

LL.M/M.C.L. (2/3 Year) III Term Course

[2009-10]

LM – 3018 : Statutory Laws Relating to Testamentary and Intestate Succession

Note : 1. The following course content should not be treated as exhaustive. The questions may be set from any topic which the examiner feels relevant to the subject.

2. *There shall be one written examination of three hours' duration in each subject at the end of each Term. One question paper shall be set in each of the subjects prescribed for study and examination. Each paper shall carry 100 marks out of which 20 marks will be for valuation of term paper and 80 marks for written examination. The minimum pass marks in each subject shall be 50%.*

3. *Every student of this course is required to present a paper in the class for discussion on a topic assigned by the concerned teacher. No student shall be permitted to appear in the examination unless a certificate is issued by the teacher that the paper presented by the student was to his satisfaction.*

Statutory Laws Relating to Intestate and Testamentary Succession

India has a multiplicity of succession laws some of which are codified while others are uncoded. The diversified application of these is linked with religion, domicile, community, tribe, form of marriage and even the religion of the spouse of the deceased. The present course is intended to take a critical study of the statutory laws of intestate and testamentary succession in vogue in India. Under the intestate succession category, the study would include a critical examination of the provisions of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925; that covers succession to the property of Christian and Jew intestates and all Indian (except two Hindus) who get married under the Special Marriage Act, 1954, and to the property of the issue of such marriage. Separate provisions within the Indian Succession Act, 1925 are provided for the Parsi Intestates. In addition the course will also cover a study of the rules governing devolution of agricultural property and testamentary succession under the Indian Succession Act, 1925.

I General Introduction

Laws of intestate succession in vogue in India; different laws for different communities; legislative history of these laws; criterion for their applicability; religion, domicile, form of marriage; effect of conversion on applicability of laws of inheritance; the Caste Disability Removal Act, 1850 and general principles of inheritance.

Readings:

1. JND Anderson (ed.,) *Family Laws in Asia and Africa* (1972).
2. Jeremy Bentham, *Theory of Legislation* (1975)
3. Poonam Pradhan Saxena, *Family Law Lectures, Family Law II*, 2nd ed., (2006).
4. Paras Diwan and Peeyushi Diwan, *Laws of Intestate and Testamentary Succession* 3rd ed., 2006.
5. L L Sardesai (ed.,) *Glimpses of Family Law of Goa, Daman and Diu*, 1982.
6. G D Sriveni (ed.,) *Family Laws of Goa, Daman and Diu*, 1979.
7. David Annouswamy, About the Right of Legitim among the Hindus in Pondicherry (1978) 20 JILI 535.
8. David Annouswamy, Pondicherry : Babel of Personal Laws (1972) JILI 420.

II Multiplicity of Succession Laws and Uniform Civil code

Concept of uniform civil Code: Art 25 and 44 of the Constitution of India: desirability and feasibility of a Uniform Civil Code.

Readings:

1. Constituent Assembly Debates 1948-49, Vol VII.
2. Vasudha Dhagamwar, Towards a Uniform Civil Code 1989.
3. Virendra Kumar, "Uniform Civil Code Revisited : A Juridical analysis of John Vallamattom 45 JILI (2003) 315.
4. Virendra Kumar, "Pragmatic Approach Towards a Uniform Civil Code, 4 Social Science Research Journal 134-42 (1995).
5. N R Madhav Menon (ed.,) National Convention on Uniform Civil Code for all Indians 1986.
6. Madhu Kishwar, "Breaking the statement: Uniform Civil Code v Personal Laws" Manushi No. 77 (1986).
7. Madhu Kishwar, Stimulating Reforms Not Forcing Uniform Civil Code v Optional Civil Code, Manushi No. 89 (1995).
8. B. R. Sharma – A Uniform Civil Code for India '21 Civil and Military Law Journal 1985.
9. John Vallamattom v Union of Indian AIR 2003 SC 2902.

III The Hindu Succession Act, 1956

General introduction and applicability of the Act : Devolution of the property of a male and female intestate; devolution of an interest in the Mitakshara coparcenary and the concept of notional partition; abolition of limited estate for a Hindu female, general rules of inheritance, disqualifications; Introduction of females as coparceners, State amendments and the Hindu Succession (Amendment) Act, 2005.

Readings

1. Ranganath Mishra (Rev.,) Mayne's Treatise on Hindu Law and Usage (15th ed., 2006).
2. Satyajeet A Desai (Rev.,) Mulla's Principles of Hindu Law, Vol 1 and II)(20th ed., 2007).
3. Duncan M Derret, A critique of Modern Hindu Law (1970).
4. S A Kader, The Hindu Succession Act, 1956 (2004).
5. Report of the Hindu Law Committee 1948.
6. Lok Sabha Debates, 1955, Vol V.
7. Anil V Antur Kar, "Interpretation of Sec. 22 of the Hindu Succession Act, 1956" (1981) JS 68 AIR 122.
8. B Sivaramayya, the Hindu Succession Act, 1956, and the Socio economic justice 1971 1 KuLJ 72.
9. Kiran B Jain, "A Review of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986, Islamic and Comparative Law Quaterly Vo. VIII : 2003 p. 225.
10. Nilima Bhadbade, State Amendments to the Hindu Succession Act, and conflict of Law: Need for law reform (2001) 1 SCC (Jour) 40.
11. V S Anjaria, "Succession to the former Limited Estate of a remarried widow under the Hindu Succession Act, 1956, (A Case for re-thinking (1973) I SCC (Jour) 25.
12. R K Pandey, "Status of Remarried Hindu Widow (1973) I SCC (Jour) 25.
13. Om Prakash v. Radha Charan 2009 (7) SCALE 51.
14. Gurupad v Hirabai AIR 1978 SC 1239.
15. C Kanna Gounder vAnjana Gounder (2003) I LW 408.
16. Vellikannu v R Singaperumal (2005) 6 SCC 622.
17. State of Maharastra v Narayan Rao Sham Rao Deshmukh AIR 1985 SC 476.
18. Yudhister v Ashok Kumar AIR 1987 SC 559.
19. Ramkali v Mahila Shyamwati AIR 2000 MP 288.
20. Ramchandra v Arunachalammal (1971) 3 SCC 847.
21. Padmavati Mishra v Sumitra Devi 2002 (1) HLR 114 (Pat).
22. Ramabai Padmker v Rukminibai Vishu Vekhande AIR 2003 SC 3109.
23. Kasturi Devi v Deputy Director, Consolidation AIR 1976 SC 2595.
24. V Tulsamma v Sessa Reddi AIR 1977 SC 1944
25. Bai Vijaya v Thakuribai Chelabai AIR 1979 SC 993,
26. Pratap Singh v Union of India AIR 1958 SC 1695 (Constitutional validity of sec. 14).
27. V Muthuswami v Angmmal AIR 2002 SC 1279.

28. Gulab Rao Balwant Rao Shinde v Chhabubai Balwant Rao Shinde AIR 2003 SC 160
29. Velamari Venkata Sivaprasad v Kothuri Venkateshwarlu AIR 2000 SC 434 (remarriage of widow that is void).
30. Seetha Lakshmiammal v Muthuvenkatarama Lyengar AIR 1998 SC 1692.
31. Bhagat Singh v Teja Singh (2002) 1 HLR 17 (SC).
32. Radhika v Ahgnu (1996) 2 HLR 344 (SC).
33. Lachman Singh v Kirpa Singh AIR 1987 SC 1616.
34. Dhanistha Kalita v Ramakanta Kalita AIR 2003 Gau 92.
35. State of Punjab v Balwant Singh AIR 1991 SC 2301.
36. Somu Bai Yashwant Jadeav v Balagovinda Yadav AIR 1983 bom 156 (Constitutional validity of sec. 15).
37. Jhugli Tekam v Assistant Commissioner AIR 204 MP 52.
38. Kasturi Devi v Deputy Director, Consolidation AIR 1976 SC 2595.
39. Ram Chatterjee v Debathi Mukherjee (2002) 2 SCC 193.

IV – The Indian Succession Act, 1925

Applicability, historical developments, provisions relating to consanguinity, recognition of relationship by adoption; general principles of succession.

Readings

1. E L Devadasan, *Christain Law in India*, 1974.
2. S S Subramani & Kannan (Rev.), Paruck's *The Indian Succession Act*, 1925 (9th ed., 2002).
3. Sanjiva Rao, *The Indian Succesion Act*, 1925 (7th ed., 2000).
4. Law Commission of India: 110 Report on the Indian Succession Act, 1925.
5. "Family Law and Succession" in Annual Survey of Indian Law" pub: Indian Law Institute.
6. Poonam Pradhan, Scheme of inheritance under the Indian Succession Act, 1925, a comparison with Islamic and Hindu Laws, *Islamic and Comparative Law Quarterly* 1982 p. 101.
7. Sebastian Champappilly, "Christian Law of Succession and Mary Roy's case (1994) 4 SCC (Jour) 9.
8. Land Board v Cyriac Thomas AIR 2002 SC 3161.
9. Mary Roy v State of Kerela 1986(2) SCC 209.
10. Abdur Rahim Kyakutty Haji v Joseph 1952 TC 176.
11. Louis Marie Antoine v Alexis Sandanaswamy AIR 1984 Mad 271.
12. Lucas v Jerome Pascal AIR 1977 Mad 270.

V Law governing intestate succession among the Parsis

Legislative history; special rules applicable to Parsi intestates under the Indian Succession Act, 1925.

Readings

1. Phiroze K Irani, Personal Law of Parsis in India, in Family Law in Asia and Africa J N D Anderson (ed.), (1972) p. 274,
2. Mancherji v Mithibai 1 Bom 349.
3. Erasha v Jerbai 4 Bom 537.
4. Jehangir v Perozbai 11 Bom 1.

VI Devolution of agricultural property in India

A general overview of the devolution of agricultural property in India; State enactments, Constitutional validity of the Laws governing agricultural property. Effect of deletion of Sec. 4(2) of the Hindu Succession Act, 1956 in 2005, via the Hindu Succession (Amendment) Act, 2005.

Readings

1. Bina Agarwal, *A Field of one's own: Women and Land Rights in India* (1994).
2. B Sivarammayya, Women's Access to Land and Other Productive Resources: Legislative Policy of Hunting with Hounds and Running with Hare in Shamsuddin Shams ed., 'Woman, Law and Social Change 1991 p. 89.
3. Ambika Mishra v State of UP 1980 (3) SCC 719.
4. Mahdu Kishwar v Union of India 1996 (5) SCC 125.

VII Succession Laws and Gender Justice

Historical perspective, Constitutional Guarantee of gender parity and succession laws, sex discrimination and its socio-economic effects, judicial response to the challenge of discriminatory provisions with respect to ownership of material assets and land rights, legislative efforts to inculcate gender justice in succession laws, their impact and adequacy.

Readings

1. Report of Committee on Status of women in India, 1974.
2. Law Commission of India. 114th Report on the Property Rights to Women : Proposed Reforms Under Hindu law (May, 2000).
3. J D M Derrett, "Lurking Sex Discrimination in the Hindu Succession Act, 1956" 1978 KLT 75.

4. B Sivaramayya, Coparcenary Rights to Daughters: Constitutional and Interpretation Issues (1997) 3 SCC (Jour) 25.
5. R S Venkatachari, "The need for amendment of the Hindu Succession Act, 1956 in regard to Class-II heirs pointed out and the validity of postponement of female Bandhus in Mitakshara of succession on the basis of Art. 15 of the Constitution examined." 1972 (II) MLJ 34.
6. Poonam Pradhan Saxena, "Women's Right to Dwelling House under the Hindu Succession Act, 1956 : Narasimha Murthy v Sushila Bai, AIR 1996 SC 1826- A Comment, Vol II National Capital Law Journal 1997 p. 121.
7. Prakash Chand Jain : "Women's Property Rights under Traditional Hindu Law and the Hindu Succession Act, 1956: Some Observations 45 JILI (2003) p. 509.
8. Narasimhamoorthy v Sushila Bai AIR 1996 SC 1826.
9. Nanjamma v State of Karnataka 1999 AIHC 3003 (Kant).
10. Ambika Mishra v State of UP 1980 (3) SCC 719.
11. Madhu Kishwar v Union of India 1996 (5) SCC 125.

VII Testamentary Succession

Law of Testamentary Succession in India, Applicability, Testamentary capacity, Definition of a Will, Codicil, Executor, Administration, Probate and Letters of Administration, Distinction between a Will, Deed and Donation Mortis Causa, execution of Unprivileged and Privileged Wills, Attestation, Revocation, Alteration and Revival of Wills, Bequest of limited and absolute estates, Mutual Wills, Construction of Will and technical words, Lapse of legacies, General, Specific and Demonstrative legacies, Representative title to the Property of a deceased and Succession Certificates, Bequest for Charitable and Religious purposes.

Readings:

1. Madhukar D Shende v Tarabai Aba Shegade AIR 2002 SC 637.
2. Raja Ram Singh v Arjun Singh AIR 2002 Del 338.
3. Hirda Devi v Deolakhan Devi AIR 2002 Jhar 55.
4. Muninanjappa v R Manual AIR 2001 SC 1754.
5. Balwant Kaur v Chanan Singh AIR 2000 SC 1908.
6. Arun Kumar v Shrinivas AIR 2003 SC 2528.
7. Ramabai Padmakar Paul v Rukinibai Vishnu Vekhande AIR 2003 SC 3109.
8. P M Mani v P S Mohankumar AIR 2002 Mad 402.
9. Ganeshammal v Arunachalam AIR 2002 Mad 417.
10. Krishna Kunjulakshmi v Narzan AIR 2003 Ker 98.
11. Meera Diwan v Shakuntala Diwan AIR 2002 Del 321.
12. Mauleshwari Mani v Jagdish Prasad AIR 2002 SC 727.
13. Somwati Tiwari v People in General AIR 2003 MP 278.
14. Hari Prashad Singh v Prakash Singh AIR 2002 Jhar 97.

15. John Vallamattom v Union of India AIR 2003 SC 2902.

16. Preman v Union of India 1998 (2) KLT 1004.

Question Paper 2007

Attempt any FOUR questions. All questions carry EQUAL marks.

1. (i) Discuss the changes introduced by the Hindu Succession (Amendment) Act, 2005 relating to Mitakshara Hindu Male's property.

A, a Hindu male died leaving behind his mother, widow, two daughters and a son of a predeceased daughter. Allocate the shares among the heirs both in obstructed and unobstructed properties.

- (ii) The Hindu Succession Act, 1956 upholds the Constitutional dictum; 'No discrimination on the basis of sex'. Discuss

2. Discuss the general rules relating to intestate succession under the Indian Succession Act, 1925. How much are they different from the general rules of succession of intestate succession under Hindu Succession Act, 1956. Also discuss the effect of conversion on the applicability of laws of inheritance under both Acts.
3. Distinguish between :
 - (i) Will and Codicil;
 - (ii) Unprivileged and Privileged Wills;
 - (iii) General and Specific Legacies.
4. What are the general rules of intestate succession applicable to Parsis as are laid down in the Indian Succession Act, 1925?
5. Discuss under what circumstances and to what extent can a Hindu make testamentary disposition of his property? Are Hindus governed by the I.S. Act, 1925, if so, discuss the procedure to execute a will after the death of a testator.
6. Discuss the general rules of succession as laid down in H.S. Act 1956. What are the disqualifications recognized by the H.S. Act, 1956 which prevent an heir from inheriting property.

There was a factor fight among three brothers ABC and sister D. Father sided one of the brother. In that right, father was accidentally killed by a blow from B. Is B entitled to succeed property of a father along with A, C and D. Discuss in the light of the provisions of H.S. Act, 1956.