Topic 8. Testamentary succession

Topic 8 of 16 · Semester 1

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Chapter

Succession by will is one of the most important and complex institutions of civil law, expressing the absolute will of a person in deciding how their property is to be distributed after their death. In this lesson, we will examine the general rules on drawing up a will, the strict requirements governing its form, and the mechanisms for giving effect to the testator's intentions. During the lesson, we will analyse freedom of testation and its limits, conditional wills, and specific legal constructs such as the appointment of a substitute heir. Furthermore, notarially certified wills and wills equivalent to notarially certified ones, the confidentiality of a will, its interpretation, revocation, and amendment procedures will be considered. In the concluding section of the lesson, the invalidity of a will, the process of its execution, as well as the legal consequences of special testamentary dispositions such as testamentary obligations (legacies) and testamentary burdens will be examined in detail. This knowledge serves as an essential foundation for future lawyers in correctly resolving inheritance disputes.

AT A GLANCE

- 1 yil — Term of executor's authority (The executor of a will must perform their duties within at most 1 year from the date the succession opens (Civil Code, art. 1131).)
- 2 ta — Witnesses for a secret will (At least two witnesses must be present to seal and certify a secret will in an envelope (Civil Code, art. 1125).)
- Majburiy ulush — Limit on freedom of testation (A testator may leave property to any person, but cannot circumvent the reserved share of statutory heirs.)

8.1 General rules of succession by will

A will is a citizen's personal expression of will concerning the disposal of property belonging to them or of rights to such property in the event of their death. Under civil legislation, a will must be drawn up strictly in person; drawing it up through a representative is categorically prohibited. The principle of freedom of

testation means that a citizen may bequeath all or part of their property to any person, whether or not they fall within the circle of statutory heirs, to legal entities, to the state, or to citizens' self-government bodies. The testator also has the right to disinherit one, several, or all statutory heirs without giving any reasons. However, disinheriting a statutory heir does not extend to their descendants who inherit by right of representation, unless the will provides otherwise. Freedom of testation is limited solely by the rules on the reserved share established by law. The testator is entitled to make dispositions not only in respect of property belonging to them at the time, but also in respect of property that may be acquired or come to belong to them in the future. If such property belongs to the testator at the time the succession opens, the will is valid. The portion of property that has not been bequeathed is distributed among the statutory heirs. This category of heirs also includes those statutory heirs who were bequeathed another part of the property under the will. Hypothetical example: Grandfather Anvar bequeathed his large house and yard to his friend Sobir, and his bank deposits to the state. He disinherited his only son without any explanation. Anvar's car was not specified in the will. Following his death, the house passes to Sobir, and the funds pass to the state. The car, as the un-bequeathed portion of the estate, must pass to the statutory heirs; however, because the son was disinherited, he cannot take it. If the son is entitled to a reserved share (for instance, if he is incapacitated for work), then irrespective of the terms of the will, he may claim his statutory share.

- A will must be drawn up personally; drawing it up through a representative is prohibited (Civil Code, art. 1120).
- The testator may leave property to any person, the state, or an organisation, and may disinherit statutory heirs without providing grounds (Civil Code, art. 1120).
- The un-bequeathed portion of the property is distributed among the statutory heirs (Civil Code, art. 1123).

> **KEY INSIGHT**
> Although freedom of testation appears absolute, it is restricted by statutory rules on the reserved share. Even if the testator disinherits a statutory heir, that heir will still receive their share if entitled to a reserved share.

8.2 Conditional wills and the appointment of a substitute heir

The testator is entitled to make the receipt of an inheritance subject to lawful conditions regarding the heir's conduct. This is known as a conditional will. Conditions may include lawful requirements conforming to moral standards, such as the heir obtaining an education, entering a specific profession, or giving up harmful habits. However, unlawful conditions attached to a testamentary disposition appointing an heir or depriving one of the right of succession (for example, demanding the commission of a crime or requiring marriage to a particular person) are invalid. If an heir is unable to fulfil a condition incorporated into the will due to their state of health or other objective grounds, such condition may be declared invalid by a court upon an action brought by the heir. There is also the institution of appointing a substitute heir (substitution). The testator is entitled to appoint another heir (a substitute) in contemplation of the possibility that the heir designated in the will may die before the succession opens, fail to accept the inheritance, renounce it, or be excluded as an unworthy heir. Any person capable of being an heir under the law may be appointed as a substitute. An important rule is that renunciation of an inheritance by a testamentary heir in favour

of another person to the detriment of a substitute heir is not permitted. Hypothetical example: Botir bequeathed his business to his son Jamol, but imposed a condition: Jamol must obtain a higher education degree. This is a lawful condition. Botir also provided in the will that if Jamol were to die prior to the opening of the succession or renounce the inheritance, the business would pass to Botir's younger brother Sanjar. In this scenario, Sanjar is the substitute heir. If Jamol accepts the inheritance and subsequently wishes to renounce it in favour of someone else, the law prohibits this because a substitute heir (Sanjar) has been designated.

- Lawful conditions concerning the heir's conduct may be imposed for the receipt of an inheritance (Civil Code, art. 1121).
- Conditions that are unlawful or impossible to fulfil due to objective grounds may be declared invalid (Civil Code, art. 1121).
- A substitute heir may be appointed for situations where the primary heir cannot take the inheritance (Civil Code, art. 1122).

> **COMMON PITFALL**
> Conditions in a conditional will that restrict human constitutional rights (for example, "you will only inherit if you marry so-and-so" or "if you change your religious beliefs") are entirely unlawful and void per se.

> **EXAM FOCUS**
> In examinations, you will be asked to enumerate the grounds for appointing a substitute heir: the death of the primary heir, failure to accept the inheritance, renunciation, declaration as an unworthy heir, or failure to fulfil testamentary conditions.

8.3 Form of a will: notarially certified and equivalent wills

A will must strictly be drawn up in written form, specifying the place and time of its execution, and signed by the testator in their own hand. The legislation recognises two forms of written wills: notarially certified wills and wills equivalent to notarially certified ones. If the testator is unable to sign it personally due to physical defects, illness, or illiteracy, another citizen may sign it on their behalf at their request in the presence of a notary. In such case, the reasons must be recorded without fail. The notary, the person in whose favour the will is drawn up (and their family members), individuals lacking full legal capacity, illiterate persons, and individuals with previous convictions for perjury cannot sign the will. A notarially certified will may be written by the testator or recorded by the notary from the testator's words. A secret will is a will certified by a notary without the notary becoming acquainted with its contents, at the wish of the testator. It must be written and signed by the testator in their own hand and then certified in an envelope that is enclosed and sealed in the presence of two witnesses and the notary. Owing to practical necessities of life, wills certified by certain officials are equivalent to notarially certified wills. These include: wills of individuals undergoing treatment in hospitals certified by the chief medical officer; wills of persons on board vessels certified by the master of the vessel; wills of individuals on expeditions certified by the head of the expedition; wills of military personnel certified by the unit commander; and wills of persons held in detention facilities certified by the head of the institution. Hypothetical example: Sardor fell seriously ill during a long voyage at sea. As the ship was on the high seas, no notary was available. Sardor wrote his will and had it certified by the

master of the vessel. This document is fully equivalent to a notarially certified will and takes legal effect upon the opening of the succession.

- A will must be in writing, state the place and time of execution, and be signed personally (Civil Code, art. 1124).
- A secret will must be handwritten and sealed in an envelope in the presence of two witnesses (Civil Code, art. 1125).
- Wills certified by heads of hospitals, vessels, expeditions, military units, and correctional institutions are equivalent to notarially certified wills (Civil Code, art. 1126).

> **EXAM FOCUS**
> Remember who may not sign a will in place of the testator: the notary themself, the heir and their close relatives, persons lacking legal capacity, and individuals convicted of perjury.

8.4 Confidentiality of a will and its interpretation

The confidentiality of a will is an essential guarantee that protects the inviolability of the testator's private life and the freedom of their will from external pressure. Under the law, the notary, any other official certifying the will, as well as a citizen who signed the will in place of the testator, are not entitled to disclose information concerning the contents of the will, its execution, revocation, or amendment prior to the opening of the succession (that is, until the death of the testator). This rule prevents objections, pressure, or disputes from relatives or other persons during the testator's lifetime. The interpretation of a will arises after the succession opens. When a will is interpreted by a notary, the executor of the will, or a court, the literal (verbatim) meaning of its words and expressions is taken into account. If the literal meaning of any provision in the will is ambiguous, it is established by comparing it with other provisions and with the overall content of the will as a whole. The objective is to give effect to the true intention of the testator. Hypothetical example: In his will, Otabek wrote: "Let all my vehicles pass to my son." Following his death, it was established that an automobile and an agricultural tractor were registered in his name. Other heirs initiated a dispute, arguing that a tractor is not a vehicle but specialised machinery. In interpreting the will, the court noted that Otabek had left his agricultural land to his son in other clauses, determined that he also intended the tractor under the phrase "vehicles", and reached its decision based on the overall meaning of the will.

- The contents of a will and actions related to it must remain confidential until the succession opens (Civil Code, art. 1128).
- In interpreting a will, primary regard is had to the literal meaning of the words (Civil Code, art. 1129).
- Where ambiguity exists, provisions are compared with the overall content of the will (Civil Code, art. 1129).

> **CASE LINK**
> In practice, cases often arise where the exact address or name of property is stated incorrectly. In such situations, the court ascertains the testator's true intention by comparing other parts of the will with the testator's actions during their lifetime.

8.5 Revocation and amendment of a will

Having drawn up a will, the testator remains completely free to revoke or amend it at any time, and is under no obligation to explain the reasons for the revocation or amendment to anyone. There are several methods of revoking or amending a will. Firstly, the testator may revoke an earlier will entirely or in the part that conflicts with a subsequent will by drawing up a new will. Secondly, a will may be revoked directly by the testator destroying it. Thirdly, it may be revoked upon the written order of the testator by the notary or other officials destroying all of its copies. One of the most important rules in legislation is that if a subsequent will is itself revoked or amended by the testator, the previous will that was revoked in full or in part by the execution of the new will is not revived. Hypothetical example: In 2020, Karim bequeathed his house to his elder brother (Will 1). In 2022, changing his mind, he bequeathed the same house to his friend (Will 2). By this action, Will 1 was revoked by operation of law. In 2023, Karim had a falling out with his friend, attended a notary to submit an application revoking Will 2, and destroyed it. In this scenario, Will 1 from 2020 is not automatically revived. If Karim does not execute a new will, upon his death the house will devolve upon his statutory heirs.

- The testator may revoke or amend a will at any time without stating grounds (Civil Code, art. 1127).
- A subsequent will revokes an earlier one in full or in the part that is inconsistent with it (Civil Code, art. 1127).
- Even if a subsequent will is revoked, an earlier will revoked by it is not revived (Civil Code, art. 1127).

> **COMPARE**
> The distinction between amendment and revocation: In an amendment, only specific clauses are updated (for example, the car is given to the daughter rather than the son), but the remainder of the will remains in force. In revocation, the entire document loses its legal force.

8.6 Invalidity of a will

Because a will is a unilateral transaction subject to strict formal requirements, its invalidity is governed by both specific and general rules of civil legislation. A will drawn up in violation of the prescribed form (for example, failure to comply with the written form, failure to sign, or absence of notarial certification) is void per se. Furthermore, the invalidity of a will may be grounded upon general rules on the invalidity of transactions (for instance, execution by an incapacitated person, or under the influence of fraud, duress, or threats). A will may be declared invalid by a court upon an action brought by a person who would incur proprietary consequences as a result of the will being declared invalid (ordinarily, statutory heirs). An important rule is that the invalidity of individual testamentary dispositions does not impair the validity of the remainder of the will. If a will is declared invalid, an heir disinherited by that will is entitled to inherit on general grounds under statutory succession. Hypothetical example: Elderly Aunt Nodira, whose mental health had deteriorated, bequeathed all her property to a stranger who had been caring for her. Following her death, Nodira's daughter brought an action in court and proved through forensic medical examination that her mother was incapable of understanding the significance of her actions when drawing up the will. The court declared the will invalid. Consequently, the stranger was deprived of the right to inherit, and the daughter claimed the entire estate as the sole statutory heir.

- A will that breaches formal requirements is void per se (Civil Code, art. 1130).
- Where the procedure for drawing up a will is breached, a person with a proprietary interest may bring a claim in court (Civil Code, art. 1130).
- If a will is declared invalid, a person disinherited under it inherits on statutory grounds (Civil Code, art. 1130).

> KEY INSIGHT
> Partial invalidity of a will does not entail its total annulment. If only one clause contravenes the law, only that clause is nullified, while the testator's remaining testamentary intention continues to be executed.

8.7 Execution of a will

The execution of a will is the process that ensures the complete and fair implementation of the testator's intentions. The testator may entrust the execution of the will to a person designated in the will who is not an heir — the executor of the will (testamentary executor / dusheprikashchik). For this purpose, the written consent of that person is required. If the testator did not appoint an executor, the heirs may agree among themselves to entrust the execution to one of the heirs or to another person. In the absence of an agreement, an executor may be appointed by a court. The principal duties of an executor of a will include: preserving the estate and managing it; notifying all heirs and legatees of the opening of the succession; recovering debts due to the testator; distributing property to the heirs; and ensuring the performance of testamentary obligations. The executor performs these duties within a reasonable period necessary to clear the estate of debts and enable the heirs to enter into possession of the property, but this period must not exceed one year from the date of the opening of the succession. The executor is entitled to reimbursement of expenses out of the estate and, where provided for in the will, to remuneration. Hypothetical example: Businessman Rustam died. His will specified numerous real estate properties and various heirs. He had appointed his lawyer friend Alisher as executor of the will. Following the opening of the succession, Alisher temporarily managed the factories, settled accounts with creditors, and within 8 months distributed all net assets among the heirs as specified in the will. He subsequently submitted an accounting of all actions taken to the heirs.

- The executor of the will must be a non-heir and their consent must be obtained (Civil Code, art. 1131).
- The executor protects, manages, and distributes the estate among the heirs (Civil Code, art. 1131).
- The execution period must not exceed one year from the day the succession opened (Civil Code, art. 1131).

> EXAM FOCUS
> The term of authority of an executor of a will is strictly defined: no more than 1 year from the day the succession opened. Upon expiry of this period, the executor must provide an accounting to the heirs.

8.8 Testamentary obligations (legacies) and testamentary burdens

The testator may not only distribute property in the will, but also impose specific obligations on the heirs. A testamentary obligation (legacy) is the imposition upon a testamentary heir of an obligation to perform

any proprietary obligation out of the estate in favour of a third party (the legatee). The subject of a legacy may be the transfer of a thing into ownership, the release of a debt, the performance of specific work, or granting the right of lifelong use of residential premises. Crucially, an heir performs the legacy only within the limits of the actual value of the inheritance devolved upon them, after deducting the testator's debts. If the heir is entitled to a reserved share, the legacy is performed only out of the portion exceeding their reserved share. A testamentary burden, however, differs from a legacy. The testator may impose upon an heir the performance of an act of a proprietary or non-proprietary nature, typically pursuing a generally beneficial purpose (for instance, caring for the testator's domestic pets, publishing their literary works, or donating their art collection to a museum). In a testamentary burden, there is no specific creditor (obligee). Hypothetical example: Dilshod inherited a large house and courtyard from his father. In the will, his father imposed two conditions upon Dilshod: 1) His father's sister (paternal aunt) must have the right to reside in one room of this house for the rest of her life (this is a legacy granting a lifelong right to use residential premises). 2) Transferring his father's rich library to the city's central library free of charge (this is a testamentary burden pursuing a generally beneficial purpose). Even if Dilshod sells the house, the aunt's right of residence remains preserved.

- A legacy is the imposition of a proprietary obligation upon an heir in favour of a third party (Civil Code, art. 1132).
- A legacy is performed only within the limits of the net value of the estate after payment of debts (Civil Code, art. 1132).
- A testamentary burden requires proprietary or non-proprietary acts for generally beneficial purposes (Civil Code, art. 1133).

> **COMPARE**
> The primary distinction between a legacy and a testamentary burden: In a legacy, a specific person (the legatee) derives a proprietary benefit and acquires a right of claim. In a testamentary burden, there is no specific creditor, and it often serves the public interest or non-proprietary purposes.

KEY TAKEAWAYS

1. A will must be drawn up strictly in person and must be in strict written form.
2. Freedom of testation is broad and is limited only by statutory rules governing the reserved share.
3. Lawful and moral conditions may be imposed on an heir, and a substitute heir may be appointed.
4. The confidentiality of a will is strictly protected, and persons who breach it are subject to liability.
5. Drawing up a new will automatically revokes an earlier one (in the part inconsistent with it).
6. A defect in the form of a will results in it being void per se.
7. An executor of a will is appointed for a period not exceeding 1 year to manage and distribute the estate.
8. Proprietary obligations in favour of third parties (legacies) or obligations for generally beneficial purposes (burdens) may be imposed on an heir.

Summary

Succession by will embodies the absolute will of a person regarding the distribution of their property after death. A will must strictly be drawn up in person and in written form, and must be certified notarially or under an equivalent procedure. The legislation guarantees freedom of testation, meaning that a citizen may leave their property to any person, disinherit statutory heirs, and impose various lawful conditions on heirs. At the same time, this freedom is restricted solely by the rules on the reserved share. The confidentiality of a will is strictly maintained until the opening of the succession. The testator may revoke or amend their will at any time, whereby a new will revokes previous wills. An executor of the will may be appointed to manage a complex estate. Furthermore, the testator has the right to impose a proprietary obligation in favour of a third party (a legacy) or an obligation for generally beneficial purposes (a burden) upon the heirs. Violation of the procedure for drawing up a will serves as the ground for declaring it invalid.

KEY PRINCIPLES

1. Principle of personality: A will must be executed strictly in person; representation is not permitted.
2. Freedom of testation: The right to leave property to any person and to disinherit statutory heirs.
3. Formal strictness: Non-compliance with the written form and certification procedure results in the will being void.
4. Guarantee of confidentiality: Disclosing the contents of a will prior to the opening of succession is prohibited.
5. Primacy of intention: When interpreting a will, the true intention of the testator is ascertained.
6. Freedom of revocation: A will may be amended or revoked at any time without giving reasons.
7. Protection of the reserved share: Freedom of testation must not prejudice the rights of heirs incapacitated for work.

> #### KEY TERMS
> Will · Freedom of testation · Conditional will · Substitute heir · Secret will · Confidentiality of a will · Executor of a will · Testamentary obligation (legacy) · Testamentary burden · Un-bequeathed portion

EXAM CHECKLIST

- Can a representative be used when drawing up a will?
- Can a testator disinherit a statutory heir without providing reasons?
- Under what circumstances are conditions incorporated into a will declared invalid?
- In which circumstances is a substitute heir called to inherit?
- Who is not entitled to sign a will in place of the testator?
- What is the procedure for certifying a secret will?
- If a subsequent will is revoked, is the preceding will revived?
- What is the fundamental difference between a legacy and a testamentary burden?

Cases (IRAC)

Case 1 · Conditional Will and the Inviolability of Personal Rights

FACTS

Rustam bequeathed a courtyard house in the city of Tashkent belonging to him to his son Jasur. However, Rustam specified a special condition in the will, stating that in order to accept this inheritance, Jasur must legally divorce his current spouse. In Rustam's view, his daughter-in-law had committed acts contrary to family honour. After the opening of the inheritance, Jasur applied to a notary public requesting the formal registration of the house in his name. The notary refused to issue the certificate of inheritance, citing the failure to fulfil the condition set out in the will. Subsequently, Jasur filed a claim before the civil court seeking to have the condition in the will declared unlawful and to accept the inheritance.

ISSUE

What are the legal consequences of stipulating an unlawful condition in a will that restricts the heir's personal and family rights regarding their conduct?

RULE

Under Article 1121 of the Civil Code of the Republic of Uzbekistan, the testator is entitled to lawfully make the acquisition of the inheritance conditional upon the nature of the heir's conduct. However, unlawful conditions included in the disposition appointing an heir shall be void. Furthermore, pursuant to Civil Code, art. 1130, the invalidity of individual testamentary dispositions shall not affect the validity of the remainder of the will. Under family legislation, marriage is voluntary, and compelling its dissolution is contrary to law.

ANALYSIS

1) In accordance with Civil Code, art. 1121, the testator is entitled to lawfully make the acquisition of the inheritance conditional upon the nature of the heir's conduct. This means that the conditions must not contravene moral principles or current legislation. For instance, conditions such as graduating from a specific educational institution or refraining from harmful habits may be deemed lawful. 2) The condition imposed on Jasur to divorce his spouse directly contravenes the norms of the Family Code and the Constitution. Family legislation stipulates that marriage is entered into and dissolved on the basis of voluntary consent. No one may be compelled to divorce. Therefore, this condition included in the disposition appointing the heir is unlawful and has no legal effect. 3) When hearing this dispute, the court declares the condition regarding divorce in the will void. Under Civil Code, art. 1130, the invalidity of individual testamentary dispositions shall not affect the validity of the remainder of the will. That is, the condition is annulled, but the primary testamentary intent to leave the house to Jasur remains valid. Consequently, Jasur acquires the right to accept the inheritance without dissolving his family.

CONCLUSION

The court satisfies Jasur's claim and declares the condition in the will regarding divorce void on the grounds of its illegality. The provision of the will leaving the house to Jasur remains in force. Thus, Jasur, as the heir, acquires ownership rights to the courtyard house without obstacles and whilst preserving his family.

DISCUSSION QUESTIONS

1. What types of conditions is a testator entitled to impose on an heir?
2. Is the condition in a will regarding the dissolution of marriage lawful?
3. What decision will the court render in this situation?

Civil Code of the Republic of Uzbekistan, Part Two (29.08.1996) — https://lex.uz/docs/180552

Case 2 · Failure to Comply with the Form of a Closed Will

FACTS

Grandfather Anvar did not wish his children to know how he had distributed all his property and decided to draw up a closed will. At home, he typed the text of the will on his personal computer, printed it out, and certified it with his own signature at the bottom. He then placed the document into an envelope, sealed it, and, accompanied by a single witness who was his neighbour, arrived at the state notary office. Grandfather Anvar demanded that the notary accept and certify this envelope as a closed will. Explaining that the document had been typed on a computer and that only one witness was present, the notary refused to certify the closed will. Grandfather Anvar lodged a complaint against the notary's actions.

ISSUE

What are the legal consequences of failing to comply with the form and procedure for executing and certifying a closed will?

RULE

Pursuant to Civil Code, art. 1125, under penalty of invalidity, a closed will must be written by hand and signed by the testator personally. The will must be placed into an envelope and sealed in the presence of two witnesses and a notary; the witnesses sign the envelope, providing their identifying details. Under Civil Code, art. 1130, a will not executed in the proper form is void.

ANALYSIS

1) Pursuant to Civil Code, art. 1125, a closed will differs from ordinary notarial wills by its strict formal requirements. In accordance with legislation, under penalty of invalidity, a closed will must be written by hand and signed exclusively by the testator personally. Its preparation by technical means (computer, typewriter) is strictly prohibited. 2) Grandfather Anvar violated an imperative statutory requirement by typing the will on a computer. In addition, the law requires that two witnesses must be present when presenting a closed will to a notary. The witnesses are obliged to sign the envelope, indicating their

details. Grandfather Anvar, however, brought only one witness. 3) The notary's refusal is entirely lawful. Had the notary certified this defective document, upon the subsequent opening of the inheritance, this will would have been declared void by a court pursuant to Civil Code, art. 1130 due to failure to comply with formal requirements. In order to guarantee the authenticity of a closed will whilst ensuring its secrecy, the legislature made the holographic (handwritten) form and the participation of two witnesses mandatory. This safeguards the freedom of the testator's will and serves to prevent subsequent forgery.

CONCLUSION

The notary's refusal to certify the closed will is lawful and well-founded. If Grandfather Anvar intends to execute a closed will, he is required to write it in his own hand, sign it personally, attend the notary office together with at least two witnesses, and have it enveloped and sealed in the manner prescribed by law.

DISCUSSION QUESTIONS

1. What are the legal requirements for executing a closed will?
2. What errors exist in Grandfather Anvar's actions?
3. Is the notary's refusal to certify the will lawful?

Civil Code of the Republic of Uzbekistan, Part Two (29.08.1996) — https://lex.uz/docs/180552

Case 3 · Testamentary Burden (Legacy) and the Right of Lifelong Use

FACTS

Aunt Malika bequeathed a three-room flat belonging to her to her daughter Nargiza. In the will, she imposed an obligation on her daughter Nargiza to grant her sister Nodira, who has a disability, the right to the gratuitous lifelong use of one room in this flat. Following Aunt Malika's death, Nargiza accepted the inheritance and registered ownership of the flat in her name. Six months later, Nargiza found herself in financial need and sought to sell the flat to a third party. She informed her maternal aunt Nodira that the flat was being sold and that she had to vacate the premises. Nodira refused to move out, insisting that she held a right of lifelong habitation.

ISSUE

Does the right of lifelong use of residential premises based on a testamentary burden (legacy) subsist upon a change of owner, and can it be revoked?

RULE

Under Civil Code, art. 1132, the testator is entitled to impose on the heir the obligation to grant another person the lifelong use of a residential dwelling or a part thereof. Upon the subsequent transfer of ownership rights in the residential dwelling to another person, the right of lifelong use remains in force. This right is non-transferable and cannot be assigned to another.

ANALYSIS

1) Civil Code, art. 1132 establishes the institution of testamentary burden (legacy). According to this provision, the testator is entitled to impose upon an heir the performance of an obligation at the expense of the estate in favour of one or more persons (legatees). The condition in Aunt Malika's will constitutes precisely a testamentary burden directed at providing lifelong use of the dwelling. 2) As strictly stipulated by legislation, upon any subsequent transfer of ownership in the residential dwelling to another person, the right of lifelong use retains its validity. In other words, even if Nargiza sells, gifts, or mortgages the flat, Nodira's right of habitation is not extinguished. This right runs with the property as an encumbrance. 3) As the owner, Nargiza has the right to alienate the flat, as she has not been deprived of the right to dispose of her property. However, she is obliged to notify the purchaser that a person resides in the flat by virtue of a testamentary burden. Under no circumstances is Nargiza entitled to evict Nodira by force. Nodira's right is protected by law and the courts, and it subsists until she voluntarily relinquishes it. Moreover, it must be noted that the right of lifelong use of residential premises is non-transferable and does not pass to Nodira's heirs. It is an absolute right attached solely to her person.

CONCLUSION

Nargiza is entitled to sell the flat, but she cannot evict Nodira. The right of lifelong use arising on the basis of a testamentary burden (legacy) retains its validity against the new owner of the flat as well. Nodira possesses the full right to reside in the designated room of the flat for the remainder of her life.

DISCUSSION QUESTIONS

1. What is a testamentary burden (legacy), and what rights does it confer?
2. Does the right of lifelong use subsist when ownership is transferred to another person?
3. Is Nargiza entitled to evict Nodira from the home?

Civil Code of the Republic of Uzbekistan, Part Two (29.08.1996) — https://lex.uz/docs/180552

Quiz

MULTIPLE CHOICE

1. Anvar bequeathed his house to his son Botir, but included the following condition in the will: 'Upon Botir's death, he must bequeath this house to my grandson Jasur'. How is this condition evaluated from a legal perspective?

- A. This condition is lawful and Botir is bound to fulfil it
- B. This condition is void, as such an obligation cannot be imposed on an heir
- C. If Botir consents before a notary, the condition is deemed valid
- D. The condition takes effect only in respect of half of the house

CORRECT: B

A testator is not entitled to impose upon persons designated by him as heirs in a will an obligation to dispose of the property bequeathed to them in a particular manner in the event of their own death.

> Therefore, this condition imposed by Anvar on his son Botir is legally void, and Botir may dispose of the property at his own discretion. (Civil Code, art. 1120)

2. Rustam bequeathed his business to his daughter Malika, but stipulated in the will that Malika must divorce her spouse. What legal effect does this condition of the will have in this situation?

- A. The condition is lawful and deemed valid
- B. If the will is notarially certified, the condition is valid
- C. The condition is void because it is unlawful in nature
- D. If the spouse consents, the condition remains in force

> **CORRECT: C**
> Unlawful conditions included in a disposition appointing an heir or depriving a person of succession rights shall be void. Conditioning inheritance upon Malika's divorce is contrary to her personal and family rights and is unlawful. Therefore, this condition has no legal effect, and Malika is entitled to accept the inheritance without fulfilling the condition. (Civil Code, art. 1121)

3. Karim bequeathed his car to his younger brother Salim and wrote in the will: 'If Salim disclaims the inheritance, the car shall pass to my friend Umid'. Upon the opening of the inheritance, Salim wished to disclaim the car in favour of his own son. According to legislation, is this permissible?

- A. Yes, the law permits this
- B. Yes, if Umid consents to this in writing
- C. Yes, if this circumstance is notarially certified
- D. No, disclaiming inheritance to the detriment of a substitute heir is not permitted

> **CORRECT: D**
> A testamentary heir is not permitted to disclaim an inheritance in favour of another person to the detriment of a substitute heir (Umid). Salim may only disclaim the inheritance unconditionally, in which case the property passes directly to the substitute heir Umid designated in the will. Salim's disclaimer in favour of his son is prohibited by law and such an act is void. (Civil Code, art. 1122)

4. Farhod has three sons. He bequeathed his courtyard house to his eldest son, but made no mention in the will of a substantial sum of money deposited in a bank. How are the funds in the bank distributed?

- A. They are divided equally among all three sons
- B. They are divided only between the two younger sons
- C. They escheat to the State
- D. They are given exclusively to the eldest son

> **CORRECT: A**
> The unexpressed part of the property is distributed among the statutory heirs. These heirs include those statutory heirs to whom another part of the property was bequeathed under a will, namely the eldest

son. Therefore, the bank deposits must be distributed in equal shares among all three sons according to the rules of intestate succession. (Civil Code, art. 1123)

5. Due to a severe illness, Qambar has lost the use of his hands and cannot sign the will himself. He wishes to leave all his property to his nephew Murod. Before a notary, at Qambar's request, Murod signed the will on his behalf. Is this will valid?

- A. The will is deemed valid
- B. It is valid if two witnesses are present
- C. The will is void because a beneficiary may not sign it
- D. If the notary authorises it, the will remains in force

CORRECT: C
The law strictly defines who may not sign a will on behalf of a testator. Accordingly, the person in whose favour the will is made (namely the nephew Murod) cannot sign the will. This rule serves to prevent conflicts of interest. Therefore, this will signed by Murod is declared void. (Civil Code, art. 1124)

6. Lola typed her closed will on a computer, printed it, and signed it. She then placed it into an envelope in the presence of two witnesses, sealed it, and presented it to a notary. Does this closed will have legal effect?

- A. The will is deemed valid
- B. It is void, because a closed will must be written by hand
- C. It is valid if the witnesses read the text
- D. It is deemed valid if the notary reviews the text

CORRECT: B
Under penalty of invalidity, a closed will must be written by hand and signed by the testator personally. A closed will typed on a computer, even if signed by the individual and sealed in the presence of witnesses, is not valid because it fails to satisfy the strict statutory formal requirements. It must exist exclusively in holographic form. (Civil Code, art. 1125)

7. Qosim is in a serious condition in hospital. He drafted a will and had it certified by the ordinary duty nurse attending to him. Is this will equivalent to a notarially certified will?

- A. The will is valid and equivalent to a notarially certified one
- B. It will be valid if a notary subsequently certifies it
- C. It is deemed valid if two witnesses sign it
- D. It is void because it must be certified by the chief medical officer or duty doctor

CORRECT: D
The wills of citizens undergoing treatment in hospitals must be certified by chief medical officers, their deputies for medical affairs, or duty doctors. A will certified by an ordinary nurse is not equivalent to a

notarially certified will. Therefore, Qosim's will has no legal effect and is deemed void because it was not certified by the proper official. (Civil Code, art. 1126)

8. In 2020, Vali bequeathed his house to Hasan. In 2022, he changed his mind and executed a new will leaving the house to Husan. In 2023, Vali revoked the 2022 will. Following Vali's death, to whom will the house belong?

- A. The property passes to Hasan, as the first will is revived
- B. The property passes to Husan
- C. The property passes to the statutory heirs, as the earlier will is not revived
- D. The property passes to state ownership

CORRECT: C
As strictly stipulated by legislation, an earlier will (the 2020 will) that has been revoked wholly or in part by the execution of a subsequent will is not revived if the subsequent will is itself revoked or altered by the testator. Thus, both of Vali's wills are deemed revoked, and his property passes to the statutory heirs on general grounds. (Civil Code, art. 1127)

9. Nodir is alive and well. His son attended the notary office seeking to ascertain whether his father had left a will. How must the notary proceed?

- A. The notary is obliged to disclose the will
- B. The notary must refuse to provide information, as the inheritance has not yet opened
- C. Information may be provided if the son is the sole heir
- D. The notary must provide only verbal information, without issuing a copy

CORRECT: B
Prior to the opening of the inheritance (that is, until the death of the testator), the notary is not entitled to disclose information concerning the content of a will, its execution, revocation, or amendment. Under the rule of testamentary secrecy, the notary is strictly obliged to refuse to provide the son with any information, including whether a will exists. (Civil Code, art. 1128)

10. Alongside lawful rules for distributing property, an unlawful condition regarding one of the heirs was included in a will. What is the fate of the will in this circumstance?

- A. Only the unlawful condition is invalidated, the remainder remains in force
- B. The will is declared void in its entirety
- C. The notary is obliged to redraft the will
- D. The inheritance escheats to the State in its entirety

CORRECT: A
The invalidity of individual testamentary dispositions shall not affect the validity of the remainder of the will. Therefore, only the part of the will stipulating the unlawful condition is annulled. The remaining

> rules and dispositions concerning the distribution of property retain their legal force, and the estate is distributed lawfully on that basis. (Civil Code, art. 1130)

11. In his will, Sobir appointed his friend Tohir as the executor of the will, but Tohir was unaware of this and gave no consent. Following Sobir's death, is Tohir obliged to execute this will?

- A. Yes, this constitutes a statutory obligation
- B. No, he is not obliged because his prior written consent was not obtained
- C. Yes, if the other heirs demand it
- D. Yes, if the court makes such an order

> **CORRECT: B**
> A person's consent to act as the executor of a will must be expressed in an endorsement written by that person on the will itself or in an application annexed to the will. Because Tohir did not give his consent in advance and this was not documented, he is under no legal obligation to assume the duty of executing Sobir's will. (Civil Code, art. 1131)

12. Zafar accepted an inheritance worth 100 million soums. The deceased had debts amounting to 40 million soums. Furthermore, the will imposed a legacy (testamentary burden) on Zafar to purchase a motor car worth 80 million soums for a relative. What amount is Zafar obliged to expend on the legacy?

- A. 80 million soums
- B. 100 million soums
- C. Nothing, because there are debts
- D. 60 million soums

> **CORRECT: D**
> An heir must perform a testamentary burden (legacy) only within the limits of the actual value of the estate passing to him, after deducting the testator's debts. From the 100 million soums of inheritance received by Zafar, the 40 million soums debt must first be deducted. He is obliged to perform the testamentary burden to acquire the car only within the limits of the remaining 60 million soums. (Civil Code, art. 1132)

13. Dilshod inherited a courtyard house. The will imposed an obligation on Dilshod to grant his maternal aunt Oydin the right of lifelong habitation in this house. Oydin moved into the courtyard house with her spouse. Does Oydin's spouse also have the right to reside in this house?

- A. Yes, he has the right to reside as a family member
- B. No, unless specified in the will, he has no right of residence
- C. Yes, if Dilshod gives verbal consent
- D. No, and Oydin herself is also deprived of the right of residence

> **CORRECT: B**

As explicitly established by legislation, the right of lifelong use of residential premises granted to a legatee (Oydin) by virtue of a testamentary burden does not serve as a ground for members of her family to reside in the said premises, unless otherwise provided by the will. Therefore, Oydin's husband has no right to reside in this home; the right belongs exclusively to Oydin herself. (Civil Code, art. 1132)

14. G‘ani bequeathed all his fortune to his son, but imposed the following duty upon him: 'From 10 per cent of the estate, you must establish a free library for the village residents'. What is this legal disposition called?

- A. Imposition of a duty (testamentary charge)
- B. Testamentary burden (legacy)
- C. Conditional will
- D. Disinheritance

CORRECT: A

A testator may impose upon an heir the obligation to perform an action directed towards a generally beneficial purpose. Establishing a free library for village residents constitutes precisely a generally beneficial purpose, and from a legal standpoint, this is termed the imposition of a duty (testamentary charge), rather than a testamentary burden (legacy). (Civil Code, art. 1133)

OPEN QUESTIONS

15. Is freedom of testation an absolute right, or do statutory limitations apply to it? How does the rule of the reserved share restrict testamentary freedom?

MODEL ANSWER

Freedom of testation is an essential principle of civil law; under Civil Code, art. 1120, a person may bequeath their property to any person, disinherit statutory heirs without providing any explanation, and revoke or amend the will at any time. However, this freedom is not absolute and is subject to statutory boundaries. Its primary limitation is the rule of the reserved share. Legislation prioritises the interests of persons in need of social protection, specifically minor children, disabled parents, and a disabled surviving spouse. Even if the testator bequeaths the entirety of the property to a stranger, heirs entitled to a reserved share have the right to receive no less than half of the share that would have accrued to each of them under statutory succession. This rule applies irrespective of the testator's intentions and serves as a ground for declaring the relevant portion of the will void. From a comparative perspective, while some foreign legal systems advocate for unrestricted freedom of testation and consider the inviolability of private ownership absolute, Uzbek family and inheritance law views limiting testamentary freedom via the reserved share as the most equitable and humanitarian approach to ensure the material support of family members, particularly prioritising the best interests of the child. This maintains a balance of social justice in society.

16. In what circumstances is testamentary substitution applied, and what is the practical significance of this legal institution?

MODEL ANSWER

Pursuant to Civil Code, art. 1122, a testator is entitled to designate another person as a substitute heir in contemplation of the contingency that the primary heir may die before the opening of the inheritance, fail to accept the inheritance, disclaim it, or be declared an unworthy heir. This institution is known in jurisprudence as substitution. Its practical significance lies in maximising the protection and guarantee of the testator's intent. If the primary heir cannot take the estate due to objective or subjective circumstances, property is prevented from devolving upon statutory heirs, thereby passing instead to the secondary person intended by the testator. Crucially, under the third part of Civil Code, art. 1122, the primary heir is not permitted to disclaim the inheritance in favour of another person to the detriment of the substitute heir, which prevents distortion of the testator's will. From an alternative perspective, had no substitute heir been designated, the rules governing unexpressed portions of an estate (Civil Code, art. 1123) would operate, transferring the property to statutory heirs. Substitution enables the testator personally and directly to manage the chain of succession, shielding the assets from falling into the hands of third parties or undesired individuals in unforeseen contingencies.

17. Who is an executor of a will and what is their legal status? Why is it advisable to entrust the execution of a will to a person who is not an heir?

MODEL ANSWER

Under Civil Code, art. 1131, the testator may entrust the execution of the will to a third party who is not an heir. This person is referred to as the executor of the will, and their written consent to assume this role is required. The executor's primary functions consist of taking measures to protect the estate, notifying all heirs, satisfying the testator's debts, and distributing the property in accordance with the law and the will. Their legal status resembles that of a fiduciary manager, and they must perform their actions within one year from the date of the opening of the inheritance. Entrusting the execution of a will specifically to a non-heir is intended to eliminate conflicts of interest and ensure complete impartiality. Where disputes arise among heirs, an independent person carries out the testator's wishes fairly. As an alternative approach, the law allows the heirs to entrust execution to one of themselves by mutual agreement. However, practice indicates that where the estate is complex (involving commercial enterprises or real property) and heirs are numerous, appointing an heir as executor frequently triggers suspicion and litigation. Consequently, appointing an impartial executor serves as the most effective legal safeguard against intra-family disputes.

Glossary

WILL (TESTAMENT)

The personal declaration of intent of a citizen regarding the disposition of property belonging to them, or rights in respect of such property, in the event of death, constituting a unilateral transaction that must be made personally and certified in the written form prescribed by law.

Example: Anvar executed a will through a notary public to leave all his property to his daughter.

Related: Freedom of testation, Testator

CONDITIONAL WILL
A type of will in which the testator is entitled to lawfully make the acquisition of the inheritance conditional upon the nature of the heir's conduct, provided that any unlawful conditions incorporated therein shall be void.

Example: The father left a conditional will to his son stating that he could only receive the inheritance after graduating from a higher educational institution.

Related: Will (Testament), Substitute heir

SUBSTITUTE HEIR
A reserve heir designated by the testator to inherit in the event that the primary heir designated in the will dies before the opening of the inheritance, fails to accept the inheritance, or is declared an unworthy heir.

Example: In the will, the brother was designated as the primary heir, and his child was designated as the substitute heir should the brother predecease the testator.

Related: Substitution, Unworthy heir

CLOSED WILL
A document certified by a notary at the request of the testator without the notary examining its contents, strictly required to be written by hand and signed by the testator personally.

Example: To prevent disputes among his relatives, the testator left a closed will in a sealed envelope.

Related: Testamentary secrecy, Notarially certified will

TESTAMENTARY SECRECY
The rule prohibiting the notary, witnesses, and other officials certifying a will from disclosing information concerning the content of the will, its execution, revocation, or amendment prior to the opening of the inheritance.

Example: Pursuant to the duty of testamentary secrecy, the notary did not disclose the content of the will to the children during the testator's lifetime.

Related: Closed will, Notary public

EXECUTOR OF A WILL
A person who is not an heir, appointed by the testator to ensure the execution of the will, who protects the estate and lawfully transfers the property to the heirs.

Example: The testator appointed his close friend as the executor of the will to ensure an equitable distribution of the estate.

Related: Protection of the estate, Testamentary burden

> **TESTAMENTARY BURDEN (LEGACY)**
> The act of a testator imposing upon a testamentary heir the obligation to perform any duty at the expense of the estate in favour of one or more persons, which typically bears a proprietary character.

Example: The house was bequeathed to the heir, subject to a testamentary burden to grant his maternal aunt the right of lifelong habitation in the said house.

Related: Legatee, Testamentary charge

> **TESTAMENTARY CHARGE (IMPOSITION OF A DUTY)**
> A testamentary disposition whereby the testator imposes upon an heir the obligation to perform, or refrain from, any act directed towards a generally beneficial purpose, where no creditor is conferred an individual right of demand.

Example: The testator charged his heir with utilising a portion of the bequeathed funds to renovate the library in the mahalla.

Related: Testamentary burden, Executor of a will

> **UNBEQUEATHED PORTION**
> The property of the testator not specified or encompassed in the will, which devolves among the statutory heirs according to the general order and priority of intestate succession.

Example: Although the motor car and bank deposit were bequeathed, the dacha was divided equally among all children as the unbequeathed portion.

Related: Intestate succession, Estate mass

> **RESERVED SHARE**
> A statutory guaranteed portion of an estate that must be allotted to a specific category of statutory heirs, including minor children or disabled parents, regardless of the content of the will.

Example: Even though the entirety of the property was bequeathed to a stranger, the minor child of the deceased received their reserved share.

Related: Freedom of testation, Testamentary burden

Timeline

Development of the institution of succession by will

> **1996 · ADOPTION OF THE CIVIL CODE**

> Part Two of the Civil Code of the Republic of Uzbekistan was adopted, codifying the general rules of succession by will, freedom of testation, and the procedure for appointing heirs.

Significance: Modern foundations of succession law and guarantees for the inviolability of private property were established.

> **1996 · TESTAMENTARY OBLIGATIONS AND CONDITIONAL WILLS**
> The Civil Code introduced conditional wills and testamentary obligations (the institution of legacy). This serves to give broader effect to the testator's will.

Significance: The testator was granted the ability to impose obligations in favour of third parties.

> **1996 · GUARANTEE OF TESTAMENTARY CONFIDENTIALITY**
> A strict obligation was imposed on notaries and other officials to preserve the confidentiality of wills. This rule applies until the opening of the succession.

Significance: Protection of the testator's personal rights and family secrets was ensured.

> **2022 · AMENDMENTS TO TESTAMENTARY FORMS**
> By Law No. ZRU-770 of 17 May 2022, the terminology regarding persons with disabilities was introduced into the list of documents equivalent to notarially certified wills.

Significance: Legislation was harmonised with social integration and modern human rights standards.

Mind map

Testate Succession

- General Provisions: Freedom of testation and the requirement of personal execution.
- — Personal execution: Execution via an agent is not permitted (Civil Code, art. 1120).
- — — Agency prohibited: Only the testator personally must participate.
- — Freedom of testation: The right to leave property to any person or to disinherit heirs.
- — — Disinheritance: Statutory heirs may be disinherited without explanation.
- — Conditional will: Making inheritance contingent upon lawful conduct (Civil Code, art. 1121).
- — — Lawful conditions only: Unlawful conditions are void.
- — Substitute heir: Designating a reserve heir in place of the primary heir (Civil Code, art. 1122).
- — — Reserve heir: Takes effect if the primary heir dies or disclaims.
- Form of the Will: Strict rules on written form and certification (Civil Code, art. 1124).
- — Notarially certified: The primary form, recorded and certified by a notary.
- — — Personal signature: The testator must sign in their own hand.

- — Equivalent wills: Wills certified by other designated officials in special circumstances (Civil Code, art. 1126).
- — — Hospitals and vessels: Certified by a chief medical officer or ship's master.
- — Closed will: A document certified by a notary without inspecting its content (Civil Code, art. 1125).
- — — Two witnesses: Enveloped and sealed in the presence of two witnesses.
- Revocation: Freedom to alter or revoke a will (Civil Code, art. 1127).
- — Subsequent will: An earlier will is revoked by executing a new will.
- — — No revival: An earlier will is not revived even if the subsequent will is revoked.
- — Destruction of copies: Revocation by means of physical destruction.
- — — Written order: Destroyed by lodging a written disposition with the notary.
- — Invalidity: Judicial annulment upon violation of form or procedure (Civil Code, art. 1130).
- — — Defect of form: A will not executed in the proper form is void.
- Execution of the Will: Carrying the testamentary terms into practical effect (Civil Code, art. 1131).
- — Appointment of executor: Entrusting execution to a person who is not an heir.
- — — Voluntary consent: The written consent of the executor is required.
- — Judicial appointment: Appointed by court where heirs cannot reach agreement.
- — — Application of heirs: Upon application by one or more heirs.
- — Term of authority: A reasonable time limit is provided for execution.
- — — Not exceeding one year: The process must not exceed one year from the opening of the inheritance.
- Obligation and Charge: Imposing additional duties on the heir (Civil Code, arts. 1132, 1133).
- — Testamentary burden: Imposing a proprietary obligation in favour of third parties (Legacy).
- — — Proprietary nature: Providing property or services at the expense of the estate.
- — Use of residential dwelling: Granting another person the right of lifelong use of a dwelling.
- — — Non-assignable: This right cannot be sold or inherited.
- — Testamentary charge: Acting for generally beneficial purposes.
- — — Public interest: The right of demand is not vested in an individual creditor.
- — Reserved share: Obligations must not infringe upon the reserved share.
- — — From the surplus: A legacy is satisfied only from the estate exceeding the reserved share.

Walkthrough and diagram

Process of Testamentary Burden (Legacy)

RELATIONSHIPS IN THIS DIAGRAM

- Execution of will ’Securing legal form ’Notarial certification
- Notarial certification ’Upon death ’Opening of inheritance
- Opening of inheritance ’Transfer of estate ’Acceptance of inheritance

- Execution of will ’Imposing obligation ’Testamentary burden (Legacy)
- Testamentary burden (Legacy) ’Arising of right ’Right of legatee
- Acceptance of inheritance ’Discharge of obligation ’Right of legatee
- Protection of reserved share ’Limitation rule ’Acceptance of inheritance
- Right of legatee ’Practical illustration ’Use of residential dwelling

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