

BEQUEST

Bequest: Its definition

What is a “bequest”?

A bequest is a testament given by one individual (the testator) to another individual (the executor) in order to perform a function or execute an activity for the benefit of another individual (the beneficiary) or group of individuals. Bequests include:

1. Contractual dealings: buying, selling, trading, leasing, transferring, canceling, deferring, renting, borrowing, lending, repaying a debt, guaranteeing, collateralizing, and the like;
2. Legal dealings: litigating, conducting a marriage or divorce for which the testator is guardian, witnessing, establishing proof, punishing, and the like;
3. Religious dealings: performing hajj or umra, distributing zakat and charity, paying burial expenses, and the like;
4. Personal dealings: maintaining the testator’s property and dependents, gifting, running errands, and the like;
5. Future benefit: bequesting the right (without ownership) to a possible future benefit, including the right to its profit, whether the source of the benefit exists now or may exist in future;
6. Usufruct: bequesting the right to use (but not own) something, including the right to profit from its use.

Bequesting Property Of Unascertained Value

Is it permissible to bequest the property whose quantitative and qualitative attributes are not known?

It is permissible to bequest property when its quantitative and qualitative attributes are not known.

Cancellation Of Bequest

When and how is the bequest cancelable?

The bequest is cancelable at any time by the testator before the beneficiary takes constructive possession of the item; cancellation of the bequest is effected by:

1. the testator stating so, whether spoken or written;
2. the testator using (assuming this diminishes the usefulness of the item), losing, consuming, bequesting (where the new bequest supersedes the previous one), using as collateral, gifting,

- selling, or any transactions that transfer the testator's ownership of the item and thereby nullifies the bequest;
3. the beneficiary's death, if this occurs before the beneficiary's acceptance or constructive possession of the item, though if the beneficiary dies before making an acceptance, the estate heirs are entitled to accepting the bequest.

Invalid Bequests

When is a bequest invalid?

All impermissible bequests are invalid; invalidity here entails that if the transaction has already been invalidly executed, the property should be returned to the valid owners, whereas if the transaction has not been executed, the bequest remains unexecutable until it is valid.

The Bequestable Limit

How much of the total estate may the testator bequest?

The testator may bequest up to one-third of his property, where the market value of this amount is measured at the time of the testator's death.

Violation Of Eligible Heirs' Right To Inherit

Would a bequest still be valid if it denied the eligible heirs' right to receive their portion of the estate?

A bequest is invalid if it violates the eligible heirs' right to receive their portion of the estate.

Paying For Financial Obligation From Bequest

From where should the post-death outstanding obligations (e.g. unpaid debt) be paid for the testator: (i) from his bequested one-third; or (ii) from his remaining two-thirds?

If the testator specifies a bequest to pay for something obligatory (e.g. unpaid debt), the money should come out of the bequested one-third; if the testator does not specify the bequest and the testator's obligation remains outstanding at the time of his death, the money should come out of the remaining two-thirds, and if obligations remain, the bequested one-third.

Bequests Made To General Group Of Individuals

Is it permissible for the testator to make a bequest in favor of a general group of individuals?

It is permissible for the testator to make a bequest to a general grouping of individuals (e.g. “to students of Sacred Law”).

Testator Forgiving Debts Near Death

Is a testator permitted to forgive debts when nearing death?

It is impermissible for a testator on his deathbed (or a female testator in labor who eventually dies while giving birth) to forgive any portion of the debts owed unless all the sane, adult estate heirs unanimously agree to doing so, in which case debtors who are estate heirs may be forgiven the entire debt while debtors who are not estate heirs may only be forgiven up to one-third of the estate’s value; if the testator recovers it is permissible to forgive debts.

Bequests When There Are No Heirs

Is it permissible to bequest the entire estate to an individual or organization if there are no estate heirs?

If there are no estate heirs, it is permissible to bequest the entire estate to an individual or organization.

Assigning Multiple Executors To Same Bequest

Can two or more executors be assigned to the same bequest?

It is permissible to assign two or more executors to the same or different tasks relating to the same bequest; if the testator does not specify that multiple executors are to perform separate tasks independently, then they must execute the bequest together, meaning that they must act out of consensus, not necessarily as physically together during the bequest’s execution.

Cancellation Of Executorship

When is the executorship cancelable?

The executorship is cancelable at any time by either testator or executor, with the exception that if after the testator's death the executor is almost certain that the bequest will be misappropriated, the executor is forbidden from canceling the bequest unless a qualified executor is found to replace him.

Ownership Transfer To Beneficiary

When does the ownership of the bequested item transfer to the beneficiary?

In cases where the beneficiary is specified, once the beneficiary accepts the bequest, ownership of the bequested item transfers to the beneficiary upon the testator's death, even if actual possession takes place much later.

Transfer Of Ownership On Beneficiary's Refusal

Who is entitled to the ownership of a bequest in case the intended beneficiary refuses the bequest?

In cases where the beneficiary is specified, if the beneficiary refuses the bequest, ownership of the bequested item transfers to the estate heirs upon the testator's death, even if actual possession takes place much later.

Beneficiary's Cancellation Of Bequested Item

Under what conditions may a beneficiary validly cancel the ownership of the bequested item?

The beneficiary's ownership of the bequested item is only cancelable by the beneficiary before taking constructive possession of the item; thereafter, cancellation by the beneficiary is invalid and only a separate disposition removes the item from the beneficiary's property.

Estate Heir As Beneficiary Of Bequest

Can an estate heir also be the beneficiary of a bequest?

It is impermissible for the beneficiary of a bequest to be an estate heir, unless the sane, adult estate heirs unanimously agree to the bequest; meaning, an heir to the two-thirds (of the testator's property normally reserved for estate division) may receive a bequest from the one-third (of the testator's property normally reserved for estate division) if the sane, adult estate heirs unanimously agree.