been inherited by a person from his father, father's father, or father's father's father. Therefore, property inherited by a person from his collaterals, such as brother, uncle, etc., or property inherited by him from a female, e.g., his mother, will be his separate property.
- ▶ Ancestral Property bequested by Will or Partition shall change to self-acquired property.
- ▶ Suman Surpur & Anr.versus Amar & Anr (Civil Appeal 188-189 of 2018) Supreme Court of India: Daughters who were born prior to the date of the introduction of the law as well are included as co-parcenor.
- ▶ The first preference is given to Class 1 heirs simultaneously and then the legacy is passed to class II heirs, upon the absence of class I heir

Class I Heirs

- ▶ Son;
- ▶ daughter;
- ▶ widow;
- ▶ mother;
- ▶ son of a predeceased son;
- ▶ daughter of a predeceased son;
- ▶ son of a predeceased daughter;
- ▶ daughter of a predeceased daughter;
- ▶ widow of a predeceased son;
- ▶ son of a predeceased son of a predeceased son;
- ▶ daughter of a predeceased son of a predeceased son;
- ▶ widow of a predeceased son of a predeceased son.

Class II Heirs

- ▶ I. Father.
- ▶ II.
 - (1) Son's daughter's son,
 - (2) son's daughter's daughter,
 - (3) brother,
 - (4) sister.
- ▶ III.
 - (1) Daughter's son's son,
 - (2) daughter's son's daughter,
 - (3) daughter's daughter's son,
 - (4) daughter's daughter's daughter.
- ▶ IV.
 - (1) Brother's son,
 - (2) sister's son,
 - (3) brother's daughter,
 - (4) sister's daughter.
- ▶ V. Father's father; father's mother.
- ▶ VI. Father's widow; brother's widow.
- ▶ VII. Father's brother; father's sister.
- ▶ VIII. Mother's father; mother's mother.
- ▶ IX. Mother's brother; mother's sister.

Bequesting of Property-Muslim Law

Property is inherited after appropriations like debt, will, expenses paid in place of a funeral are determined and paid off.



Hanafi/Sunni

Favors Male's
Heirs- Son's Son,
Son's Daughter,
Father's Mother



Shia

No
discrimination

Source of Muslim Law

- ▶ Holy Quran;
- ▶ Sunna (practice of prophet);
- ▶ Ijma (Consensus of the learned men of the community over the decision over a particular subject matter);
- ▶ Qiya (deductions based on analogy on what is right and just in accordance with good principles)

Types of Heir- Muslim Law

Sharers -Entitled to certain share of deceased property.

Residuary - Takes the share left over after sharers have taken their part.

Sharers

- ▶ Husband
- ▶ Wife
- ▶ Son/Daughter
- ▶ Daughter of a son (or a son's son or a son's son's son's)
- ▶ Father
- ▶ Paternal grandfather
- ▶ Mother
- ▶ Grandmother on the side of the males
- ▶ Full sister
- ▶ Consanguine sister
- ▶ Uterine sister
- ▶ Uterine brother

- ▶ *Other heirs other than the Sharer are Residuaries. Further, in the presence of a Son, the daughter becomes the residuary.*

Method of Share

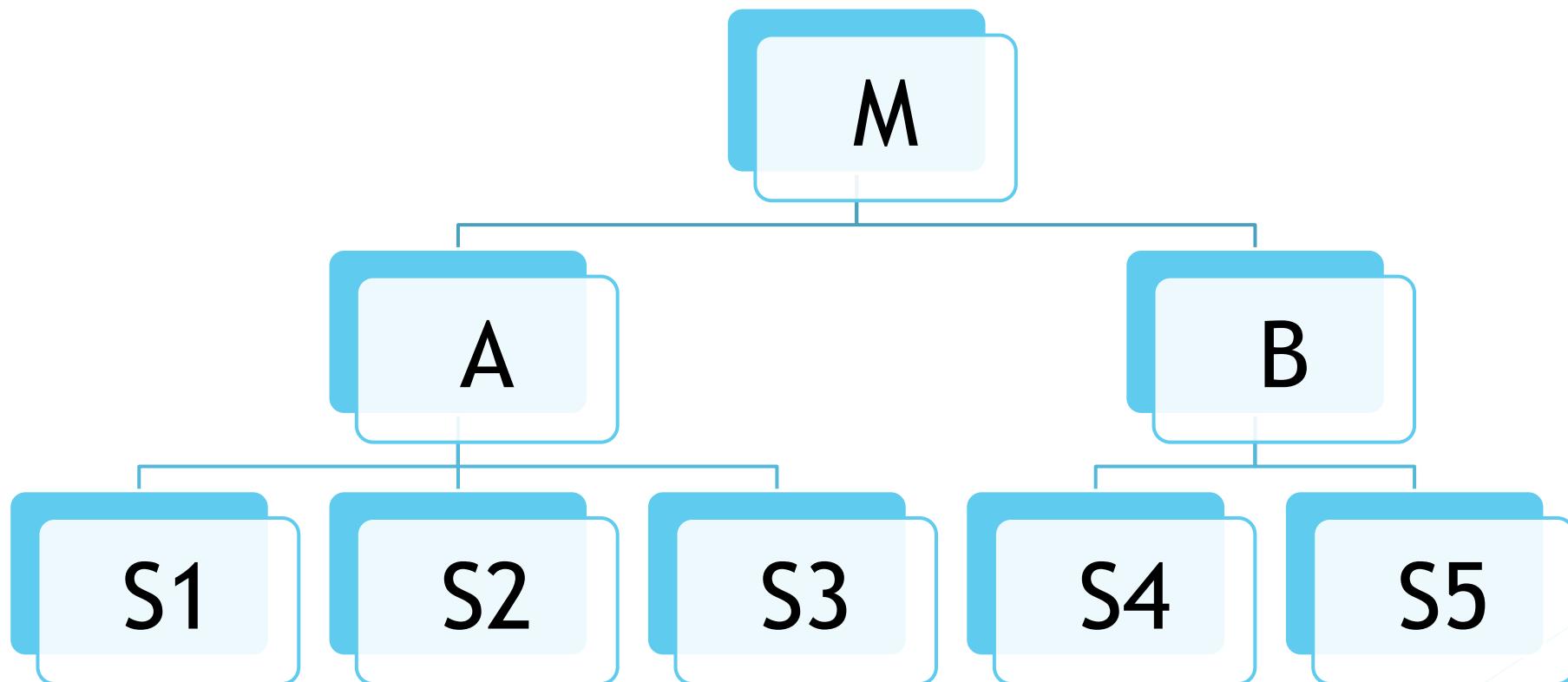
The share taken by each sharer will vary in certain conditions. For instance,

- ▶ A wife takes $\frac{1}{4}$ th of share in a case where the couple is without lineal descendants, and a one-eighth share otherwise.
- ▶ A husband (in the case of succession to the wife's estate) takes a half share in a case where the couple is without lineal descendants, and a one-fourth share otherwise.
- ▶ A sole daughter takes a half share. Where the deceased has left behind more than one daughter, all daughters jointly take two-thirds.
- ▶ If the deceased had left behind son(s) and daughter(s), then, the daughters cease to be sharers and become residuaries instead, with the residue being so distributed as to ensure that each son gets double of what each daughter gets.

Muslim Law: Shia Law

- ▶ Whenever a Muslim dies, his properties devolve on his heirs in definite share of which each heir becomes an absolute owner.
- ▶ Under Muslim law of inheritance, no distinction has been made between self-acquired and ancestral property. All properties, whether acquired by a Muslim himself or inherited by his ancestors, are regarded as an individual property and, may be inherited by his legal heirs: **Abdul Raheem vs. Land Acquisition Officer, AIR 1989 AP 318.**
- ▶ No right upon Birth.
- ▶ The nearer excludes the remoter.

Muslim Intestate Law: Bequesting Property



Per Capita: Sunni

- ▶ M has got two sons A and B. A has three sons, S1 , S2 and S3 . B has two sons S4 and S5 . When M dies there are two branches of succession, one of A and the other of B. Suppose, A and B both die before the death of M so that the sole surviving heirs of M are his five grandsons.
- ▶ The total number of claimants (heirs) is five and the heritable property would be equally divided among all of them irrespective of the branch to which an heir belongs.

Per-Strip Distribution: Shiya

- ▶ The quantum of property inherited by each of them depends upon the property available to that particular branch to which they belong. In the above-mentioned illustration, A and B constitute two branches, each having 1/2 of M's property. Both, A and B pre-decease M.
- ▶ Therefore, the surviving heirs of A namely, S1 , S2 , S3 would get equal shares out of 1/2 which is quantum of property available to the branch of A. Thus S1, S2 and S3 would get 1/6 each. Similarly, the quantum of property available to the branch of B is also 1/2 but the descendants from this branch are only two. Accordingly, the 1/2 property of B would be equally shared by S4 and S5 . Therefore, S4 and S5 would get 1/4 each.

Muslim Law

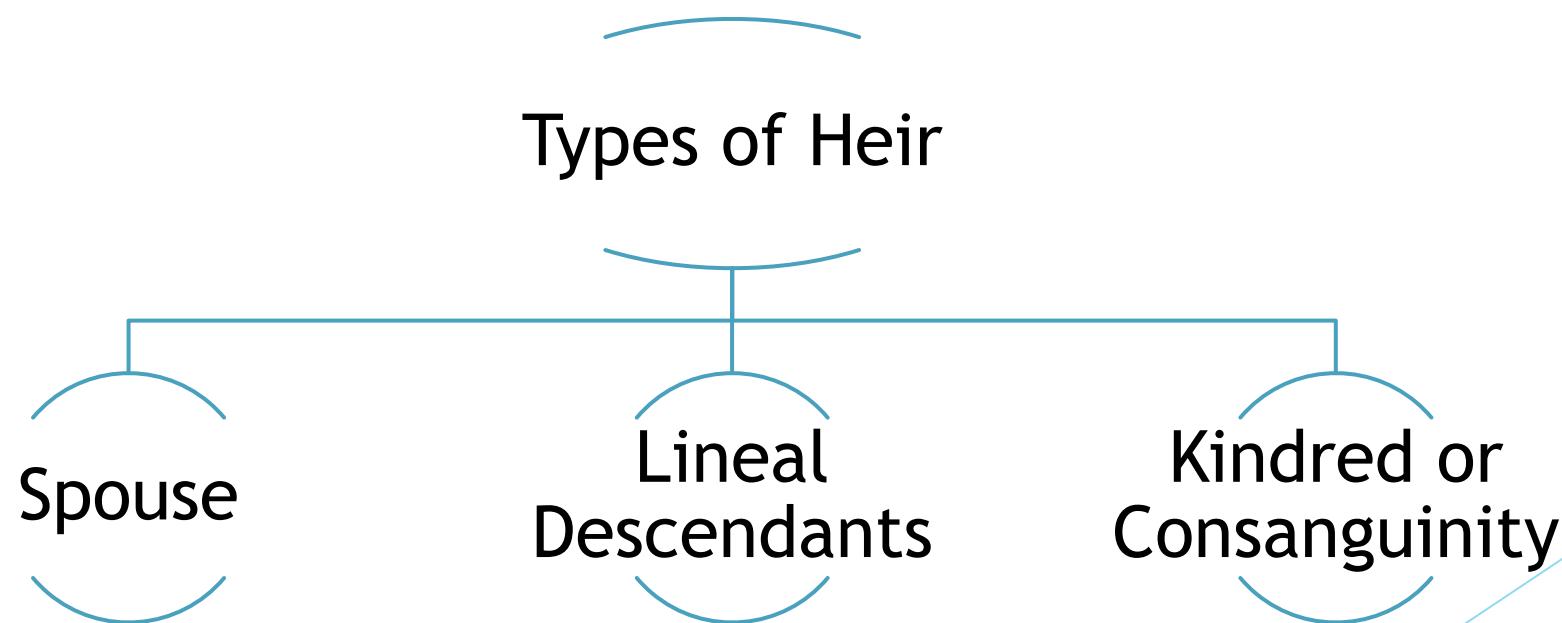
- ▶ Female Rights: “For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much – an obligatory share.”

Males and females have equal rights of inheritance. Upon the death of a Muslim, if his heirs include also the females then, male and female heirs inherit the properties simultaneously. Males have no preferential right of inheritance over the females, but normally the share of a male is double the share of a female. In other words, although there is no difference between male and female heir in so far as their respective rights of inheritance is concerned but generally the quantum of property inherited by a female heir is half of the property given to a male of equal status (degree).

- ▶ Step Children: The step-children are not entitled to inherit the properties of their step-parents. Similarly, the step-parents too do not inherit from step-children.

Christian Law: Bequesting of property

- ▶ Governed by Indian Succession Act;



Obtainment of Succession Certificate

Filing Application before District Court

- The petition seeking succession certificate shall be filed before DC as laid down under CPC, 1908.

The petition shall contain the following information:

1. Death details of the deceased;
2. Ordinary residence of the deceased.
3. Family and other relative details;
4. Petitioner's rights;
5. Declaration
- Debts and Securities the certificate is applied for.

Process on Application

- The DC shall fix a date of hearing and send notice as it feels should be given.
- On the fixed date, the DC proceeds in relation to the right to certificate.
- Upon satisfaction, the DC grants order for certificate

Thank You.

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