

The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012

(Goa Act 23 of 2016)

[19-9-2016]

AN

ACT

*to consolidate and amend the law of intestate and testamentary succession, notarial law and the laws relating to partition of an inheritance and matters connected therewith.*

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

PART I

GENERAL PROVISIONS

1. *Short title, extent, commencement and application.*— (1) This Act may be called the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force on the 90th day from the date of its publication in the Official Gazette.

(4) It shall be applicable to,—

(a) all persons who, prior to the 20th day of December, 1961, were governed by the provisions of the Civil Code of 1867 as in force in erstwhile Portuguese regime over Goa and which continued in force by virtue of sub-section (1) of section 5 of the Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962), as adapted by the Military Governor of Goa, Daman and Diu vide Order No. 175/2/MG dated 31st May, 1962;

(b) any person born in Goa of parents who are governed by the provisions of the Civil Code of 1867 which is at present in force in Goa and which was in force prior to the 20th day of December, 1961;

(c) any person born outside the State of Goa of parents who were or are governed by the provisions of the said Civil Code of 1867, unless such person declares that he does not desire to be governed by the provisions of this Act at any time before the expiry of three years from the date he attains majority or before the expiry of three years from the date he comes from outside the State of Goa, before the Special Notary having office in the sub-district where such person resides;

(d) any person born in Goa of parents who are governed by the provisions of the corresponding laws in force in the rest of India provided that he chooses permanent residence in the State of Goa and he declares before the expiry of three years from the date he attains majority that he desires to be governed by this Act before the Special Notary having office in the sub-district where such person resides;

(e) any person born in Goa of parents who are foreign citizens provided such person satisfies the requirements of sections 3 and 4 of the Citizenship Act, 1955 (Central Act 57 of 1955);

(f) any person born in Goa of unknown parents or of unknown nationality;

(g) any person adopted by parents who are governed by the provisions of the Civil Code of 1867 as in force in Goa or by parents to whom this Act is applicable:

Provided that such a person shall not be deemed to have taken up permanent residence in Goa,—

(i) merely by reason his residing there on account of his being appointed in the Civil, Military, Naval, Air Force service of the Government of India;

(ii) merely on account of he being appointed by the Government of a foreign country as its representative and residing as such in Goa in pursuance of such appointment nor shall any other person residing with such representative as part of his family or as servant.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “absent person” means a person who, without appointing an attorney to manage his properties, has left the place of his residence and his whereabouts are not known and is so adjudged by a competent Court;

(b) “assets” means properties, movable or immovable, corporeal, whether animate or inanimate, or incorporeal, unless repugnant to the context and includes liabilities;

(c) “authentic document” means a document drawn by a public official or with his intervention as required by law and such document constitutes proof of the veracity of the acts done by the public official and the veracity of the facts which have occurred in his presence or which he has certified and was competent to certify, unless it is proved that the document itself is fabricated or false;

(d) “conferee” means the person, who has to return the assets gifted to him to the mass of the inheritance for the purpose of collation;

(e) “deaf and dumb” means a person who is deaf and dumb and is not capable of managing his assets and is so adjudged by a competent court;

(f) “estate leaver” means the person upon whose death the transmission of his estate takes place;

(g) “forced heir” means the heir whom the estate leaver cannot deprive of the portion of his estate reserved to such heir by law, except in cases where the law permits the estate leaver to disinherit him;

(h) “head of the family” means the person who is entrusted with the duty to give the list of the assets and liabilities of an inheritance and with the management of the inheritance till the finalization of the partition;

(i) “inofficious gift or will” means a gift or a will made by the estate leaver which impairs the legitime of the forced heir;

(j) “interdict” means a person who is declared to be incompetent to manage his assets by an order of the court;

(k) “inventory proceeding” means a proceeding to partition the inheritance of a deceased person or to obtain a formal order of allotment of inheritance by the court;

(l) “legal or intestate succession” means the succession which takes place by operation of law;

(m) “liabilities” include all debts, obligations, burdens and encumbrances;

(n) “matrimonial regime” means a system of rules which govern the ownership and management of the property of married persons as between themselves and towards third parties;

(o) “moiety holder” means a spouse who has a right to moiety; and right to moiety is the half-share which any of the spouses has to the common assets of the couple or to the community properties;

(p) “personal representative” includes a natural guardian, a guardian appointed by the court

and a guardian appointed by parties;

(*q*) “person under disability” means a person declared by law or by the court as being incapable of managing his assets and includes a minor, insane person, a deaf and dumb and an absent person;

(*r*) “prescribed” means prescribed by rules;

(*s*) “prodigal” means a person who is major in age but is a habitual spendthrift or has extravagant habits and is adjudged by a court as being incapable of managing his assets;

(*t*) “renunciation or repudiation of heirship” means the relinquishment of the inheritance made by a person entitled to inherit by succession and to succeed;

(*u*) “right of accretion” means the right of the heirs or legatees to add to their shares in the inheritance, the share of any co-heir or legatee;

(*v*) “right of representation” means the right conferred by law upon certain relatives of a deceased person to succeed to all rights to which such a person would have succeeded, if alive;

(*w*) “sortition” means the adjudication of the lots or the shares to the interested parties by draw of lots;

(*x*) “Special head of the family” means the head of the family restricted to certain assets of inheritance, such as the donee who brings the gifted assets into the mass of the inheritance and the co-heirs in lawful possession of certain assets of the inheritance prior to the opening of succession;

(*y*) “Special Notary” means a Notary with special powers to draw, authentic documents such as (*a*) wills, (*b*) record of printed open wills (*c*) instruments of consent to the will by the spouse of the testator, (*d*) instruments of renunciation of inheritance, (*e*) record of approval of the closed wills, (*f*) ante nuptial agreements, (*g*) deeds of declaration of heirship, (*h*) adoption deeds and (*i*) such other acts which the Special Notary is authorized to perform by law;

(*z*) “to make a record” or “to draw a record” means to draw up a written account of an act or a series of acts under authority of law by the Special Notary and designed to furnish permanent authentic evidence of the matters to which it relates;

(*za*) “unknown heir” means a heir whose identity is not known.

## PART II

### SUCCESSION

#### CHAPTER I

##### **Preliminary Provisions**

3. *Succession*.— Succession is the transmission of the estate of a deceased person in favour of his successors. Successor is the person who is called to succeed to the juridical relations of the deceased person and upon whom the assets and liabilities devolve.

4. Types of Succession.— (*1*) Succession may be intestate or legal and testamentary.

(2) Testamentary succession is the succession which results from a will left by the estate leaver and a testamentary heir is a heir instituted by a will. Contractual succession is illegal, except when expressly authorised by law.

(3) Intestate succession is either free or forced. Forced succession is the one which is reserved by law to the forced heirs and places restrictions on the freedom of the estate leaver to dispose of

his estate.

5. *Types of successors: Heirs and legatees.*— (1) Heir is the person who inherits or succeeds to the totality of the estate of the estate leaver or to an undefined share thereof, without specifying the assets constituting it, while a legatee is the one who succeeds to specific and determined assets.

(2) A person who succeeds to the remainder of the estate when the assets constituting the remainder are not determined, is a heir.

(3) An usufructuary is a legatee even if he be entitled to the usufruct of the totality of the estate.

(4) The nomenclature used by the testator, if in contravention of the above provisions, shall not change the character of the successor.

6. *Inheritance.*— Inheritance or succession of a deceased person comprises of all the properties, rights and obligations which he leaves upon death. Personal rights which by their very nature or by operation of law, extinguish upon death of the title holder, do not form part of the inheritance.

7. *Simultaneous death of the estate leaver and the successor.*— If the estate leaver and those who succeed him, either by virtue of a will or by operation of law, die simultaneously in the same accident or on the same day and it is not possible to ascertain who died the first, it shall be presumed that all died at the same time and there will be no transmission of the inheritance or the legacy as between them.

## CHAPTER II

### **Opening of the inheritance, competence to succeed and transmission of ownership and possession**

8. *Opening of the succession.*— (1) Succession opens upon the death of the estate leaver.

(2) The place where the succession opens shall be determined as follows:—

(a) if the deceased had a permanent residence in the State of Goa, the succession opens at the place of his permanent residence;

(b) if the deceased did not have a permanent residence in the State of Goa, the succession opens where his immovable properties are situated in the State of Goa. If his immovable properties are situated at different places in the State of Goa, the succession opens where the major part of these properties are situated. Such major part is calculated on the basis of the value of the properties. If the immovable properties of the deceased are situated partly in the State of Goa and partly outside the State of Goa but within the country, the succession opens in the State of Goa irrespective of the value of the properties;

(c) the succession of a person, who died outside the State of Goa, and did not have a permanent residence in the State of Goa nor did he own any immovable properties in the State of Goa but has movables in the State of Goa, opens at the place where the major part of the movable assets are located,

(d) Where the deceased did not have a permanent residence nor immovable properties in the State of Goa, the succession opens at the place where he died in the State of Goa.

(3) The succession is universal and, subject to the provisions of section 373, the succession of a deceased person to whom this Act is applicable may be partitioned in Goa, wherever the properties, movable or immovable, are situated.

9. *Competence to succeed.*— (1) All persons, besides the State, who are born or conceived at the

time of the opening of the succession are competent to succeed, unless the law provides otherwise.

(2) In case of testamentary or contractual succession, the following are also competent to succeed:—

(a) Those conceived, who are to be born, children of a determined person who is living at the time of the opening of succession;

(b) bodies having juridical personality.

10. *Incompetence to succeed by reason of unworthiness to succeed.*— (1) The following persons shall be unworthy to succeed the estate leaver and are, consequently, incompetent to be his successors:—

(a) A person convicted for the commission of murder of, or attempt to murder, the estate leaver or his spouse, descendant, ascendant, adopter or adoptees;

(b) A person convicted for defamation of the persons specified in the preceding clause or for giving false evidence against the aforementioned persons in relation to an offence punishable with rigorous imprisonment for not less than two years, whatever its nature;

(c) A person who, by deceit or coercion, induced the estate leaver to make, revoke or modify a will, or obstructed him from doing so;

(d) A person who has fraudulently spirited away, concealed, destroyed or suppressed a will, before or after the death of the estate leaver, or has benefited himself by any of his abovementioned acts.

(2) The conviction mentioned in clauses (a) and (b) of sub-section (1) may be subsequent to the opening of the inheritance but the offence must have been committed before it.

However, when the institution of an heir or the appointment of a legatee is subject to a condition precedent, the offence committed before the condition is fulfilled, shall be relevant till the condition is fulfilled and shall have the same consequences.

(3) Upon conviction as provided in clause (a) or (b) of sub-section (1) becoming final, the person so convicted shall be unworthy of succeeding to the estate leaver.

(4) The suit for a declaration that the person is unworthy of succeeding to the estate leaver may be filed within 1 year from the date of knowledge of the cause of unworthiness laid down in clauses (c) and (d) of sub-section (1).

11. *Consequence of declaration of un-worthiness to succeed.*— (1) Once a person is declared as unworthy to succeed by a Court or is unworthy of succeeding as provided in sub-section (1) of section 10, the inheritance is deemed not to have devolved on him, and such person shall, for all purposes be considered a person in malafide possession of the assets.

(2) In case of legal succession, the incompetence contemplated in sub-section (1) above does not affect the right of representation of his descendants.

12. *Re-acquisition of competence to succeed.*— (1) A person unworthy to succeed re-acquires competence to succeed if the estate leaver expressly rehabilitates him by a will or a deed drawn before a Special Notary.

(2) Where the testator does not expressly rehabilitate such person, but the testator benefits him in the will when he was fully aware that he had given cause to be unworthy to succeed, the person may inherit within the parameters of the testamentary disposition.

13. *When the ownership and possession is transmitted.*— The ownership and possession of the inheritance is transmitted to the heirs, whether testamentary or intestate, the moment the estate leaver dies.

### CHAPTER III

#### **Right to partition the inheritance**

14. *Partition by inventory.*— An inheritance may be partitioned by a mandatory inventory or optional inventory as provided in sections 366 and 367 respectively.

15. *Partition by deed.*— Where the heirs are of full age and none of them is under disability or is absent, they may, by consent, partition the inheritance by executing a deed of partition under the Registration Act, 1908 (Central Act 16 of 1908), provided such deed of partition is preceded by a deed of declaration of heirship.

16. *Inheritance is indivisible till partition is effected.*— Where more than one person has a claim to the inheritance, their rights shall be indivisible both in respect of ownership and possession, till the partition is effected.

17. *Consequences of transfer of specific asset of inheritance.*— (1) A co-heir is not entitled to dispose of any specific asset of the inheritance or part of such an asset to a stranger until and unless the said asset or part thereof is allotted to him in the partition. Any such transfer, if made, shall be inoperative and void.

(2) Where, however, a co-heir transfers his undivided right to the inheritance to a stranger, the transfer shall be subject to the right of pre-emption.

18. *Right of co-heir to claim the inheritance in its entirety.*— Any heir may recover the whole of the estate or part thereof in possession of a third party or obtain an injunction against such party under the provisions of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the latter shall be precluded from raising the plea that such estate or part thereof does not solely belong to such co-heir.

19. *Right to demand partition.*— (1) Any of the co-heirs or the moiety holder has a right to demand partition of the inheritance.

(2) No co-heir or moiety holder may renounce the right to demand partition of the inheritance.

(3) However, the parties may agree to keep the inheritance undivided for a certain period not exceeding 5 years.

20. *Partition of assets of joint family.*— The partition of the assets amongst members of a joint family shall take place in accordance with the provisions that govern partition amongst co-heirs.

### CHAPTER IV

#### **Acceptance and Renunciation of the inheritance**

21. *Acceptance of inheritance.*— Acceptance of inheritance shall be unconditional.

22. *Devolution of inheritance under different titles.*— The person who renounces the inheritance which devolves on him by one title is not, for that reason, debarred from accepting the inheritance which devolves on him by another title.

23. *Freedom to accept or renounce.*— The acceptance or renunciation of an inheritance is an entirely voluntary and free act.

24. *Nullity of restricted acceptance or renunciation.*— It is not lawful for a person to accept or renounce an inheritance in part, or for a certain time limit or conditionally.

25. *Capacity to accept or renounce.*— Any person who is capable of managing his assets may, lawfully accept or renounce the inheritance.

26. *Acceptance or renunciation by one of the spouses only.*— A married person is not entitled to accept or renounce an inheritance without written consent of the other spouse. The consent may be made good by an order of the Court.

27. *Acceptance of inheritance left to a person under disability.*— The inheritance left to a minor or a person under other disability may be accepted by those who represent him.

28. *Acceptance or renunciation of inheritance left to a deaf and dumb person.*— A deaf and dumb person, who is not under guardianship and who knows to write, may accept or renounce the inheritance, either personally or through a constituted attorney.

29. *Form of acceptance.*— (1) The acceptance of inheritance is express or tacit.

(2) The acceptance is express when in any document the heir accepts the title or quality of heir. The acceptance is tacit, when the heir does some act from which the intention to accept has to be necessarily inferred or the act done is of such a nature that he could not have done it otherwise than as an heir.

(3) However, acts done solely to preserve or to provisionally manage or safeguard the assets of the inheritance do not imply it's acceptance.

30. *Gratuitous transfer of inheritance or share therein.*— A gratuitous transfer of inheritance or share therein in favour of all the co-heirs to whom it would have belonged in the absence of the transfer, shall be deemed to be renunciation of the inheritance.

31. *Consequences of Court decision declaring a person to be an heir.*— A person who has been declared to be an heir by an order or decree of a Court that has become final or a person against whom a decision has been passed expressly in that quality shall be deemed to be an heir both in relation to the creditors or the legatees who had been parties to the case as also in relation to others.

32. *Absence of consensus among heirs to accept or renounce inheritance.*— Where there is no consensus amongst the heirs as to whether the inheritance should be renounced, some may accept it and others may renounce it.

33. *Transmission of right to accept.*— Where the heir dies without accepting or renouncing the inheritance, the right to accept or renounce shall pass on to his heirs.

34. *Indivisibility of renunciation.*— (1) The heir who has accepted the inheritance of the estate leaver may renounce the inheritance which the estate leaver had not accepted at the time of his death.

(2) Renunciation of the inheritance of the estate leaver shall mean renunciation of all inheritances which would have otherwise devolved on the estate leaver.

35. *How renunciation is effected.*— (1) Renunciation of an inheritance shall be made before the Court having jurisdiction over the place where the succession opens or before any Special Notary.

(2) When made before the Court, it shall be drawn in a book which shall have it's pages duly numbered, and initialled by the Court and when made by the Special Notary, it shall be drawn in his respective Book. The deed or record of renunciation by the heir shall be written in indelible black ink in a clear and legible handwriting.

(3) It is the duty of the court to inspect the book once a year and record a certificate of inspection on the page immediately following the last page used. The register shall be maintained in the chronological order and shall be preserved as a permanent record of the court.

(4) When an heir renounces the inheritance through his attorney, the power of attorney shall be also preserved in a separate file maintained for the purpose and the page at which the power of attorney is placed shall be mentioned at the bottom of the deed. The file shall have an index of the powers of attorney.

(5) Where the renunciation is made through an attorney, the original power of attorney with the specific power to renounce shall be preserved in the court or office of the Special Notary, as the case may be.

36. *Consequences of renunciation.*— (1) Where the person who is called to succeed, renounces the inheritance, he shall be deemed to have never been an heir. There is no right of representation in this case. But the renunciation of the inheritance does not deprive the person who has renounced of the right to receive the legacies which might have been bequeathed to him.

(2) The person called to succeed who is entitled to an inheritance under a will and intestate, and renounces it under the will is presumed to have renounced also the intestate inheritance. But, if he renounces the inheritance as an intestate heir without having knowledge of the will, he may accept the inheritance under the will, notwithstanding the former renunciation.

37. *Implications of renunciation of disposable share.*— A renunciation of the disposable share shall not imply renunciation of the mandatory share, unless it is expressly made.

38. *When acceptance may be challenged.*— (1) No heir who has accepted the inheritance may, thereafter challenge his acceptance unless,—

(a) there was coercion or;

(b) he was induced to accept it by fraud; or

(c) more than half of the inheritance has been bequeathed by will and the existence of the will was not known to the heir at the time of acceptance.

(2) The provisions of sub-section (1)(a) and (1)(b) shall be applicable to renunciation.

39. *Subrogation by creditor.*— Where an heir renounces the inheritance to the detriment of his creditors, the latter may apply to the court for authorising them to accept it in lieu and on behalf of the debtor-heir, but after the creditors are paid, the remainder of the inheritance shall go to the other succeeding heirs and not to the heir who had renounced it.

40. *Prohibition to renounce.*— No person is permitted to renounce, whether in the ante-nuptial agreement or otherwise, the right to any future inheritance or to alienate or create a charge on the rights which he may eventually have to any inheritance.

41. *Retroactivity of acceptance or renunciation.*— Acceptance or renunciation of the inheritance has retrospective effect from the date of the opening of the inheritance.

42. *Inheritance at abeyance.*— The inheritance is at abeyance when the inheritance has neither been accepted nor has it been declared vacant.

43. *Temporary management.*— (1) The person who is called to succeed is not debarred, even if he has not yet accepted or renounced the inheritance, from taking steps to manage the assets when delay may cause injury.

(2) Where several persons are called to succeed, it is lawful for any of them to perform acts of management; but if there is objection from another, the vote of the majority shall prevail.

44. *Notice to accept or renounce the inheritance.*— (1) When a person called to succeed is known and he neither accepts nor renounces the inheritance, the court having jurisdiction over the place of permanent residence of the heir, may, on application from an interested party, cause a notice to be served on him calling upon him to either accept or renounce the inheritance within such reasonable time, not exceeding 60 days, as may be fixed by the Court.

(2) When no statement of acceptance is made nor is any document renouncing the inheritance produced, the inheritance shall be deemed to have been accepted.

(3) If the heir renounces the inheritance, then, without prejudice to the provisions of sub-sections (4) to (6), the next immediate heirs shall be notified and so on, successively, till no person comes forward to claim the inheritance over the estate.

(4) The creditors of the heir who renounces the inheritance may accept it when it is necessary to safeguard and guarantee the rights of the creditors. The creditors who are subject to a condition precedent or to a specified period may exercise such right when there is just apprehension that waiting for the fulfillment of the condition or for the debt to fall due, is likely to cause them prejudice.

(5) Such creditors have to accept the inheritance within six months from the date of knowledge of the renunciation.

(6) The court shall notify the debtor that the creditors have accepted the inheritance. The acceptance by one creditor enures to the benefit of all creditors.

(7) Upon the creditors of the heir who has renounced the inheritance being paid, the remainder shall devolve on the next immediate heirs, and not on such debtor.

## CHAPTER V

### **Liabilities of the inheritance**

45. *Liabilities of the inheritance.*— The liabilities of inheritance shall be satisfied in the following order of priority:—

(1) the funeral and other expenses towards last rites and religious services for the soul of the estate leaver;

(2) to meet the burden of the executorships and management;

(3) towards the payment of the debts of the deceased for the satisfaction of the legacies.

46. *Order of priorities.*— The creditors of the inheritance and the legatees have priority over the personal creditors of the heir and the creditors of the inheritance have priority over the legatees.

47. *Liability of the usufructuary.*— (1) The usufructuary of the entire inheritance of the deceased or of a share thereof may advance the sums required, according to the assets he enjoys, to meet the burdens of the inheritance, but he retains the right to recover from the heirs, at the end of the usufruct the sums advanced.

(2) If the usufructuary does not advance the amounts required, the heirs may demand that such of the assets enjoyed by the usufructuary, as may be necessary, be sold to meet the liability, or they themselves may pay the liability and, in this event, they shall have the right to demand interest from the usufructuary at the rate of 8% per annum.

48. *Legacy of maintenance or lifetime pension.*— (1) The usufructuary of the entire inheritance of the deceased is bound to satisfy fully the legacy for maintenance or lifetime pension annuity or monthly allowance.

(2) Where the usufruct is in respect of a share of the estate, the usufructuary is bound to contribute only in proportion to his share for the satisfaction of the legacy for maintenance or lifetime pension annuity or monthly allowance.

(3) The usufructuary of specified assets is not bound to contribute for the aforementioned maintenance or lifetime pension annuity if such burden is not imposed on him expressly.

49. *Rights and duties of the heirs in respect of the inheritance.*— (1) The heir shall retain, as against the inheritance, till partition, all the rights and obligations vis-a-vis the deceased, with the exception of those that get extinguished upon the death of the latter.

(2) The amount of money which the heir owes to the inheritance is to be set off against his share.

(3) Where it is necessary to adjudicate on the rights and duties of the heir and he is the head of the family, an administrator shall be appointed to manage the inheritance.

50. *Bona fide satisfaction of the legacies.*— If a will is declared null or is annulled after the satisfaction of the legacies made in good faith, the presumptive heir is discharged of his obligation towards the true heir, by handing over the remainder of the inheritance to the true heir, without prejudice to the rights of the latter against the legatees.

## CHAPTER VI

### Legal Succession

51. *When legal succession takes place and its extent.*— Where any person dies without making a disposition of his assets or making a disposition of only a part thereof or, having made a will, the will is annulled, revoked, reduced or it lapses, his legal heirs shall inherit the assets or the part thereof.

52. *Order of legal succession.*— (1) The legal succession shall devolve in the following order:—

- (i) on the descendants;
- (ii) on the ascendants, subject to the provisions of sub-section (2) of section 72;
- (iii) on the brothers and their descendants;
- (iv) on the surviving spouse;
- (v) on the collaterals not comprised in clause (iii) upto the 6th degree;
- (vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.

(2) In respect of persons referred to in clauses (i), (ii) and (iii) of sub-section (1), the agricultural produce or fruits, gathered or growing, meant and necessary for the maintenance of the couple shall be deemed to be the personal property of the surviving spouse, provided that on the date of the opening of the inheritance there is no suit for divorce or separation of persons and properties, pending or decreed.

53. *Proximity of degree.*— Within each group referred to in section 52, the relative closer in degree shall exclude the more remote, unless the law has conferred on the latter the right of representation.

54. *Succession per capita.*— The relatives who are in the same degree shall inherit per capita or in equal proportion subject to the provisions of section 63.

55. *Accretion upon renunciation of the inheritance.*— Where the nearer relatives renounce the inheritance, or are incapable of succeeding, the said inheritance shall devolve on the relatives of the next degree; but where only some of the co-heirs renounce their shares, such shares shall be added to the shares of the other co-heirs within the same group.

56. *Degree and lines of kinship.*— Each generation constitutes a degree and a series of degrees constitute a line of kinship.

57. *Direct and collateral line.*— The line of kinship is either direct or collateral; the direct line is constituted by a series of degrees between persons who descend one from the other; the collateral line is constituted by a series of degrees between persons who do not descend one from the other, though they descend from a common progenitor.

58. *Types of direct line of kinship.*— The direct line is either descending or ascending; descending, when it is considered as proceeding from the progenitor to the progeny; ascending when it is considered as proceeding from the progeny to the progenitor.

59. *How degrees are counted in the direct line.*— In the direct line, the degrees are counted by the number of the generations, excluding the progenitor.

60. *How degrees are counted in the collateral line.*— In the collateral line, the degrees are counted by the number of generations, ascending by one of the lines to the progenitor and descending by the other line, without counting the progenitor.

61. *Incapacity to inherit by legal succession.*— The persons incapable of acquiring by will are incompetent to acquire by legal succession.

62. *Extent of Incapacity.*— The incapacity of the heir ceases with him. His children and descendants, if any, succeed as if the person incapable of succeeding had died without any incapacity.

## CHAPTER VII

### **Right of representation**

63. *Right of representation.*— The right of representation arises when the law designates certain relatives of the deceased person who succeed to all the rights to which such person would have succeeded, if alive.

64. *Representation in the direct line.*— The right of representation takes place always in the direct descending line but never in the ascending line.

65. *Representation in the collateral line.*— In the collateral line, the right of representation takes place in favour of the descendants of the brothers and sisters of the deceased.

66. *Right of the representatives.*— The representatives inherit only what the person represented would have inherited, if alive.

67. *Joint representatives.*— If there be several representatives of the same person, they shall share equally among them what would belong to the person represented, if alive.

## CHAPTER VIII

### Order of Succession

#### Succession of Descendants/Ascendants

68. *Succession of children and their descendants.*— Children and their descendants succeed to their respective parents and other ascendants, without distinction of sex or age.

69. *When filiation is disputed.*— (1) Where, in a proceeding for partition of an inheritance, the filiation is disputed and it is not proved by documentary evidence, such party will have to institute a suit for declaration.

(2) No proceeding for partition of an inheritance shall be stayed pending the final disposal of such suit.

(3) Where the party succeeds in the suit, he shall, on his application, be impleaded in the inventory proceeding and participate in the proceeding from the stage it has reached or, where the partition in such proceeding has been homologated, he shall have his share settled in money as provided in section 449.

70. *Succession per capita.*— Where all the descendants are of the first degree, they shall succeed per capita and the inheritance shall be divided into as many shares as the number of heirs.

71. *Succession per stirpes.*— Where all or some of the heirs have a claim by virtue of the right of representation, they shall succeed per stirpes or by forming branches amongst whom the inheritance shall be distributed and sub-divided into branches where there is more than one heir. The rule of equality shall be observed both in the division and in the sub-division.

#### Succession of Ascendants

72. *Succession of parents.*— (1) Where a person dies without descendants, his father and mother shall succeed to him in equal shares or to the entire inheritance where only one of them is living.

(2) However, if there are full blood brothers or sisters of a predeceased child or descendants of the deceased full blood brothers or sisters of such child, the father or the mother who has married again does not inherit the assets which the predeceased child had inherited from the other progenitor or from his other ascendants but only the usufruct thereof.

(3) Where the parents have acknowledged that they are the parents of a child during the lifetime of the child, and the child dies without issue, the inheritance shall devolve upon his parents or one of them, as the case may be; where, in the circumstances mentioned above, such child dies without issue but leaving a surviving spouse, the surviving spouse shall have the right to usufruct of half of the inheritance.

#### Succession of Ascendants of the Second Degree

73. *Succession of grandparents and other ascendants.*— In default of parents, the inheritance of the deceased shall devolve on the ascendants of the second degree and in default of ascendants of the second degree, it shall devolve on the ascendants of the next degree, and so on.

74. *Division per capita: Ascendants in the same degree.*— Where the surviving ascendants are of the same degree, the inheritance shall be divided amongst them in equal shares, irrespective of whether they belong to the paternal or maternal line.

75. *When ascendants are not in the same degree.*— Where the ascendants are not in the same

degree, the inheritance shall devolve on the nearest one, without distinction of the line.

#### Succession of Brothers, Sisters and their Descendants

76. *Succession of brothers, sisters and their descendants.*— In default of descendants and ascendants and where the estate leaver has not disposed off his assets, his brothers, sisters and, in a representative capacity, their descendants, shall inherit the assets. However, the surviving spouse shall be the usufructuary of the estate of the deceased spouse irrespective of their matrimonial regime, if at the time of the death of the latter they were not divorced or there was no judicial separation by a decision that had become final.

#### Succession of Surviving Spouse and of the Collaterals

77. *Succession of surviving spouse.*— In default of descendants, ascendants, brothers, sisters and their descendants, the surviving spouse shall succeed, provided that at the time of the death of the other spouse, they were not divorced or there had been no judicial separation of spouses and assets by a decision which had become final.

78. *Collaterals other than brothers, sisters and their descendants.*— Where the deceased is not survived by any of the persons mentioned in clauses (i), (ii), (iii) and (iv) of sub-section (1) of section 52 and has not disposed off his assets, it shall be inherited by the collaterals other than brothers, sisters and their descendants till the 6th degree.

#### Succession of the State

79. *Succession of the State.*— In default of all testamentary or legal heirs, the State shall succeed.

80. *Rights and duties of the State.*— The rights and obligations of the State in respect of the inheritance shall be the same as those of any other heir.

81. *Prior court order.*— The State shall not take possession of any inheritance without prior decision of the court declaring its rights thereto.

### CHAPTER IX

#### Preferential, Right of the Spouse

82. *Preferential right of habitation and use of surviving spouse.*— (1) The surviving spouse of the estate leaver shall have the right to exclusive habitation of the residential house of the family and the right to use the movables and other objects or utensils intended for the comfort, service and decoration of the house. If such claim is made, the value of the right to habitation and use shall be determined and the surviving spouse shall pay owelty to the heirs if the value of right of habitation and use exceeds the value of her moiety and share, if any.

(2) The person having right to habitation and use is bound to use the property as a prudent man would use.

(3) If the surviving spouse fails to inhabit the house for a period of one year, the right shall cease.

(4) At the request of the owner of the house, the court may, if it deems just to do so, require the surviving spouse to give such security as found necessary.

### CHAPTER X

#### Mandatory Succession, Collation and Reduction

83. *Disposable portion.*— The portion which the testator may freely dispose off shall be called the disposable portion and it shall consist of half of the estate of the estate leaver, except as

provided hereunder:—

(a) Legitime of the parents: Where the estate leaver has no children or descendants at the time of his death but either his mother or father is alive, the legitime of the surviving parents shall consist of half of the inheritance.

(b) Legitime of other ascendants: Where the estate leaver has at the time of his death ascendants other than the father or mother, their legitime shall consist of one third of the inheritance.

84. *Restrictions on transfer by parents, or grandparents.*— Parents or grandparents shall have no right to sell or mortgage their assets to their children or grandchildren unless the remaining children or grandchildren and their spouses give their consent thereto in writing.

85. *Disposition of specific usufruct or lifetime annuity.*— Where the testator bequeaths a specific usufruct or a lifetime annuity and the value of such usufruct or lifetime pension annuity exceeds in value his disposable portion, the forced heirs may give effect to the legacy or deliver to the legatee the disposable portion only.

86. *Inofficious dispositions.*— Dispositions by the estate leaver by gift or will which exhaust the disposable portion and impair the mandatory share of the forced heirs shall be called inofficious dispositions.

87. *Right of forced heir to claim reduction.*— Where the estate leaver has gifted or disposed off by will assets in excess of his disposable portion, the forced heirs may apply that the gift or the testamentary disposition be reduced.

88. *Renunciation of right to claim reduction.*—No person shall during the lifetime of the estate leaver renounce his right to have the gift or will reduced.

89. *Computation of disposable portion.*— (1) For the purposes of reduction of inofficious gifts or wills, the computation of the disposable portion shall be made as follows:—

- (a) the values of all the assets left by the estate leaver on the date of his death, shall be added;
- (b) thereupon, the value of the assets gifted by the estate leaver during his lifetime shall be added;
- (c) and thereafter, the debts of the estate leaver shall be deducted.

The disposable portion shall be calculated taking into account the total sum.

(2) The value of the gifted assets shall be the value they had on the date of the opening of the inheritance, and this date shall be considered for computation of the disposable portion.

Where the thing gifted has perished for no fault of the donee, the gifted thing shall not be included in the inheritance for the purpose of computation of the legitime, unless otherwise provided.

### **Rules Relating to Collation**

90. *Collation.* — When the gift made in favour of the forced heir impairs the mandatory share of the other forced heirs, the donee shall be bound to restore the excess to the mass of inheritance for the purposes of reconstituting the mandatory share and equalization of partition. Such return is called collation.

91. *Exemption from collation.*— (1) Forced heirs may be exempted from collation if the donor so states expressly or if the donee renounces the inheritance. Nevertheless, the other heirs have the right to obtain reduction of the gift, if the gift is inofficious.

(2) Where the forced heir is exempted from collation, it shall be deemed that the donor intended

that the gift be reckoned in the disposable portion.

92. *When is a gift deemed an advancement of the legitime.*— Where the donor makes a gift in favour of his forced heirs without stating that it shall be reckoned in the disposable share, such gift shall be deemed to be an advancement of the future legitime or part thereof.

93. *Collation by grandchildren.*— When the grandchildren succeed to the grandparents as representatives of their parents, they are bound to collate whatever their parents would have to collate, notwithstanding that the grandchildren have not inherited from the parents.

94. *When parents are not bound to collate.*— Parents are not bound to collate to the inheritance of their ascendants what was gifted by the latter to their children nor are the children bound to collate what was gifted to them during the lifetime of their parents, in case they succeed to them by virtue of the right of representation.

95. *Ascendants duty to collate.*— The ascendants who claim the inheritance of the descendant donor are not bound to collate.

96. *Spouses of children not bound to collate.*— The gifts made by the parents to the spouse of their son or daughter are not subject to collation, but when they are made jointly to both the spouses, the son or the daughter, as the case may be, shall be liable to collate to the inheritance his or her respective half of the value of the gifted assets.

97. *Expenses to be collated.*— (1) All the expenses which the deceased has made in favour of his children, whether by way of higher studies or for settling them in life or payment of their debts, shall be collated.

(2) But in the computation of such expenses, ordinary expenses which the parents are bound to incur, are not to be taken into account and the parents may dispense with collation provided the expenses do not exceed the disposable portion.

(3) The money which the children have spent to the benefit of their parents or given to them without being by way of gift, shall be deducted from the amounts to be collated.

(4) Where the deceased has made expenses in favour of his children for settling them in life or for payment of their debts, which have to be collated or where a co-heir has done improvements to the assets with the written consent of the other co-heirs, the value of the expenses or improvements shall be calculated taking into account the changes in the cost of living or the value of currency.

(5) Sums spent towards maintenance, and remuneratory gifts for services rendered, or gifts made to compensate the children for any properties embezzled by their parents, shall not be subject to collation.

98. *Collation of fruits and profits of gifted things.*— The fruits and profits of the things gifted shall be computed from the date of the opening of the inheritance, for the purpose of collation.

99. *How collation is done.*— (1) The collation shall be made in money, based on the value of the things as assessed at the time of the opening of the inheritance, unless the parties agree that the collation be done in kind.

(2) The value of the improvements made to the gifted properties by the donee, shall be assessed with reference to the date of the opening of the inheritance and it shall be deducted from the value of things gifted.

(3) The deterioration or reduction in value of the things gifted will not be taken into account, where the donee or his representatives are responsible for their deterioration and diminution in value, by reason of an act committed by them or by reason of their negligence.

(4) When collating, livestock, fungibles or consumable things or things subject to wear and tear,

the condition in which they were, when possession was delivered to the donee, shall be taken into consideration. When restituting securities which are not in possession of the donee, the value they had at the time of the alienation shall be taken into account, if it is higher than the value they had at the time of the opening of the inheritance.

100. *Where the value of the gifted assets exceeds the value of donee's share in the inheritance.*— Where the value of the gifted properties exceeds the donee's share in the inheritance, the excess shall be returned in kind. The donee shall have the right to choose from amongst the gifted properties those that are necessary to make up his share in the inheritance and the encumbrances on the gift. The donee does not have the right to take part in the licitation of the properties, which he has to return to the other co-heirs. In case, amongst the gifted properties, there is any property which is physically indivisible and which in its totality does not fit in the share of the donee, it shall be collated in kind and the donee shall be entitled to take part in the licitation, subject to the provision of section 427.

101. *On payments made.*— Payments made by the donee, payments of the debts of the donor or payments of the encumbrances in favour of third parties, including the payment to any co-heirs on account of their share in the value of the gifted properties, shall be updated with reference to the official index of inflation. The provision is applicable to collations and gifts, made in cash.

102. *Family arrangement.*— A gift inter vivos by a married couple, with or without the reservation of usufruct and with the written consent of all the presumed forced heirs, of their assets or a part thereof to any one or more of the presumed forced heirs, where the donees compensate or undertake to compensate the presumed forced heirs of their future mandatory share, is valid and shall not be deemed to be a contractual succession. Any change in the value of the assets at the time of the opening of the inheritance shall, in these cases, be irrelevant.

The owelty money, if not paid immediately, shall carry interest at the rate of 8% per annum.

103. *Gift of community assets.*— (1) When community assets are gifted by both the spouses, on the death of one of them the respective half only shall be brought for collation and on the death of the other spouse, the other half shall be brought for collation. If the assets gifted are exclusive assets of either of the spouses, such assets shall be brought for collation, upon the death of the respective spouse.

(2) Once valuation of the community assets, which have not been gifted, is made, the same valuation is valid for the second partition, having regard to the official index of inflation.

(3) When a single judicial partition is made upon the death of both the donor spouses, the community assets gifted shall be valued only once with reference to their value at the time of the opening of the inheritance of the donor who has predeceased. This value shall be corrected as regards the second inheritance, if need be, taking into account the official index of inflation between the dates of the opening of the respective inheritance.

104. *How the shares of co-heirs are to be paid.*— (1) The shares of co-heirs of the donee shall be filled up, as far as possible, with assets of the same nature and kind, as those gifted to the donee.

(2) Where the gifted assets are immovables, and if it is not possible to fill up the shares of the co-heirs in the aforesaid manner, the said co-heirs shall be compensated in money. If there be no funds in the inheritance, as many properties as may be necessary to fetch the required amount, shall be sold in public auction. If the assets are movable, the co-heirs shall be compensated with other movables, having regard to their fair value.

105. *When the value of the assets gifted exceeds the legitime of the donee.*— When the value of the assets gifted exceeds the legitime of the donee, the excess shall be computed in the disposable portion of the donor. If despite such computation, the legitime and the disposable portion are

exceeded, the donee shall be liable to bring the excess into the estate.

106. *Where there are several donees.*— Where there are several donees, and the disposable portion is not sufficient to satisfy all the donees, the provisions of sections 113 and 114, shall be followed.

107. *Dispute as regards obligation to collate.*— Where there is a dispute between the co-heirs regarding the obligation to collate or over the subject of collation and the dispute cannot be decided in the inventory, the inventory proceeding shall not be stayed on that ground and the person bound to collate, shall furnish security in respect of the properties gifted to him till the dispute is decided by a competent court.

108. *Assets which devolve in a preferential manner.*— (1) The successor of any assets, which are not subject to partition, and which devolve in a preferential manner, is bound to collate such improvements which have increased the value of the assets.

(2) Where the assets which are not subject to partition and which are to devolve in a preferential manner have been acquired for a valuable consideration, the price of the acquisition or their value, shall be collated, at the option of the successor.

109. *Duty to collate is a charge in rem.*— The duty to collate constitutes a charge in rem on the gifted immovable properties.

110. *Reduction of legacy or gift.*— (1) Where the legacy or the gift impairs the legitime of the forced heirs, the legacy or gift may be reduced for inofficiousness to the extent necessary to make up the legitime.

(2) For the purpose of determining whether there is inofficiousness, the disposable share shall be computed as provided in section 89.

111. *Order of reduction.*— Where inofficious gifts have been made, gifts mortis causa or legacies shall be reduced first and the gift inter vivos shall be reduced only when legacies are not sufficient to make up the legitime of the forced heirs.

112. *Partial reduction.*— Where a partial reduction of the legacies is sufficient to make up the legitime of the forced heirs, the legacies shall be reduced pro rata, amongst the legatees, unless the testator has in his will stated that any one of the legatees shall be exempted from reduction or which shall be the order of reduction.

113. *Reduction of gifts inter vivos.*— Where gifts inter vivos are to be reduced, the last shall be reduced first in its totality or in part, and when the last gift is not sufficient to make up the legitime, the next immediate shall be reduced and so on.

114. *Pro rata reduction.*— Where several gifts are made in the same gift deed or on the same day, the gifts shall be reduced pro rata.

115. *Reduction in respect of movables.*— When the gift consists of movables, their value at the time the gift was made shall be taken into account for the purpose of reduction and the provisions of sub-sections (3) and (4) of section 99 shall be applicable.

116. *Reduction of gifts of immovables.*— (1) When the gift consists of immovables, they shall be reduced in specie, and the provisions of sub-sections (3) and (4) of section 99 shall be applicable.

(2) For the purpose of reduction, their value shall be computed as on the date the reduction is made, and neither the increase in the value resulting from the improvements made by the donee nor the decrease of such value arising from deteriorations imputable to the same donee shall be included therein.

117. *When immovable cannot be divided.*— Where any immovable is not susceptible to division without detriment:

(a) when the amount of reduction exceeds half of the value, the donee shall have the remainder in cash; and

(b) when the reduction does not exceed the said half, the donee shall return the amount of the reduction.

118. *When the donee may retain the gifted property.* — Where the donee is also a co-heir, he may retain the gifted property, if the value of such immovable does not exceed the value of the legitime of the co-heir added to the value of the reduced gift.

Otherwise, the donee shall return the gifted property to the inheritance, and he shall be paid off for the legitime and the reduced gift in accordance with the general rules of partition.

119. *When immovable properties are not in possession of the donee.*— Where the immovable properties are not in possession of the donee at the time of the reduction or revocation, he shall be liable for its value at the time of the opening of the inheritance. If the donee has alienated the gifted assets, he shall have to compensate in cash and if the donee has mortgaged the gifted assets, the heir to whom such assets have been allotted shall be entitled to redeem the mortgage and claim the amount of redemption including the expenses incurred in that regard from such donee.

120. *When the donee is insolvent.*— Where the gift consists of movables and the donee is insolvent, the parties may claim from the immediate transferees, if the transfer was done gratuitously and the right is not extinguished by prescription, the value of such movables at the time of the acquisition.

121. *Fruits and profits in the event of reduction.*— The donee affected by reduction is liable for the fruits and profits only from the date of demand. However, if the donee is a co-heir, he is liable from the date of the death of the donor.

## CHAPTER XI

### Testamentary Succession

122. *Institution of heir.*— One or more persons may be instituted as heirs and even where the testator has left them shares in the inheritance in a certain proportion, they shall nevertheless be considered as heirs.

123. *Liability of the heirs.*— The heir is liable to pay the debts and satisfy the legacies within the resources of the inheritance.

124. *Liability of the legatee.*— The legatee is not liable for the encumbrances of the legacy beyond the resources of the legacy.

125. *Apportionment of liabilities where inheritance is distributed by way of legacies only.*— (1) Where the inheritance has been entirely distributed by way of legacies, the debts and encumbrances shall be distributed among the legatees in proportion to their legacies, unless the testator has given directions to the contrary.

(2) Where the assets of the inheritance are not sufficient to pay the legacies, the same shall be paid pro rata, except for remuneratory legacies which are considered to be debts of the inheritance.

126. *Specific sum or thing bequeathed.*— Where the testator has bequeathed a specific sum of money only or a specified thing or a determined part of the inheritance, the disposition shall be considered to be a legacy.

127. *Institution of heirs collectively.*— Where the testator institutes certain heirs individually and others collectively and says, for instance, “I institute as my heirs Peter and Paul and the children of Francis”, those who are collectively instituted shall be considered to be appointed heirs individually.

128. *Brothers or sisters generally instituted as heirs.*— Where the testator institutes his brothers or sisters in general as heirs and he has full blood, consanguineous or uterine brothers or sisters, the succession shall be considered intestate.

129. *Institution of certain person and his children.*— Where the testator institutes a certain person and his children as heirs, they shall be considered to have been appointed heirs simultaneously and not successively.

130. *Right to be compensated for management of inheritance distributed by way of legacies.*— The heir, who has managed the inheritance which has been distributed by way of legacies, shall be entitled to be compensated by the legatees for the expenses which he has incurred towards the legacies.

131. *Legacy of a thing subsequently acquired.*— Where the bequeathed thing, which did not belong to the testator at the time he made the will, subsequently comes to belong to him under any title, the bequest shall take effect as if such thing belonged to the testator at the time the will was made.

132. *Legacy of a thing belonging to the heir or legatee.*— Where the testator directs that the heir or the legatee shall give to another person a thing belonging to one of them, he shall be bound to carry out the disposition or give the value of the thing, if he does not choose to relinquish the inheritance or the legacy.

133. *Legacy of a thing which belongs only in part to the testator or to his successors.*— Where the testator, the heir, or the legatee, is the owner of a part only of the bequeathed thing or has a limited right only to the bequeathed thing, the bequest shall take effect only to the extent of such part or of such right.

134. *Restraint on marriage.*— (1) The condition which prohibits the heir or the legatee from getting married, or from remaining unmarried, except when the same is imposed on a widow or widower having children, by the deceased spouse or by his or her descendants or ascendants and so also the condition which compels him to take priesthood vows or to take or not to take a certain and specified profession, shall be deemed inexistent.

(2) The provisions of sub-section (1) shall not be applicable to testamentary disposition which limits the duration of the benefits for the period during which the heir or legatee holds a particular status, namely, bachelorhood, widowhood, or married status.

135. *Condition to reciprocate.*— The disposition made on condition that the heir or legatee shall also make in his will a disposition in favour of the testator or of another person, shall be null and void.

136. *Deferred execution of the disposition.*—The condition which suspends the operation of the disposition for a certain period, shall not be a bar for the heir or legatee to acquire right to the inheritance or to the legacy and to transmit it to his heirs.

137. *Ineffective dispositions.*— The legacies shall not take effect:-

(a) if the testator alienates the bequeathed thing; or

(b) when the bequeathed thing is *res extra-commercium*; or

(c) when the testator transforms the bequeathed thing in such a way that it does not have either its original form or its denomination; or

(d) where the testator has been dispossessed of the bequeathed thing by a person having a lawful title thereto or it has been wholly destroyed during the lifetime of the testator and the heir is not responsible therefore.

138. *Legacy in the alternative.*— (1) Where a legacy is in the alternative, that is, the testator makes a bequest of one of two or more things and one of them is destroyed, the existing thing or things shall be delivered to the legatee.

(2) Where only a part of the thing is destroyed, the remainder shall be delivered.

139. *Indivisibility of the disposition.*— The legatee is not entitled to accept a part of the legacy only and relinquish the other part; neither is the legatee entitled to relinquish an onerous legacy and accept the one which is not onerous.

However, the heir, who is at the same time a legatee, may relinquish the inheritance and accept the legacy and vice versa.

140. *Supervenienc of descendants.*— (1) The will made by a person who did not have children at the time of making it or did not know that he had children, lapses in the event of supervenienc of children or other descendants.

(2) A legacy does not lapse in any of the cases mentioned above but it may be reduced as in officious in accordance with section 110.

141. *Effect of supervenient children predeceasing.*— Where the supervenient children die before the testator, the disposition shall take effect unless revoked by the testator.

142. *Legacy of a pledged thing.*— Where the bequeathed thing is pledged, it shall be redeemed at the expense of the inheritance.

143. *Legacy of thing ascertainable at the place where found.*— The legacy of a thing or a quantity which is to be received at a fixed place, shall take effect only to the extent of the portion that is found at that place.

144. *Legacy of debt not fallen due.*— (1) Where the testator bequeaths a certain thing or a certain amount as a debt owed by him to the legatee, the legacy shall be valid, notwithstanding that the amount or thing was not really due, unless the legatee was incompetent to receive it as a gift.

(2) If a debt is to fall due only after a certain period, the legatee is not bound to wait for the expiry of the period to demand its payment. However, the legacy will not take effect if the testator, who was a debtor at the time of making of the will, has paid the debt subsequently.

145. *Legacy made to the creditor of testator.*— (1) Where the testator makes a bequest to the creditor without making any reference to the debt of the testator, the legacy shall not deemed to have been made in payment of debt.

(2) Where the testator bequeaths any outstanding debt due to him, whether recoverable from a third party or from the legatee himself, or discharges the legatee of the debts, the heir shall carry out the bequest by handing over to the legatee the respective instrument, if any.

(3) Where it is proved that the debt due to the testator has been paid, wholly or in part, the legatee may demand from the heir the equivalent of the debt or of the part paid; but when the extinguishment of the debt results from any other cause, he shall not be entitled to make any demand to obtain its payment.

146. *Unconditional legacy.*— An unconditional legacy confers on the legatee a transferable right from the date of the testator's death.

147. *Choice of legacy of a generic thing.*— (1) Where the testator makes a bequest of an unspecified thing comprised in other things of the same kind, the selection of such thing shall be made by the person who has to hand it over from amongst the things having similar qualities.

(2) Where the right to select is by an express disposition of the testator given to the legatee, he shall in his discretion select from amongst the things of the same kind.

But where things of the same kind do not exist in inheritance, it is the heir who shall select the thing to be given to the legatee and such thing shall be of similar value or quality.

148. *Heir's right to select.*— Where the legacy is in the alternative and the right to select has not been expressly conferred on the legatee, the heir shall have the right to select.

149. *Transmission of right to choose.*— Where the heir or legatee who has the right to select, has not made such selection during his lifetime, such right shall devolve on to the heirs. Once the selection is made, it shall be irrevocable.

150. *Legacy for maintenance.*— (1) Where a legacy is given for the maintenance of a legatee, the legacy shall include food, clothing and lodging and, when the legatee is below 18 years of age, it shall also include education, unless otherwise provided in the will.

(2) The maintenance given for education may be reduced in the event the ability to give or the need to receive, is reduced.

151. *Legacy of house with things existing in it.*— Where a house with all things found therein is bequeathed, the bequest shall not include debts due to the inheritance notwithstanding the fact that the instruments and documents relating to such outstanding debts due to the testator, are found in the house.

152. *Legacy of usufruct.*— A legacy of usufruct without fixing the period of its duration shall be construed to have been made for the lifetime of the legatee and where such legatee is a body with perpetual succession, the legacy shall be construed to have been made for a period of thirty years only.

153. *Legacy to minor.*— A legacy to a minor which is to be received by him after he attains majority, cannot be demanded by him before he attains majority.

154. *Legacy for charitable purposes.*— A legacy left for charitable purposes shall be construed to have been made for the purpose of welfare and charity, unless otherwise provided in the will.

155. *Mistake as to object or subject of the legacy.*— The mistake of the testator in respect of the object or the subject of the legacy shall not render the legacy void, if it is possible to ascertain clearly what was the intention of the testator.

156. *Delivery of legacy.*— (1) Where the legatee is not in possession of the bequeathed thing, he shall call upon the heirs to give effect to the legacy.

(2) When the heirs delay in taking charge of the inheritance, the legatee may cause summons to be served on them to accept or renounce the inheritance.

(3) Where the heirs renounce the inheritance, the legatees may apply that a curator be appointed for the inheritance and demand the delivery of the legacy from the appointed curator.

(4) Where the legacy is an encumbrance on another legacy, the legatee of the encumbrance shall demand the legacy from the latter.

157. *Duty to carry out the will.*— (1) Where the entire inheritance has been distributed by way of legacies and the testator has not appointed an executor, the legatee who is the most benefited shall be deemed to be the executor.

(2) Where there be more than one legatee in similar circumstances, such legatees shall choose one of them to be the executor.

(3) When there is no agreement between the legatees, or when any of such legatees is a minor, absent person or under interdiction, the executor shall be appointed by the court.

158. *Fruits and income of legacy.*— Unless the testator has provided otherwise, the legatee is entitled to the fruits and profits of the bequeathed thing right from the date of the death of the testator, as well as to the interest accrued from the money bequeathed, from the expiry of the time to carry out the legacy.

159. *Legacy of periodic sums.*— Where the testator bequeaths periodic sums, the first period shall run from the date of the testator's death. The legatee shall have the right to the said installment the moment the new period commences, even if the legatee dies before the period comes to an end. However, the bequest shall be enforceable at the end of the period only, unless the bequest is for maintenance in which case it shall be enforceable at the beginning of the period.

160. *Expenses for delivery of legacy.*— The expenses for the delivery of the bequeathed thing shall be met by the inheritance, unless the testator has provided otherwise.

161. *Manner and place of delivery.*— The bequeathed thing shall be delivered together with its accessories at the place and in the condition in which it was at the time of the testator's death. If the bequest consists of money, jewellery, or shares and other securities, whatever may be the type of the instruments, it shall be delivered at the place where the inheritance is opened, unless the testator has provided otherwise or there is an agreement between the parties to the contrary.

162. *New acquisitions.*— If the person who bequeaths any immovable property adds subsequently to such property new acquisitions, these acquisitions, even if contiguous, shall not form part of the legacy without a new declaration of the testator. In case any improvement is made to the bequeathed property which is necessary, useful or luxurious, it shall form part of the legacy.

163. *Legacy of thing burdened with encumbrance in rem.*— If the bequeathed thing is burdened with any emphyteutic fee, share in the rent, easement or any other encumbrance inherent thereto, the bequeathed thing shall go to the legatee with the encumbrance. However, if such encumbrances are in arrears, such arrears shall be met by the inheritance.

164. *Lien on immovable assets.*— The immovable assets which devolve on the heirs from the testator are subject to a lien for the satisfaction of the legacies. However, if any one of the heirs is specifically made liable for any such payment, the legatee can exercise this right over the immovable asset which may be allotted to the said heir in the partition.

165. *Duty of co-heirs to compensate when the legacy consists of an asset of one co-heir only.*— Where the testator bequeaths a thing belonging to one of the co-heirs, the other heirs shall be bound to compensate him proportionately unless the testator has provided otherwise.

166. *Institution of heir or legatee subject to fulfillment of condition.*— If the inheritance or the legacy has been left subject to the condition that the heir or legatee should not give a specified thing or should not perform a specified act, the said heir or legatee may be compelled, at the instance of the interested parties, to furnish security for the performance of the condition, unless the condition is one of those contemplated by section 134.

167. *Conditional legatee.*— If the legacy is conditional or is to take effect after a certain time, the legatee may require the person who has to deliver the legacy, to furnish security.

168. *Responsibility of the heir apparent.*— (1) If the will is declared null and void after the payment of the legacy and the legacy has been satisfied in good faith, the heir instituted in the will shall stand discharged of his responsibility towards the true heir by delivering the remainder of the inheritance.

(2) The preceding provision shall also be applicable to legacies subject to encumbrances.

169. *Reduction of encumbrance attached to legacy.*— When the legacy is subject to an encumbrance and the legatee does not receive the whole legacy due to his own fault, the encumbrance shall be reduced proportionately and, in case he is dispossessed from the bequeathed thing, the legatee may demand the restitution of whatever was paid by him.

### **Right of Accretion**

170. *Right of accretion.*— (1) If any of the instituted co-heirs dies before the testator or renounces the inheritance or becomes incapable or unworthy of receiving it, his share shall be added to the shares of the other instituted co-heirs, unless the testator has provided otherwise.

(2) The heirs shall also be entitled to the right to accretion, if the legatees do not want or are unable to receive the legacy.

171. *Exclusion of right of accretion.*— (1) The legatees shall not have the right of accretion interse.

(2) If the bequeathed thing is indivisible or cannot be divided without detriment, the co-legatees shall have the option either to retain the whole thing against payment to the heirs of the value of the excess or to receive from them whatever as of right belongs to them, delivering to such heirs the bequeathed thing.

However, when the legacy is encumbered with an obligation and the said obligation lapses, the legatee shall profit from the resulting benefit, if the testator has not provided the contrary.

172. *Effects of accretion.*— The heir who acquires a share in the inheritance by reason of accretion shall succeed to all rights and obligations of the heir who did not wish or could not receive the disposition, had it been accepted by him.

173. *Renunciation of right of accretion.*— The heirs who get the right of accretion may renounce it in the event it carries special encumbrances created by the testator; but, in such a case, the said portion shall revert to the person or persons in whose favour the encumbrances have been created.

174. *Right to legacy.*— The legatee shall have the right to recover the bequeathed thing, whether movable or immovable, from a third party, provided that the bequeathed thing is certain and specified.

### **Substitutions**

175. *Common or direct substitution.*— The testator may appoint one or more persons to substitute the instituted heir or heirs or legatees in case such heirs or legatees cannot or do not wish to accept the inheritance or the legacy. This is called common or direct substitution. Such substitution ceases to operate upon such heir accepting the inheritance.

176. *Pupillary substitution.*— (1) The testator, who has children or other descendants under parental authority, who will not upon the death of the testator be under the authority of another ascendant, may substitute the said children or other descendants by heirs or legatees of his choice,

in case the said children or other descendants die before completing eighteen years of age, irrespective of their sex. This is called pupillary substitution for minors.

(2) Such substitution becomes ineffective when,—

(a) the person substituted attains the age of eighteen years or

(b) the substituted person dies leaving behind descendants entitled to succeed.

177. *Quasi pupillary substitution.*— (1) The provisions of section 176 shall be applicable, irrespective of the age, when the child or other descendant is of unsound mind provided he is so declared by the court. This is called quasi pupillary substitution.

(2) Such substitution shall become ineffective if such unsoundness of mind ceases.

178. *Properties which may be subject to substitution.*— The substitution, pupillary or quasi-pupillary, may comprise such properties only which the substitute could have disposed of, if he was not unable or debarred from doing so at the time of his death and which he may have acquired through the testator.

179. *Rights and duties of the substitute.*— The substitute shall receive the inheritance or legacy with the same encumbrances, with which the substituted heirs or legatees would have received, with the exception of encumbrances which are solely personal, unless it has been provided otherwise.

180. *Reciprocal substitution.*— When the co-heirs or legatees with equal shares are reciprocally substituted, it shall be deemed that they have been substituted in the same proportion. However, if the number of substitutes exceeds the number of instituted heirs or legatees and no provision in that regard has been made, it shall be deemed that they were substituted in equal shares.

181. *Fide-commissary substitution.*— (1) The testamentary disposition whereby any heir or legatee is bound to preserve the inheritance or the legacy which on his death is to go to a further beneficiary is called the fide-commissary substitution or fidei-commissum and such heir or legatee is called fiduciary and such further beneficiary shall be called fidei-commissarius.

(2) It shall not be lawful to make a fide-commissary substitution in more than one degree.

182. *Lapse of fidei-commissum.*— If the fidei-commissarius, who is the ultimate beneficiary, does not accept the inheritance, or dies before the fiduciary, the substitution shall lapse and the fiduciary shall be the absolute owner of the properties.

183. *Nullity of the substitution.*— The nullity of the clause relating to fide-commissary substitution does not render the institution of the heir or the appointment of the legatee null and void. The fide-commissary clause only shall be deemed to be non-existent.

184. *Dispositions which are not analogous to fidei-commissum.*— Dispositions whereby the testator leaves the usufruct to one person and the naked ownership to another or successive usufructs are not fide-commissary substitutions.

185. *Deemed fidei-commissum.*— (1) (a) Dispositions made subject to a condition prohibiting alienation inter vivos and (b) dispositions which appoint a third person to take what is left from the inheritance or the legacy, on the death of the heir or of the legatee, are deemed to be fidei-commissum and as such valid upto one degree.

(2) In cases covered by clause (b) of sub-section (1), the fiduciary shall be entitled to alienate only when he does not have any properties of his own, apart from his residential house, and upon

obtaining written consent of the fidei-commissarius for the purpose or upon his consent being dispensed with by an order of the court.

186. *Encumbrances in favour of paupers, etc.*— The dispositions which impose on the heir or the legatee the obligation to pay successive sums of money in favour of paupers, or in favour of any public utility institution or foundation are valid. In this case, however, the burden shall be charged on specific assets and such heir or legatee shall be allowed to capitalize, or convert the instalments into corresponding capital in money.

187. *Irregular fidei-commissum.*— When the testator makes a disposition for a public purpose, the testator may provide that in case the institution which has to carry out the will of the testator is extinguished, the same properties shall go to another institution or legal body nominated by him.

188. *Applicability to past and future fidei-commissum.*— The provisions of the preceding sections are applicable to past and future fidei-commissum.

### Disinheritance

189. *Disinheritance.*— The forced heirs may be deprived by the testator of their legitime or be disinherited by declaring his wish in the will, only when the law expressly permits him to do so.

190. *Grounds for disinheritance.*— The testator may in his will disinherit by expressly declaring that he does so, disclosing the grounds on which he disinherits, the following persons:—

(a) the presumed heir when he is convicted for an offence intentionally committed against the testator, his spouse, ascendants, brothers, adopter or adoptee, punishable with imprisonment of more than six months;

(b) the presumed heir who has been convicted for having lodged malicious prosecution or for perjury against any of the persons mentioned in the clause (a) above;

(c) the presumptive heir who, without sufficient cause, refused to maintain the testator and or his spouse.

191. *Effects of disinheritance.*— The descendants of the disinherited persons, who survive the testator, shall be entitled to the legitime which their ascendant was deprived of, but the ascendant who was disinherited is not entitled to enjoy the usufruct of the legitime received by his descendants.

192. *Burden of proof.*— When the ground for disinheritance is contested, the burden of proving that such ground exists shall be on the persons who benefit from the disinheritance.

193. *Failure to mention ground or irrelevant ground.*— When the testator declares that he disinherits without clearly mentioning the ground or when the ground is not proved or the ground is unlawful, the dispositions of the testator affecting the legitime of the disinherited heir, are void to that extent.

194. *Right to maintenance of the disinherited heir.*— When the disinherited heir has no means of subsistence, the beneficiary of the assets of which the disinherited heir has been deprived is bound to provide maintenance to him but not beyond the income of the said assets, unless the said maintenance is due for any other reason.

195. *Period of limitation to challenge disinheritance.*— The person who has been disinherited

and wishes to challenge the disinheritance may file a suit within three years from the date of knowledge of the will or the date of death of the testator, whichever is latter.

## CHAPTER XII

### Wills

196. *Concept of will.*— (1) A will is an unilateral act whereby a person makes disposition of the whole or a part of his estate to take effect upon his death.

(2) All dispositions which are by law permitted to be included in a will are valid if done with all the formalities required to make a will, notwithstanding that they do not contain disposition of assets.

197. *Will is a personal act.*— A will is a personal act. It shall not be lawful to make a will through an attorney nor to leave it to the discretion of another person, either as regards the institution of heirs or appointment of legatees or as regards the subject matter of the inheritance or as regards the execution of the will.

However, the testator may entrust the partition or the inheritance to a third party when he institutes or appoints a class of persons as heirs or legatees.

198. *Will dependant upon instruction.*— Dispositions which (a) depend on instructions secretly given to another person or (b) refer to documents which are not authentic or are not written and signed by the testator or (c) are made in favour of uncertain persons, who cannot be ascertained in any manner, shall not take effect.

199. *Disposition in favour of unnamed relatives.*— Dispositions in favour of the relatives of the testator or in favour of relatives of another person without specifically designating the person, shall be presumed to have been made in favour of the nearest relatives of the testator or of the person indicated, as per the order of legal succession.

200. *Conditional disposition.*— The testator may either make an unconditional disposition of his estate or he may dispose of his estate subject to conditions, provided such conditions are not absolutely or relatively impossible of performance or contrary to law, morality or public policy. A condition which is impossible of performance or contrary to law morality or public policy shall be presumed to be inexistent and shall not adversely affect the heirs or legatees notwithstanding that the testator has provided to the contrary.

201. *Obstruction to fulfillment of condition.*— Where a person who is interested in the non-performance of the condition, obstructs its fulfillment, the condition is presumed to have been fulfilled.

202. *Reason contrary to law.*— Where the testator gives the reason or motive for making the will and the reason or motive, whether true or false, is contrary to law, the disposition shall be null and void.

203. *Disposition where time for commencement or cessation of heirship is fixed.*— Where the testator fixes a time limit from which the institution of the heirs shall commence or cease, such a declaration shall be deemed as not written by the testator.

204. *Will obtained by coercion, undue influence, deceit, or fraud.*— (1) A will obtained by coercion, undue influence or by deceit or fraud, is voidable.

(2) The intestate heir forfeits his right to the inheritance when by deceit, fraud, undue influence or coercion he had prevented the estate leaver from making a will and the inheritance shall devolve on the person upon whom it would devolve, had such heir not existed.

205. *Duty of authorities.*— An administrative authority which comes to know that a person is preventing another from making a will is duty bound to go promptly to the house of the person so prevented with a Special Notary and two witnesses. Upon verifying that the information is true, set the said person free to make a will and he shall also cause a report to be written and forwarded to the Assistant Public Prosecutors/Public Prosecutor.

A person who prevents another from making a will shall be liable to be prosecuted.

206. *When expressions are insufficient.*— A will wherein the testator has not expressed clearly and fully his wish but only by signs and monosyllables in answer to questions put to him, is null and void.

207. *Prohibition imposed by testator to challenge his will.*— It shall not be lawful for the testator to prohibit his legal heirs from challenging the validity of his will, when such will is null under the law.

208. *Joint wills.*— It shall not be lawful for two or more persons to make a will jointly in the same instrument, whether for their common benefit or for the benefit of third parties.

209. *Revocation of will.*— (1) A will may be freely revoked by the testator fully or in part by another will or by a deed before the Special Notary with the same formal requirements.

(2) It shall not be lawful for the testator to renounce his right to revoke the will.

(3) When the testator alienates the bequeathed thing before his death, the will shall stand revoked pro tanto.

210. *Implied revocation.*— (1) Where a subsequent will is made without making a reference to the earlier one, the subsequent will revokes the earlier will to the extent of its inconsistency only.

(2) Where there are two wills of the same date and it is not possible to ascertain which of them is later in point of time, the contradictory or inconsistent dispositions in both the wills shall be deemed inoperative.

211. *Effect of will which has lapsed.*— The revocation of a will shall take effect notwithstanding that the subsequent will lapses on account of the incapacity of the heir or of the legatee appointed therein or on account of the relinquishment of the inheritance by the heir or by the legatee.

212. *Restoration of will.*— Where the testator revokes the subsequent will and declares that he wishes that his earlier will shall subsist, the earlier will shall stand restored.

213. *When testamentary dispositions lapse.*— A testamentary disposition shall lapse and become ineffective in relation to the heir or the legatee,—

(a) where the heir or legatee dies before the testator;

(b) where the heir is instituted or the legacy is left subject to a condition and the heir or legatee dies before the condition is fulfilled;

(c) where the heir or the legatee is under a disability to acquire the inheritance;

(d) where the heir or the legatee renounces his rights.

214. *Effect of ignorance of existence of children.*— If the testator had children or other descendants and he did not know that he had children or other descendants, or he thought that they were dead, or where the children are born to the testator after his death, or where the children are born to the testator before his death, but after the will was made, the will shall be valid only to the extent of the disposable portion of the testator, in accordance with section 140.

215. *Interpretation of wills.*— (1) Where any doubt arises as to the interpretation of a testamentary disposition, the intention of the testator shall be gathered from the will and accordingly carried out.

(2) When the words of a will are unambiguous, but it is found from extrinsic evidence that they admit of interpretations, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these interpretations was intended.

216. *Object contrary to law, morality or public policy.*— A testamentary disposition is void when from its interpretation it follows that the will was intended essentially for an object contrary to law, morality or public policy.

#### Who may make a will and acquire by will

217. *Capacity to make a will.*— A person who by law is not expressly forbidden from making a will, may make a will.

218. *Incapacity to make a will.*— (1) A person who is not in his full senses or a person of either sex under 18 years of age, is incompetent to make a will. Blind persons, or persons who are unable or do not know to read are incompetent to make closed wills.

(2) The capacity of the testator to make a will is determined at the time when the will is made.

219. *Restrictions on disposition of community assets.*— A disposition of specific and determined properties by a person who is married under the regime of general community of assets is null and void, unless:—

(a) the assets disposed of are allotted to him in a subsequent partition; or

(b) they do not form part of the community; or

(c) the disposition has been made by one of the spouses in favour of the other; or

(d) the other spouse has in a document drawn by a Special Notary given consent to the said disposition

220. *Restrictions on disposing of specific assets of the inheritance.*— (1) It shall not be lawful for a co-heir to dispose of any specific asset of the inheritance or right to a part of specific assets, unless such asset or right to such part, is allotted to him in a partition

(2) The disposition made in contravention of this section shall be null and void.

221. *Relative incapacity of sick person.*— A will made by a sick person in favour of the physician or nurse who attended to him during his illness or in favour of the priest who assisted him spiritually during his illness shall not take effect if the sick person dies of that illness.

However, (a) a legacy by way of remuneration for the services rendered to the sick person when such person was not paid any remuneration for the services or (b) a disposition made in favour of the descendants, ascendants, collaterals till the third degree or to the spouse of the testator, are valid.

222. *Disposition in favour of a person who has rendered domestic help or care and assistance.*— A disposition made by a sick and old person, having ascendants, descendants, collaterals till the fourth degree or spouse, in favour of a person who has rendered domestic help or care and assistance to such person shall not exceed one third of the value of inheritance. However, a disposition made in favour of ascendants and descendants, collaterals till the fourth degree or the spouse of the testator is valid.

223. *Relative incapacity-Disposition in favour of guardian or manager of assets.*— A disposition made by a person who is interdicted or under disability in favour of his guardian or manager of his assets, even if the accounts of the management have been already approved, shall be void.

224. *Relative incapacity-Disposition by adulterous spouse.*— Where the adultery is proved in court, either in criminal or civil proceeding, before the death of the testator, the adulterous spouse shall be incompetent to make a disposition in favour of the partner in the adultery.

225. *Relative incapacity-Disposition in favour of the Special Notary.*— The testator shall be incompetent to make a disposition in favour of the Special Notary who draws his will or certifies his closed will or in favour of the person who writes the will for him or in favour of the witnesses to, or interpreter of, the will or to the record of approval or certification of the closed will.

226. *Extent of nullity.*— Only that part of the testamentary disposition which is hit by the provisions which refer to the relative incapacity of the testator shall be null and void.

227. *Restrictions on impairment of mandatory share.*— Persons who are bound by law to reserve the legitime may dispose of only the disposable portion.

228. *Who may receive by will.*— (1) Only living persons, including an embryo, may acquire by will. The embryo is deemed to exist when born alive and with human figure within 300 days from the death of the testator.

(2) However, the disposition is valid even when the future heir or legatee is born beyond the period of 300 days from the date of the death of the testator, if the disposition is in favour of the children yet to be born who are descendants in the first degree of certain or specified persons alive at the time of the death of the testator.

229. *Relevant time to determine capacity to acquire by will.*— The relevant time to determine the capacity to acquire by will is the time of the testator's death. Where an heir is instituted subject to condition, or where the legacy is left subject to conditions, the relevant time to determine the capacity to acquire by will is not only the date of the testator's death but also the time of fulfillment of the condition.

230. *Consequence of incompetence to acquire by legal succession.*— A person who is incompetent to acquire by legal succession as provided in section 9 is incompetent to acquire by testamentary succession.

231. *Consequences of refusal to act as executor or guardian or their removal.*— The executor who refuses to accept the office or who, having accepted the office, is removed therefrom on account of mismanagement and so also the testamentary guardian who refuses the office or is removed therefrom, forfeits the right to whatever is bequeathed to him by the testator.

232. *Capacity of corporate bodies.*— Corporate bodies, associations, trusts, or other legal entities may succeed by will as heirs or legatees.

233. *Fictitious disposition.*— (1) A will made in favour of an incompetent person by ostensibly making it in favour of another person with an understanding that it will benefit the incompetent person or through an intermediary shall be null and void.

(2) A testamentary disposition is deemed to have been made through a fictitious person when it is made in favour of the spouse of the person who is incompetent to acquire by will or to a person whose presumptive heir he is or when made in favour of a third party who has agreed with the person who is incompetent to acquire by will that he will transmit the benefit of the will in favour of the latter.

## Types of Wills

234. *Types of wills.*— Wills may be of the following categories:—

- (a) Public;
- (b) Printed open;
- (c) Closed or sealed;
- (d) Wills made outside Goa.

235. *Public will.*— A testator who wishes to make a public will has to declare his last wish before any Special Notary in the presence of two witnesses, worthy of credit so that he may record the will in the Book of Wills.

236. *Printed open will.*— A testator who knows to read, may opt to present to the Special Notary a computer generated printout of the operative part of his will on a standard paper of the size of 29.7 cms x 21 cms entitled 'open will' and declare before the Special Notary that the printout contains his last wish in the presence of two credit worthy witnesses, who shall identify the testator, and certify that the testator is in his senses and free from coercion.

237. *Closed or sealed will.*— Closed or a sealed will shall be written and signed by the testator, or it may be written by another person at the request of the testator and signed by the testator. The person who signs the will shall initial all its pages. The testator is exempted from signing the will where he is unable to sign it; however, the fact that he is unable to sign the will shall be recorded in the will by the Special Notary.

238. *Incompetence to make a closed will.*— Persons who do not know or are unable to read are not competent to make dispositions by way of a closed will.

239. *Failure to present the closed will.*— Where a person who is in possession of the closed will, and, where the will is made by an absent person, does not present it or, in case of the testator's death, does not present it within thirty days from the date of the knowledge of the death, he shall be liable to pay damages. Where the person who fails to present the will is guilty of deceit, he shall, besides being liable to pay damages, forfeit his right, if any, to the inheritance of the testator and shall also be liable for criminal prosecution.

240. *Fraudulent removal of will.*— Any person who fraudulently removes the will from the effects of the testator or from the possession of any person with whom it is deposited shall be subject to pay damages, forfeit his right to the inheritance and shall also be liable for criminal prosecution.

241. *Where the closed will is found open.*— Where the closed will is found opened, whether amidst the effects of the testator or in the possession of a third party but without any other defect, it shall not be annulled for that reason. In such a case, the will shall be presented as it is to the Special Notary of the sub-district, who shall draw a record stating the above facts in accordance with sections 341, 342, 343 and 344.

242. *Tampered or torn will.*— Where the will is found open and tampered with, or torn, the following provisions shall apply:—

- (a) Where the will is found cancelled and obliterated, or torn, either amidst the effects of the testator or in the possession of a third party, to such an extent that it is not possible to read the original disposition, it shall be deemed to be non-existent;
- (b) Where it is proved that any person other than the testator has tampered with the will, the provisions of sections 239 and 240 which are applicable to a person who fraudulently withholds or removes the will shall be applicable to such person.

243. *Presumption as to who is responsible.*— Where the will is tampered with, it shall be presumed that the tampering was done by the person to whom the will was entrusted until the contrary is proved.

244. *Torn will found amidst the effects of the testator.*— Where the will is found to be torn or reduced to pieces amidst the effects of the testator, the will shall be deemed to be non-existent, notwithstanding that it is possible to put the pieces together and read the disposition, unless it has already been proved that it was torn or reduced to pieces after the death of the testator or was caused by him when he was of unsound mind.

245. *Wills under this Code to become operative upon death.*— When a public will, printed open will or closed will is made in accordance with the provisions of this Act, the will shall become operative and executable immediately upon the death of the testator and no probate is required.

246. *Wills made outside Goa.*— A will is valid as to form if it is made in conformity with the law of the place of making at the time it was made.

## CHAPTER XIII

### **Management of the inheritance head of the family**

247. *To whom the office of head of the family belongs.*— (1) The office of head of the family belongs in order of priority to—

(a) the surviving spouse, unless the spouse does not have a share in the assets to be partitioned and does not have descendants, who are still minors, as heirs;

(b) the children, who are not under a disability, and in default of children, other descendants who are not under a disability;

(c) the other heirs, who are not -under a disability.

(2) In the category of children, other descendants and other heirs, the following shall have preference:—

(a) the heirs who are living with the deceased over the others;

(b) where there are more than one in the same circumstances, the elder shall have preference.

(3) The heir, who was residing permanently in the company of the estate leaver only, shall be deemed to be the heir living with the estate leaver.

248. *When the guardian is appointed head of the family.*— Where there is no surviving spouse nor heirs referred to in section 247, the court shall appoint the guardian of the heirs under disability as the head of the family and where there is more than one group of heirs with different guardians, such guardian as is chosen by the court and, till such time there is no guardian appointed by the court, the court shall appoint provisionally a receiver from amongst the nearer relatives of the heirs under disability.

249. *Eldest of the spouses to be the head of the family.*— Where an inventory is instituted consequent upon divorce, separation or annulment of marriage, the head of the family shall, where the marriage is governed by the regime of community of assets, belong to the eldest spouse and where the marriage is governed by the regime of separation of assets, to the spouse who owns the assets; if there are any community assets, the eldest shall be the head of the family in respect thereof.

250. *Special head of the family.*— The co-heirs who on the date of the opening of the inheritance, were in possession of certain properties of the inheritance and so also the heirs who

have to restitute gifted properties to the estate shall be deemed heads of the family in respect of such properties.

251. *Duty to initiate the inventory.*— The head of the family is duty bound to initiate an inventory where there is a co-heir who is a minor or under disability.

252. *When half of the income may be distributed.*— After the assets and liabilities have been listed in the inventory proceeding, any party may apply that half of the income of the properties which have not been bequeathed be distributed among the co-heirs taking into consideration the value which has been attributed to them; the head of the family, who fails to comply with such direction issued by the court, shall be removed forthwith and shall be liable to pay compensation for the damage caused.

253. *Rights and duties of the head of the family.*— The head of the family, as manager of the estate, shall receive the fruits and profits of the properties in his possession and shall meet the normal liabilities and shall have the duty to render accounts in case the usufruct of the said properties does not belong to him.

However, the head of the family shall not alienate any properties of the estate other than fruits or other things which cannot be preserved without fear of deterioration.

254. *Head of the family when there are only legacies.*— Where the inheritance is distributed by way of legacies only, the most benefited shall be the head of the family; and if all circumstances are equal, the eldest shall have priority.

255. *When the head of the family seeks exemption or is removed.*— (1) If the persons referred to in the preceding section of this Chapter, seek exemption or are removed, the court shall appoint suo motu or on application by an interested party, the head of the family.

(2) Notwithstanding the above provisions, the parties may by mutual consent agree that the management of the inheritance and the functions of the head of the family be discharged by any other person.

256. *Concealment of assets of the inheritance by the head of the family or heir.*— (1) The moiety holder or heir who fraudulently conceals assets of the inheritance, whether as head of the family or not, forfeits in favour of the heirs or co-heirs, as the case may be, the right he may have to the concealed assets.

(2) The person who conceals assets is deemed to be merely in custody of those assets and the Court may order him that they be handed over to the head of the family.

257. *Fraudulent description.*— The head of the family who fraudulently describes credits, rights or encumbrances which are founded on sham, false or falsified documents of title, shall be liable to pay damages for the injury caused and he shall be criminally liable.

258. *Fraudulent concealment of documents.*— The head of the family, who conceals fraudulently documents of title necessary to take cognizance of the nature of, or of the encumbrances on, the partible assets, shall be liable for the losses caused by such omission.

### **Executor**

259. *Executor appointed by the testator.*— The testator may appoint one or more persons to carry out his will in whole or in part. Such persons are called executors.

260. *Who may be executor.*— Only a person who has the capacity to contract may be appointed as executor.

261. *Appointment of executor by court.*— The court may appoint an executor when the heirs do not agree on the choice of the executor. Where there are minors, interdicted or absent heirs, any interested party may apply to the court that an executor be appointed. The applicant shall disclose who are the other interested parties and he may propose the person who in his view is best qualified for being appointed as an executor.

262. *Where the executor declines to accept the office.*— The appointed executors may decline to accept the appointment. In this event, however, if a legacy is left to the executor as compensation for discharging the functions of executor, he shall not be entitled to claim the legacy.

263. *Time limit to decline appointment.*— The appointed executor who is not willing to accept the appointment, shall, within thirty days from the knowledge of the will, so inform, by registered post, the Special Notary of the place where the inheritance opens with a copy to any one of the beneficiaries under the will. In case of his failure to inform the authorities mentioned above, he shall be liable to pay damages.

264. *When the executor may resign.*— The appointed executor who has accepted the office, may quit the office upon showing just cause such as disability due to illness, absence for a long period or incompatibility with the discharge of a public office and upon obtaining an order of the court competent in terms of section 373. Such Order shall be made after hearing the parties. In case he quits the office without order of the competent Court, he shall be liable to pay damages.

265. *Office of the executor is gratuitous.*— The office of the executor is gratuitous, unless remuneration is provided for by the testator, in the will.

266. *Impediments to become executor.*— Where there is an impediment which does not permit the person appointed as executor to assume the office or the executor is discharged, the heirs shall carry out the purpose of the will and they shall be subject to the following provisions:—

(a) where the hereditary shares are not equal, the office shall vest in the heir who is the most benefited;

(b) where the hereditary shares are equal, the parties shall appoint the executor from amongst them, and, in case of disagreement or when one of them is a minor or an interdict or an absent person, the competent Court shall appoint one amongst them.

267. *Powers of the executor.*— The executor shall have such powers as the testator may have conferred upon him in accordance with law. However, he shall cease to function as such upon the appointment of the head of the family in an inventory proceeding. He shall nevertheless be entitled to intervene in the inventory proceeding to bring to the notice of the court the directions contained in the will.

268. *General duties of the executor.*— Where the testator does not specify the duties of the executor, they shall be as follows:—

(i) to make arrangements for the funeral of the testator and to pay the respective expenses and religious ceremonies in accordance with the wishes of the testator or, where the will makes no provision in this regard, according to the customary usages;

(ii) to cause registration of the closed will, if it is in his custody, before the competent authority, within thirty days from the date of the knowledge of the death of the testator;

(iii) to carry out or execute the testamentary dispositions and to defend, if necessary, their validity in or outside the court;

(iv) to allow the parties to take inspection of the will, if it is in his custody, and to allow true copies thereof to be taken, when so requested.

269. *Duty to initiate inventory.*— (1) (a) The executor shall institute inventory proceeding where there are minors, interdicted or absent heirs and legatees.

(b) Where the testator has empowered the executor to utilize the income of a certain part of the estate for the benefit of a charitable or public utility foundation or trust or institution, which is intended to be created by the will or which does not have a legal personality, the executor shall initiate inventory proceeding and apply for the sale of such part of the estate by public auction.

(2) The procedure laid down in clause (b) of sub-section (1) shall not be applicable where the inheritance or legacy was left for the aforesaid purpose to an institution with legal personality or a trust already in existence.

270. *When the testator leaves forced heirs.*— Where the testator leaves forced heirs, the testator shall not authorize the executor to take charge of the estate. However, the testator may direct that the forced heirs shall not take charge thereof, unless inventory proceeding are instituted and the executor is served.

271. *Where the testator does not leave forced heirs.*— (1) Where the testator leaves heirs who are not forced heirs, he may authorize the executor to take charge of the estate but he shall not exempt the executor from instituting inventory proceeding.

(2) Such heirs may prevent the executor from taking charge of the estate by providing to him the necessary amount to meet the expenses for the discharge of his functions.

(3) Where there are no funds in the estate sufficient to meet the expenses of the executor and the heirs are not willing or are unable to advance the necessary amount, it shall be lawful for the executor to cause the sale of movables and, if the amount realized is not sufficient, to cause the sale of one or more immovables after hearing the heirs; if any of the heirs is a minor, absent person or an interdict, the sale of the movables or immovable shall be done by public auction.

272. *Time limit to carry out the will.*— (1) When no time limit has been fixed in the will for its execution, the executor shall carry it out within one year from the date on which he assumes office or from the date on which the litigation, if any, with regard to the validity or nullity of the will, has come to an end.

(2) However, it shall always be lawful for the executor to supervise and take care of the execution of the dispositions which have not been carried out and to apply to the Court for such preventive reliefs as may be necessary.

(3) When the income is to be utilised for the benefit of a charitable or public utility institution or trust, the executor shall continue the execution of the will till such time as may be necessary to carry out the legacy or legacies, if the testator has so directed, subject to section 269.

(4) Where the executor has failed to discharge his duties within the time fixed, he shall forfeit the remuneration left to him, and the will shall be executed, by the persons who have the duty to execute it, as if no executor has been appointed.

273. *Joint executors.*— (1) Where more than one executor has accepted the office and later on one or more of them have abstained from participating in the execution of the will, the execution carried out by the others shall be valid; but all of them shall be jointly liable for the assets of the estate of which they have taken charge.

(2) Where the executors who have accepted the office do not arrive at a consensus on the manner in which the will is to be executed, the executorship shall lapse and the will shall be executed by the person who has the duty to do so as if no executors had been appointed.

274. *Duty to render accounts.*— The executor shall render accounts of his management to the

heirs or their lawful representatives. For this purpose, the executor may, if necessary, file an application to the competent court. Where inventory proceedings are instituted, such an application shall be filed in the same proceeding.

275. *Office of executor not transferable or heritable.*— The office of the executor is neither transferable nor heritable nor can it be delegated.

276. *Accretion of remuneration.*— Where the testator has bequeathed to joint executors, the part of the remuneration of the executor who has been discharged or of the one who is unable to accept the office shall be added to the remuneration of the others.

277. *Expenses of the executor.*— The expenses incurred by the executor in the discharge of his duties shall be met from the mass of the inheritance. Petty expenses for which usually no receipt is issued shall be approved on the basis of an affidavit of the said executor.

278. *When the executor is guilty of deceit or fraud.*— The executor who is guilty of deceit or fraud in the discharge of his duties shall be liable to pay damages and may be removed from his office by order of the court at the instance of the parties. The procedure for removal is provided in section 384.

## CHAPTER XIV

### Partition

279. *Effects of partition.*— The partition of the inheritance in the inventory proceeding and made in respect of which there has been no objection, confers on the parties exclusive ownership of the properties respectively allotted to them, as against other parties to the proceeding.

280. *Consequences of co-heir and moiety holder being deprived of possession.*— (1) The co-heirs and moiety holder shall be mutually liable to indemnify the co-heir or moiety holder, who is deprived of possession of the property allotted to him, by a person having better title thereto.

(2) Such liability ceases when there is agreement to the contrary or if the dispossession takes place due to the fault of the person dispossessed or due to a cause which has arisen subsequent to the partition.

(3) The dispossessed person shall be indemnified by the co-heirs and moiety holder in proportion to their shares but where any of them has become insolvent, the remaining parties shall be liable for his share in the said proportion, after deducting the share of the dispossessed party.

281. *Limitation for suit for damages.*— A suit for recovery of the compensation set out in the foregoing section shall be filed within a period of three years, and other provisions of the Limitation Act, 1963 (Central Act 36 of 1963) shall be applicable.

282. *Partition done out of court.*— (1) An inheritance can be partitioned by a deed out of court where the mandatory inventory is not required under the provisions of this Act.

(2) No partition of an inheritance shall be done out of court unless it is preceded by a deed of declaration of heirship.

283. *Rescission in case of out of court partition.*— Partitions of inheritance made out of court may be rescinded only on the grounds on which contracts may be rescinded.

## CHAPTER XV

### Supplemental Provisions

284. *Sale of share in undivided inheritance: right of pre-emption.*— The moiety holder and the co-heir shall have the right of pre-emption when any share in an undivided inheritance is sold to a

stranger, without prior notice to him.

285. *Notice to moiety holder or co-heirs.*— A co-heir or a moiety holder who intends to sell his respective share or moiety in an undivided inheritance to strangers may, however, give notice of the intended sale by instituting inventory proceeding to enable the parties entitled to pre-empt to exercise their right in accordance with section 396.

286. *Sham sale.*— (1) A sale, whether made directly or through an intermediary, to defeat the provisions imposing restrictions on the power to transfer shall be null.

(2) When the sale is made by the spouse of the person who is incompetent to acquire or by a person whose presumed heir he is or when made with a third party who has agreed with the person who is incompetent to acquire that he will transmit the benefits in favour of the latter, such person is deemed to be the intermediary.

287. *Creation of easement.*— (1) Where any immovable property is divided by metes and bounds in the inventory proceeding and it is necessary to create an easement, such easement of necessity shall be created and recorded in such proceeding.

(2) Nothing shall prevent the parties from creating an easement by a separate deed with the consent of parties after the inventory is concluded.

(3) Where the provisions of sub-section (1) are not followed, the respective owner of the landlocked property may file a suit for creation of such easement and the compensation payable to the servient owner as well as the costs of the suit shall be shared by all the parties to inventory proceeding.

(4) Where an inheritance is partitioned amicably by a deed and it is necessary to create an easement but such easement is not created in the deed, the respective owner of the landlocked property shall have the right to file a suit as provided in sub-section (3).

### **Usufruct**

288. *Definition of usufruct.*— Usufruct is a right to full enjoyment of an asset or a right for a specified period, without changing its form or substance.

289. *Constitution of usufruct.*— Usufruct may be constituted by a registered agreement, by will or by law in favour of one or more persons simultaneously or successively, provided they are living at the time the right of the first usufructuary becomes effective.

290. *Extinguishment of usufruct.*— (1) Unless provided to the contrary, the usufruct constituted by agreement or by will in favour of several persons jointly, extinguishes upon death of the last surviving usufructuary.

(2) Without prejudice to the provisions hereinabove, usufruct shall not exceed the life of the usufructuary; where it is constituted in favour of a body having legal personality, the usufruct shall last for a period of 30 years only.

291. *Right of the usufructuary.*— The usufructuary may use, enjoy and manage the thing or right as a prudent man would do.

292. *Determination of usufruct.*— The value of the usufruct, use and habitation shall be determined by multiplying the annual income by ten, but the value may be enhanced or decreased depending upon the probable duration of the respective rights.

293. *Emphyteusis.*— (1) Emphyteusis is a conveyance whereby the owner of any property transfers the beneficial ownership (dominium utile) to another and the latter binds himself to pay him annually certain determined periodic sum, which is known as emphyteutic fee. Upon such

conveyance, the owner of the property shall be the owner of the direct domain only and the transferee shall be the beneficial owner.

(2) Emphyteusis is hereditary.

(3) The beneficial owner shall have the right not only to enjoy but also to alienate, mortgage, gift and exchange the property.

(4) The owner of the direct domain shall have the right to receive the emphyteutic fee only.

294. *Divisibility of the emphyteusis.*— (1) The property granted in emphyteusis is not divisible into plots, unless the owner of the direct domain consents to it.

(2) The partition of its value amongst the heirs is done by estimation, and the emphyteusis shall be allotted to one of them in accordance with their agreement.

(3) Where there is no agreement, the emphyteusis shall be put to licitation.

(4) Where none of the heirs is willing to accept the allotment of the emphyteusis, the property shall be sold and the proceeds shall be divided amongst the heirs.

(5) If the owner of the direct domain consents to the division into plots, each plot shall be a separate emphyteusis and the owner of the direct domain may demand the respective emphyteutic fee of each of the beneficial owners according to the allotment done.

(6) The division and the allotment shall not be valid unless done by a registered document wherein the owner of the direct domain gives his consent. In this event, the emphyteutic fee payable by each heir may be increased on account of the trouble that the owner of the direct domain has to take to collect the divided emphyteutic fee.

(7) Where the emphyteusis is divided without the written consent of the owner of the direct domain, each of the plots shall be liable for the entire emphyteutic fee.

295. *Acts contrary to law.*— Any act which is contrary to law, whether prohibitory or mandatory, shall be null and void unless such law provides otherwise.

Such nullity may, however, be cured when the interested parties give their consent provided that the law which has been contravened is not relating to public order or public policy.

### PART III

#### SPECIAL NOTARIES

#### CHAPTER XVI

#### **Establishment of District Special Notaries and Special Notaries**

296. *District and Sub-Districts.*— (1) For the purposes of this Act, the State Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The formation of districts and sub-districts and every alteration of such limits shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such future date as may be mentioned in the Notification.

297. *Special Notaries.*— The State Government may appoint in each District one District Special Notary and in each sub-district one or more Special Notaries. The Special Notary shall exercise the powers conferred on him by this Acts within such sub-district or sub-districts as the

State Government may by order determine. The State Government may also appoint joint Special Notaries in any sub-district or sub-districts, whenever necessary.

298. *Offices of the District Special Notary and the Special Notary.*— The State Government shall establish in every district an office to be styled as the office of the District Special Notary and in every sub-district an office or offices to be styled as the office of the Special Notary or the offices of the joint Special Notaries, as the case may be.

299. *Absence of District Special Notary.*— When any District Special Notary is absent on leave or otherwise the State Special Notary shall make necessary arrangements of substitution, either directing any other District Special Notary or any Special Notary to act as such District Special Notary during the absence, unless the State Government makes an appointment in this regard. However, where any Special Notary is directed to act as District Special Notary, he shall not hear appeals against his own orders.

300. *Absence of Special Notary.*— When any Special Notary is absent, or when his office is temporarily vacant, the District Special Notary shall make the necessary arrangement of substitution directing any other Special Notary to act as such Special Notary during the absence, unless the State Government makes appointment in this regard.

301. *Seal of the District Special Notary and the Special Notary.*— The several District Special Notaries and the Special Notaries shall use an embossed seal bearing the following inscription “The seal of the District Special Notary of ..... District” or “the Seal of the Special Notary of ..... Sub-District”.

302. *State Special Notary.*— The State Government may appoint a State Special Notary for the State of Goa, who shall have powers of superintendence and control over the District Special Notaries and the Special Notaries.

303. *Qualifications.*— A person shall not be qualified to be a State Special Notary, District Special Notary and Special Notary, unless he is a graduate in law and possesses such other qualifications and experience as may be prescribed.

## CHAPTER XVII

### **Functions of the Special Notary**

304. *Function of the Special Notary.*— The function of the Special Notary is to give authenticity to the instruments which he is empowered to draw in accordance with law.

305. *Status of the Special Notary.*— The Special Notary is a public officer appointed by the Government to draw authentic instruments.

306. *Evidentiary value of the documents drawn by the Special Notary.*— The instrument recorded by the Special Notary constitutes full proof of the veracity of the act, done by him and the veracity of the facts which have occurred in his presence or which he has certified to be true and was competent to so certify, in relation to the parties and their successors-in-interest who have intervened in such instrument, unless it is proved that the document itself is false.

307. *What instruments are to be drawn only by way of authentic document.*— The instruments mentioned below shall be proved only by authentic document and no other evidence is admissible to prove them:—

- (a) Public will;
- (b) Record of printed open will;
- (c) Record of approval of the closed will;

- (d) Record of the opening of the closed will;
- (e) Instrument of consent to the will by the spouse of the testator or the testatrix;
- (f) Instrument of revocation of will;
- (g) Instrument of rehabilitation of a person unworthy to succeed;
- (h) Instrument of renunciation of inheritance;
- (i) Instrument of declaration of heirship;
- (j) Instrument of ante nuptial agreement;
- (k) Deed of adoption under the law in force in Goa;
- (l) Special Power of Attorney for acts to be done under this Act;
- (m) Instrument of declaration of the option exercised under clauses (c) and (d) of sub-section (4) of section 1.

## CHAPTER XVIII

### **Books, Indices and Fire Proof Boxes**

308. *Obligation of the State to provide books to the Special Notary.*— (1) The State Government shall provide for the office of every Special Notary, District Special Notary and State Special Notary the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms prescribed and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title page by the District Judge of the respective district court or an additional district judge nominated by him, as the case may be.

(3) The State Government shall supply to the office of the Special Notaries with a fire proof box, and shall in each sub-district make suitable provisions for the safe custody of the records connected with the State Special Notary.

(4) The State Government shall provide the embossed seals to the Special Notaries, District Special Notaries and the State Special Notary.

309. *Books to be maintained by the Special Notary and District Special Notary.*—

(1) The Special Notaries shall maintain:—

- (i) a daily register of instruments drawn under this Act;
- (ii) a register of index of wills;
- (iii) a book of public wills;
- (iv) a register of printed open wills;
- (v) a register of approval of closed wills;
- (vi) a register of deposit of closed wills;
- (vii) a register of opening of closed wills;
- (viii) a register of return of closed wills;
- (ix) a register of rehabilitation of a person unworthy to succeed;
- (x) a register of refusal to act as executor;
- (xi) a register of record of acquiescence given by the spouses;
- (xii) a register of renunciation of inheritance, adoption, ante-nuptial agreements, revocation

of wills, declaration of heirship, orders refusing to perform an act and such other acts provided under law to be performed by the Special Notary;

- (xiii) a register of Special Power of Attorney;
- (xiv) a register of declaration under clauses (c) and (d) of section 1;
- (xv) a register of plans.
- (xvi) a register of all other documents filed in his office;
- (xvii) a register of index of other instruments;
- (xviii) book of accounts of fees and stamp duty.

(2) The District Special Notary shall maintain a register of orders made in appeal against orders of the Special Notaries.

310. *Requirement of the notarial books.*— The notarial books shall have a record of their opening and closing, signed by the District Judge of the respective District Court or an Additional District Judge nominated by him, as the case may be.

311. *Indexes to be maintained.*— (1) The following indexes shall be maintained by the Special Notary:—

- (a) index of the public open will;
- (b) index of the printed open will;
- (c) index of the closed will;
- (d) index of other instruments.

(2) A copy of indexes of all wills shall be forwarded to the State Special Notary every three months by the tenth of the month following the trimester. The State Special Notary shall maintain a consolidated index in his office.

312. *Maintenance and preservation of books and other records.*— (1) The Special Notary shall preserve the books, registers, documents and their indices maintained in his office. Only where it is necessary to draw a deed outside his office on special grounds, these books can be taken out of the office.

(2) The State Government shall provide the Special Notaries with proper premises and storage equipments.

(3) All such books, registers, and documents maintained by the Special Notary shall be forwarded for preservation, after a period of 30 years, to the Director of Archives who shall be bound to preserve them by using the latest scientific methods for preservation.

(4) In case of criminal or any other investigation involving any document, a register or book maintained in the office of a Special Notary, such document, register or book shall not be taken out of his office but the investigating police officer or an expert shall be allowed to take photographs of such document for the required purpose.

(5) When in any case a court calls for any document, book or register from the office of a Special Notary before it, such document, book or register shall be returned to the Special Notary, immediately after it is examined and shall not be retained in court records.

313. *Special Notaries to allow inspection of indices and give certified copies.*— (1) Subject to the payment of fees as prescribed in that behalf, the indices maintained by the Special Notary, shall be open for inspection by any person applying to inspect the same and subject to the provisions of

section 352 copies of entries in such books shall be given to all persons applying for such copies.

(2) All copies given under this section shall be signed and sealed by the Special Notary and shall be admissible in evidence as proof of the contents of the original documents. The certified copy shall contain an endorsement stating the number of the will or other instrument in the index.

314. *Power of the State Special Notary and District Notary to superintend and control Special Notaries.*— (1) Every Special Notary shall perform the duties of his office under the superintendence and control of the District Special Notary in whose District the office of such Special Notary is situated.

(2) Every District Special Notary shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act, which he considers necessary in respect of any act or omission of any Special Notary subordinate to him.

(3) The State Special Notary shall have authority to issue, whether on complaint or otherwise, any order consistent with this Act which he considers necessary in respect of any act or omission of any District Special Notary or any Special Notary subordinate to him.

## CHAPTER XIX

### **Powers of the District Special Notary and Special Notary**

315. *Powers of the Special Notaries.*— The Special Notaries shall have powers to draw authentic documents such as (a) public wills, (b) record of printed open wills, (c) instruments of consent to the will by the spouse of the testator testatrix, as the case may be, (d) instruments of renunciation of inheritance, (e) record of approval of the closed wills, (f) ante nuptial agreements, (g) deeds of declaration of heirship, (h) adoption deeds and (i) such other acts which the Special Notary is authorized to perform by law.

316. *Power to administer oath.*— The Special Notary shall have powers also to administer oath to a person, whenever necessary, in connection with acts performed by him.

317. *Incompetence to act.*— The Special Notary shall not act in instruments and deeds where he or his spouse is a party or attorney or representative of a party or person having interest in the act or transaction; and also where any of the ascendant, descendant of the Special Notary, or brother and relative in the same degree or of his spouse is a party, interested party, attorney or representative of any party or person having an interest in the instrument or transaction.

318. *Duty of the Special Notary.*— The Special Notary shall be bound to render services, when requested, which are within his competence.

319. *When the Special Notary shall refuse to perform the act.*— The Special Notary shall refuse to perform the act:—

(a) If such act is forbidden by law;

(b) If the Special Notary doubts the mental faculties of any party, unless one of the witnesses be a doctor and the Special Notary records that such doctor has certified that such party is in his full senses.

320. *Refusal to perform an act.*— (1) Order of refusal to record reasons.— When the Special Notary refuses in writing to perform an act, which he is empowered to do, he shall make an order

of refusal expeditiously and record his reasons for such order in his Book No. IX and endorse the words “refused to draw” on the draft document, if any, is presented, and, on an application made by any person who has an interest in causing it to be drawn, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) Application for reconsideration.— The aggrieved party may call upon such Notary to reconsider his refusal.

(3) Duty to forward to the District Special Notary the application for re-consideration.— In the event the Special Notary does not reconsider the refusal within forty-eight hours, then he is bound to send the application for reconsideration to the District Special Notary as Appellate Authority, along with the respective documents and his report wherein he shall record reason for his refusal to perform the act. The District Special Notary shall give his decision affirming, reversing or altering such order within 3 days.

321. *Order of the District Special Notary.*— (1) If the order of the District Special Notary direct the special notary to draw the document and the party appears before the Special Notary within 30 days from the date of the making of such order, the Special Notary shall comply with it.

(2) Every District Special Notary rejecting the appeal shall make an order and record his reasons for such order in his Register of orders passed in appeal; and, on an application made by any person who has an interest in causing it to be drawn, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(3) No appeal shall lie from an order of the District Special Notary.

322. *Suit in case of party being aggrieved by order of the District Special Notary.*— Any person aggrieved by an order of the District Special Notary may file a suit in the civil court having jurisdiction over the area where the office of the District Special Notary is situate for a decree directing the Special Notary to draw the document.

## CHAPTER XX

### Authentic Instrument in General

323. *Who may be witnesses identifiers and certifiers.*— (1) The following persons cannot be witnesses or identifiers or certifiers:—

- (a) persons who are not in their full senses;
- (b) minors;
- (c) deaf, dumb and blind;
- (d) the Special Notary and his spouse or their ascendants, descendants, brothers and sisters, brother-in-law, sister-in-law and his staff;
- (e) persons directly interested in the deed;
- (f) ascendants in the acts of the descendants and vice versa;
- (g) father-in-law or mother-in-law in the acts of the son-in-law or daughter-in-law and vice versa;
- (h) husband in the acts of the wife and vice versa;
- (i) husband and wife together.

(2) A Special Notary may accept persons as witnesses or identifiers who are either known to him or who prove their identity by means of any official document such as voters identity card, PAN

card, multi-purpose National Identity card.

324. *Requisites of authentic documents.*— (1) The requisites of the authentic documents are as follows:—

(i) the hour, date, month, year and the place where the document was drawn or signed when drawn outside the office and the statement that the Special Notary went there at the express request of the party;

(ii) full name of the Special Notary, his designation as such Special Notary, and the address of his office;

(iii) full names, age, marital status, professions and addresses of the parties, and of their attorney or representatives, if the latter intervened directly in the deed;

(iv) a reference to the powers of attorney and other documents which prove they are attorneys or representatives, so also other documents relating to the acts or which are part and parcel of the latter, with the dates and other details which identify them. The power of attorney executed abroad shall be counter-signed by the Indian Diplomatic Agent or the Consular services and shall be duly stamped by the competent Collector in Goa;

(v) the acknowledgement of the identity of the parties from his personal knowledge or from the statement of the identifiers who know them;

(vi) reference of the oath taken by the interpreters and the reasons which required their intervention and the manner in which the interpreters ascertained the wishes of the parties and explained to them the contents of the documents;

(vii) full names, age, status, professions and address of the witnesses, interpreters and identifiers and also of the persons who read the documents at the request of the parties;

(viii) the statement of the party that he does not know to sign or cannot sign;

(ix) reference to the fact that the Special Notary has read aloud the document to the parties in the simultaneous presence of the parties, the witnesses and other persons who have intervened and of the reading by the interpreter or by any of the parties or any other person at their request, when compulsory;

(x) the errata memo describing the corrections, interlineations, alterations, words struck through or if any erasures before the signatures of parties, witnesses and Special Notary;

(xi) signatures of the parties at the end of the text when they know or can sign and of the witnesses and other persons who have intervened;

(xii) signature of the Special Notary which shall be made at the end of the document;

(xiii) the value of the notarial stamp affixed shall be mentioned in the instrument;

(xiv) the instrument shall be recorded in the language of the court. Where the party does not know such language, the page where the instrument is written shall be divided into two columns and in left column the instrument shall be recorded in the language of the court and in the right in the language known to the party. The translator shall intervene in the instrument and shall solemnly declare that the translation is true and correct.

The instrument shall be recorded continuously, without any blank space or blank line.

(2) The originals of powers of attorney given by the parties to the attorneys for intervening in a Notarial act have to be produced before the Special Notary who shall place them or certified copy thereof on record in his office.

325. *How instruments are to be recorded.*— (1) All instruments and deeds, including wills,

endorsements and approvals shall be drawn by the Special Notary in black ink and all words shall be recorded in extenso and figures in words.

(2) Drawing of the instrument and deed shall be in the presence of two witnesses who shall put their usual signatures at the end of such deed or instrument.

(3) The identity of parties in all instruments and deeds including the wills, may be done by any official identity card such voters identity card, PAN card, multi-purpose National Identity card or may also be done by witnesses or on the personal knowledge of the Special Notary.

(4) Parties who know to write shall put their signatures as usual and also shall affix their left hand thumb impression. If there be no left thumb the impression of right thumb shall be affixed and in the absence of the right thumb also the impression of any other finger, shall be affixed and the finger used shall be specified by the Special Notary. In case affixation of impression of any finger is not possible or the party is not able to put his signature, the Special Notary shall make mention thereof in the deed and the deed shall be deemed valid.

(5) The Special Notary may appoint, at the expense of the party, an interpreter or translator when he requires such assistance.

326. *Dumb and deaf.*— (1) Dumb or deaf and dumb persons who know or can write shall state in writing in the document, before their signatures, that they have read the deed and that they admit or acknowledge that the document is in accordance with their wish.

(2) In case a party is dumb or is deaf and dumb who does not know or cannot write, the signs with which he expresses his intentions should be understood by the witnesses and further an interpreter shall intervene in the acts. This fact shall be recorded in the deed.

(3) When one of the parties is blind, the document shall be read twice, once by the Special Notary and the second time by a person appointed by the party. This fact shall be recorded in the deed.

(4) The person appointed by the party shall intervene in the deed and solemnly declare that the interpretation is true and correct.

## CHAPTER XXI

### Public open will

327. *Identification of the testator and his condition.*— The Special Notary as well as the witnesses should know the testator or be able to certify his identity and further, the Special Notary shall satisfy himself that the testator is in his perfect sense and free from coercion.

328. *Place, time and date of the will.*— The will shall be dated; indicating therein the place, hour, day, month and year and it shall be read out aloud in the presence of the said two witnesses, by the Special Notary, and by the testator, if he so wishes, and signed by all.

329. *When a plan is attached to the will.*— Where the testator wishes to attach a plan to the will, or deed of consent, the Special Notary shall make an endorsement on the place recording the name of testator, the book number, the page and date of the will. The Special Notary shall also state at the end of will, the file number and serial number of the plan. The plan shall be dated and signed by the testator, the witnesses and the Special Notary.

330. *When the testator does not know or is unable to write.*— When the testator does not know to write or is unable to write, the Special Notary shall so record in the will.

331. *When the testator is deaf.*— When the testator is entirely deaf but knows to read, he shall read his will, and, when he does not know to read, he shall appoint a person to read the will on his behalf, and in either case, in the presence of two witnesses. The person appointed shall intervene in the instrument.

332. *Formalities to be complied without break.*— All the formalities in drawing a will shall be complied with without interruption in the presence of two witnesses and the Special Notary shall state faithfully the manner in which the formalities were complied with.

#### CHAPTER XXII

#### **Printed open will**

333. *Printed open will.*— (1) (a) A testator who knows to read, may opt to present to the Special Notary a computer generated printout of the operative part of his will on a standard paper of the size 29.7 cms x 21 cms entitled 'open will' and declare before the Special Notary that the printout contains his last wish in the presence of two credit worthy witnesses, who shall identify the testator, and certify that the testator is in his perfect senses and free from coercion.

(b) The will shall be printed in double line spacing on one side of the paper only leaving a margin of 5 cm. on left side, 3 cms on top and the bottom and one cm on the right side of the paper. The print shall be continuous without break between words and numbers shall be written in words.

(c) After the title, the testator shall set out his full name, occupation, marital status and description which shall contain the names of both the parents, his age and place of residence.

(d) All the open wills brought before the Notary, until they are preserved in a form of a bound book, as provided in sub-section (7), shall be maintained in a provisional file. In the same file, all the wills so presented shall be kept as per the serial order of its presentation and their pages numbered serially.

(2) In the presence of the said witnesses, the Special Notary shall verify from the testator whether the will presented by him expresses his last wish according to his intention and whether the testator is in his perfect senses and free from coercion. The Special Notary shall, thereupon, record on the will the continuous numbers of the pages which it bears in the file maintained for preserving open wills. Every page shall be signed by the testator, and the two witnesses to the will just above the first line and below the last line in the presence of the Special Notary. The Special Notary shall then make a record thereof immediately next to the signatures on the last page of the will and it shall continue without interruption on the same page and on the subsequent pages.

(3) The record to be made by the Special Notary in the presence of the testator and the witnesses shall the contain the following:—

(a) that the will was presented by the testator in person and that the testator declared that it was his last wish;

(b) that all the pages of the will were signed by the testator and the witnesses in his presence;

(c) state the number of pages the will contains;

(d) make mention to any blot, inter-lineations, correction or marginal note in the will;

(e) that the testator was identified by witnesses;

(f) that the testator was in his perfect senses and wholly free from coercion;

(g) the number which the pages will bear in the file containing open will.

(4) The Special Notary shall read aloud in the presence of the witnesses the will presented by the testator and the record made, and after specifying the place, date month and year the record shall be signed by the testator, the witnesses and the Special Notary.

(5) The Special Notary shall then affix a passport size photograph of the testator, supplied by the testator, just below the record made by the Special Notary and he shall also sign across the photograph and certify that the photograph is of the testator immediately after all the formalities are completed, the Special Notary shall issue a certified photostat copy of the will with the record made by him, to the testator and then shall file the will in the file maintained for the purpose.

(6) The Special Notary shall enter the particulars as provided in sub-section (2) above and of the date of the open will in a book maintained for the purpose.

(7) At the end of every 200 sheets, the District Judge of the concerned district shall initial all the pages of the wills contained in the file and ensure that the sheets are bound in a book.

(8) The Special Notary shall reject the printed open will presented by the testator if the said will is not written in the language of the court or in a language commonly known in the district or is written in a language not known to the Special Notary. In this event, the testator may request the Special Notary to draw a public will.

## CHAPTER XXIII

### Closed Will

334. *Presentation of closed will and approval by the Special Notary.*— (1) The testator shall present the closed will to a Special Notary in the presence of two witnesses and declare that the disposition is his last will.

(2) Thereafter, in the presence of the said witnesses, the Special Notary, after having a look at the will but without reading it, shall draw a record of approval. The record shall be drawn immediately next after the signature on the will and shall be continued without interruption on the same page and on the subsequent pages.

(3) The Special Notary shall draw a record stating as follows:—

- (a) whether the will is written and signed by the testator;
- (b) whether it is initialled by the person who has signed it;
- (c) the number of the pages of the will;
- (d) whether it has or does not have any blot, interlineations, corrections or marginal notes;
- (e) whether the testator was identified;
- (f) whether the testator was in his perfect senses and wholly free from any coercion;
- (g) whether the will was presented by the testator in person in the manner required by law.

(4) The record of approval shall be read, dated and signed in conformity with the provisions of the preceding sections 324 and 325.

(5) Thereafter and in the presence of the same witnesses the Special Notary shall put the will in a cover and seal it and draw up on the external side of the cover, a note giving the name of the testator whose will is sealed.

335. *Record of the approval of the closed will.*— The records of approval of closed wills shall be made in the respective book. It shall contain the details of the place, the day, month and year, when

the record of approval was made and the names and addresses of the testator and the witnesses.

336. *Failure to comply with formalities.*— (1) A closed will in respect whereof the above mentioned formalities have not been complied with, shall not take effect and the Special Notary shall be liable to pay damages and be subject to major penalty by disciplinary proceeding.

(2) Failure to record the number of pages of the will and whether it has any blot, interlineations, correction or marginal note, shall invalidate the will, provided that it has in fact been initialed and it does not have any blot, interlineations, correction or marginal note.

337. *Delivery of the closed will.*— Once the will is approved and closed in a cover, it shall be delivered to the testator and the Special Notary shall enter in his book a note recording the place where, and the day, month and year, when the will was approved and delivered.

338. *Custody of the closed will and its deposit with the Special Notary.*— (1) The testator may keep the closed will with himself or hand it over to a person of his confidence or deposit it in safe custody of the Special Notary.

(2) The testator who wishes to deposit his will in any Special Notary's office, shall hand it over to the Special Notary and the Special Notary shall make a record of deposit or cause such record to be drawn. The record shall be signed by him and the testator, in the respective book.

(3) On receiving such cover, the Special Notary, if satisfied that the person presenting the same for deposit is the testator or his agent, shall record in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(4) The Special Notary shall then place and retain the sealed cover in his fire proof box.

339. *Who may deposit the will.*— The will may be presented and deposited through any attorney, in which case, the Power of Attorney shall be annexed to the will.

340. *Special power of attorney for return of the will.*— Such special power of attorney shall be drawn by any Special Notary and signed by two witnesses in the concerned book.

## CHAPTER XXIV

### Opening of the closed will

341. *Formalities to open a closed will.*— (1) The closed will shall be opened or made known in the following manner.

(2) After the death of the testator has been verified, or where an absent person has left a will, if the closed will is in the possession of a private person, or it is found amidst the effects of the deceased, it shall be taken to a Special Notary who, in presence of the presenter and of two witnesses, shall cause a record to be drawn of the opening of the will. The record shall state in what condition the will was when it was presented and whether it is or it is not in the condition described in the record which was drawn when the will was closed.

342. *Proceedings on death of the depositor.*— (1) If, on the death of the testator who has deposited a sealed cover under section 338, an application be made to the Special Notary who holds it in deposit to open the same, and if the Special Notary is satisfied that the testator is dead, he shall in the applicant's presence and of two witnesses, open the cover, and at the applicant's expense cause the contents thereof to be copied into his Book No. VI.

(2) When such copy has been made, the Special Notary shall re-deposit the original will.

343. *Book of record.*— The record mentioned in the preceding section shall be written in a book, the pages whereof shall be numbered, initialed and at the end signed by the District Special Notary.

## CHAPTER XXV

### **Registration of the closed will after opening**

344. *Registration of will.*— (1) Once the record of the opening of the will is recorded in the book, the Special Notary shall cause the will to be registered by copying in extenso in an appropriate book by making a original note signed by the same, the Special Notary, stating how it was opened and registered and whether any thing suspicious was noticed or not.

(2) After the will is opened, all its pages shall be initialed by its presenter or by the interested parties present, by witnesses and by the Special Notary.

(3) The original of the will shall, thereafter, be kept in the office of the Special Notary in safe custody in charge of the Special Notary who shall be responsible for it.

345. *Withdrawal of sealed cover deposited under the preceding section.*— If the testator who has deposited the sealed cover under the preceding section wishes to withdraw it, he may apply either personally or by duly authorized agent, to the Special Notary who holds it in deposit and such Special Notary, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly. The will shall be returned to the testator by following the formalities laid down for the deposit of the will. A record shall be made in Book No. VII.

## CHAPTER XXVI

### **Instrument of Declaration of Heirship**

346. *Declaration of heirship.*— (1) After the succession opens, and the law does not require that mandatory inventory proceedings be instituted to partition the inheritance, heirship may be proved by a deed of declaration of heirship drawn by the Special Notary.

(2) Three persons and at least one of the interested parties shall have to declare on oath before the Special Notary that the interested party or parties named by them are the only heir or heirs of the deceased. If such deceased person was married, the name of the spouse shall also be disclosed and whether the spouse is surviving or has expired. The interested party shall also declare in the Act whether the value of the inheritance exceeds Rs. 10 lakhs or not shall disclose the names of the spouses of the heirs, if any.

(3) The declarants shall produce the following documents:—

(a) death certificate of the deceased;

(b) will or gift deed mortis causa, when the succession is founded on such document;

(c) document to prove the relationship of the heir or heirs to the deceased;

(4) Where a party is unable to produce a birth certificate, death certificate or a marriage certificate issued by the authorities, the party may produce an order or decree of the court certifying such birth, death or marriage or a certified copy issued by an institution maintaining such records.

(5) When all the interested parties are abroad, a constituted attorney with special powers may

make the declaration required under sub-section (2).

(6) A person, who under the provisions of this chapter is not competent to be a witness and a person who is a successor of the presumed heir, shall not be competent to be a declarant.

(7) If the declarants or the interested party or parties or their attorneys, are found to have knowingly made a false declaration, with regard to the particulars required under sub-section (2), they shall be liable for penal action under section 191 and 199 of the Indian Penal Code (45 of 1860).

(8) The fact that any person has been brought on record in Court proceedings other than inventory proceedings as legal representative of the deceased, shall not amount to a declaration of heirship.

(9) A deed of declaration of heirship shall be sufficient evidence for the purpose of:—

(i) mutation;

(ii) transfer of shares;

(iii) withdrawal of money from a bank or other financial institution where the deposit does not exceed Rs. 50,000/- Provided that where there is only one heir, there is no restriction on withdrawal of any amount from the deposit.

(10) The fee or duty on a deed of declaration of heirship shall be as prescribed, on each inheritance opened, irrespective of the number of heirs.

(11) The Special Notary recording the deed of declaration of heirship shall, at the expense of the interested party or parties, publish within 15 days, an extract of the declaration, disclosing the name and permanent residence of the deceased and the names of the interested parties and other identification particulars, in the Government Gazette. When the value of inheritance exceeds Rs. 10 lakhs in all, such extract shall also be published in a newspaper in circulation in the locality where the deed is drawn. The Special Notary shall require the interested party or parties to advance the expenses towards the publication of the notice.

(12) Any person claiming to be an heir of the deceased who has not been named in the declaration may file a suit for declaration of heirship and consequential reliefs. If such suit is filed, a notice thereof shall forthwith be given by the Court to the respective Special Notary or by the Plaintiff in the suit, enclosing a certified copy of the plaint.

(13) If the Special Notary has not received any notice from the Court or the Plaintiff, he shall, within 30 days of the publication of the extract, issue a certified copy of declaration of heirship, which shall contain an endorsement that no such communication of institution of any suit has been received by him.

(14) Failure to file suit under sub-section (12), shall not deprive the aggrieved party to challenge the deed of declaration within the period of limitation.

## CHAPTER XXVII

### **Void Notarial Acts**

347. *Notarial acts when void.*— (1) Notarial acts shall be void in the event of,—

(i) incompetence of the Special Notary as regards the subject and place;

(ii) failure to mention the day, date, month, year and place, However when it is possible to ascertain which is the correct date, month, year and place from the context of the documents or other material available in the office of the Special Notary, the nullity on the ground of failure to mention them shall not subsist;

- (iii) absence of signature of the parties when they know to or can sign;
- (iv) absence of signatures of two witnesses at least when the law does not require more;
- (v) failure to identify the party;
- (vi) failure to mention the power of attorney, if the act is done by the attorney;
- (vii) absence of errata memo of the corrections, interlineations, dashes or erasures made.

However, words corrected, struck through or erased without errata memo which do not amount to alteration of the essential terms of the respective instrument or its context in substance, are deemed not written and do not result in nullity, provided that the intention of the testator can be gathered from the remaining part of the will. The same procedure shall be followed as regards words inserted without being initialed, notwithstanding that they may result in alteration of the meaning of the text.

- (viii) absence of the signature of the Special Notary.

(2) Where a disposition is made in favour of the witnesses, certifiers or interpreters who have intervened in public wills or in the record of approval of sealed wills, only such disposition shall be void.

(3) Any act performed by the Special Notary contrary to section 317 shall be void. However, public wills and records of approval of closed wills shall be excluded therefrom; in such cases, of nullity shall be restricted to dispositions made in favour of persons referred to in section 317.

## CHAPTER XXVIII

### Validation of Notarial Acts

348. *Validation of Notarial acts.*— Notarial acts which are null on the grounds mentioned in clauses (iii), (iv) and (vi) of sub-section (1) of section 347 and which have not been initialed by the parties, may be validated by the competent court in a suit instituted for the said purpose by an interested party against the other interested parties and the Special Notary, on the following terms:—

(a) when in the circumstances mentioned in clause (iii) of sub-section (1) of section 347, it is proved that respectable persons are required by law were present;

(b) when in the circumstances mentioned in clause (iv) of sub-section (1) of section 347 the identity of the party to the instrument is proved;

(c) When in the circumstances mentioned in clause (vi) of sub-section (1) of section 347, it is proved that the deed was written in his hand by the Special Notary or by the Joint Special Notary in terms of section 324 and 325 and a certified true copy, signed by the Special Notary or by the Joint Special Notary is issued:

Provided that:

(i) Public wills or record of approval of closed wills where a mention as to the formal requirement set out in the body of this section is made, may be validated when in the respective suit it is proved that the above requirements had been complied with;

(ii) The decree validating the documents shall be endorsed in the respective deed on application of the parties or by the Special Notary suo motu;

(iii) Notwithstanding such validation, the Special Notary shall be liable for the losses caused and shall also be liable to disciplinary proceedings and the damages which he is liable to pay, may be determined in the above mentioned suit.

## CHAPTER XXIX

### **Civil liability of the Special Notary**

349. *Liability to disciplinary proceedings.*— (1) A Special Notary is liable to disciplinary proceedings:—

- (i) when he loses or destroys any books, registers or documents of his office or willfully allows them to be lost or destroyed;
- (ii) when he refuses to perform his functions at the right time without just cause;
- (iii) where his act is declared false and he is responsible for the falsification;
- (iv) when he issues certified copy which is not as per the originals;
- (v) when his act is declared void by a court on the ground of lack of jurisdiction of the Special Notary;
- (vi) when his act is declared void by a court on the account of incapacity of the parties or their attorneys or representatives, and if he had knowledge of their incapacity at the time the act was performed;
- (vii) when his act is declared void by a court for lack of competence of the witnesses and he had knowledge of such fact at the time the act was done;
- (viii) when his act is declared void for non-compliance with formal requirement, on grounds other than the lack of competence of witnesses;
- (ix) when his act is declared void on account of coercion, and if he had knowledge of the coercion at the time the act was performed or he was a party to the coercion;
- (x) when his act is declared void on the ground that he has intentionally induced a party into a mistake.

(2) The Special Notary shall be liable to disciplinary proceedings for any act done in the discharge of his duties in cases not covered in sub-section (1), when the liability arises from a criminal proceeding.

350. *Insufficiency of stamp.*— No document or instrument including a will drawn by the Special Notary shall be invalidated on the ground that it is not duly stamped or that it is insufficiently stamped.

351. *Discretion to state the provision and accept a draft.*— (1) It is open to the Special Notary while drawing an act, to make mention of the legal provision under which the act is done if the parties plead that such mention would better clarify their intention.

(2) It is open to the parties to submit to the Special Notary the proposed draft of the deed which they want the Notary to draw. The Notary shall draw the act in the manner shown in the proposed draft if he is satisfied that it conveys better the intention of the parties. The said draft, after being initialed by the Notary, shall be returned to the party who gave it, unless the party desires that the same may be kept on record. Whenever such draft is kept on record, it shall be initialed by all parties who know and can initial it.

## CHAPTER XXX

### **Certified copies**

352. *Who may apply.*— Any person may apply for certified copies of the wills, entries in the registers, instruments and documents recorded in the office of the Special Notary. However, during

the lifetime of the testator, certified copies of public wills, deeds of revocation of wills, records of deposit of closed wills, records of approval of closed wills, record of open printed wills shall be issued only on the application of the testator himself or by his attorney with special powers. After the death of the testator, such certified copies shall be issued to any person upon production of the death certificate of the testator and an endorsement to that effect shall be made in the margin of the page where the records or will are written, unless such endorsement has already been made.

353. *To whom certified copy may be delivered.*— A certified copy obtained under the section 352 shall be delivered to the applicant, either in person or to his duly authorized agent.

354. *Time limit to issue certified copies.*— The Special Notary shall issue the certified copies, within a period of ten days, on payment of the prescribed fees. When an urgent certified copy is applied for, it shall be issued upon payment of such extra fees as may be prescribed, within two days.

355. *When a reference is made to other documents in the main instrument.*— When in any instruments drawn up by the Special Notary, a mention is made to a power of attorney or to a deed delegating powers or to any other document which is on record, certified copy of such document shall be issued along with the certified copy of the main instrument drawn up by the Special Notary.

356. *When a reference is made to a drawing or plan in the main instrument.*— A certified copy of a deed or instrument, in which a reference is made to a drawing or a plan which is on record, shall be accompanied by a certified copy of such drawing or plan. For this purpose, the Special Notary shall appoint an expert to prepare a copy thereof and the Special Notary shall issue the certified copy only after comparing it with the original. The fees payable to the expert shall be borne by the party applying for the certified copy, and such fees shall be fixed by the Special Notary.

357. *Manner in which certified copy is to be issued.*— (1) No certified copy shall be issued by the Special Notary leaving any blanks or containing any abbreviations or figures and all pages shall be numbered serially.

(2) The date on which and the place at which the certified copy is issued shall be recorded therein.

358. *When there are interlineations, erasures and corrections.*— Where there are any interlineations, erasures, corrections made or any line drawn in the body of the instrument, a footnote shall be recorded describing them immediately following the body of the main text.

## CHAPTER XXXI

### Fees

359. *Fees be fixed by the State Government.*— The State Government shall prepare a table of fees payable for the instruments drawn by the Special Notary.

360. *Publication of fees.*— A table of fees so payable shall be published in the Official Gazette and a copy thereof shall be exposed to public view in every office of the Special Notaries.

## CHAPTER XXXII

### Penalties

361. *Penalty for incorrectly recording, endorsing, copying, and translating documents with intent to injure.*— (1) Every Special Notary appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with drawing, endorsing, copying, or translating a document, does so in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian

Penal Code (45 of 1860), to any person, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Every Special Notary appointed under this Act and every person employed in his office for the purposes of this Act, who has access to the documents, books and registers maintained in his office, remove, mutilate, destroys or make any alteration thereto intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code (45 of 1860), to any person shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

362. *Penalties for making false statements, delivering false copies or translations, false personation and abetment.*— Whoever,—

(a) intentionally makes any false statement, whether on oath, or not, whether it has been recorded or not, before any officer acting under this Act;

(b) intentionally delivers to any officer acting under this Act, a false copy or translation of a document or a false copy of a map or plan;

(c) personates another before any officer acting under this Act;

(d) abets anything made punishable under this Act,

shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

363. *Thing bona fide done or refused in his official capacity by an officer acting under this Act.*— No officer acting under this Act shall be liable to any suit or claim or demand by reason of anything in good faith done or refused in his official capacity.

364. *Nothing so done is invalidated by defect in appointment or procedure of appointment of an officer acting under this Act.*— Nothing done in good faith pursuant to this Act by an officer under this Act shall be deemed invalid merely by reason of any defect in his appointment or in the procedure of his appointment.

## CHAPTER XXXIII

### Miscellaneous

365. *Ex-officio powers and acts to be done after office hours.*— (1) The District Registrars and Sub-Registrars appointed under the Registration Act, 1908 (16 of 1908), shall ex-officio exercise the powers and functions of District Special Notaries and Special Notaries under this Act.

(2) The State Registrar appointed in the Registration Department of the State Government shall be the ex-officio State Special Notary and shall have power of general superintendence and control over the Special Notaries and District Special Notaries, unless the State Government deems it necessary to appoint a State Special Notary exclusively for performing functions as stated as above.

(3) No Special Notary shall be bound to draw any instrument beyond the normal office hours or on Sundays or on holidays, unless there is an emergency. The Special Notary shall, where he is required to work beyond the normal office hours, be paid by the person requiring such work, such over time fees as may be fixed by the Government, by notification. The Special Notary shall also be entitled to adequate police protection for his personal security and the security of the Notarial books.

## PART IV

### INVENTORY PROCEEDING

#### CHAPTER XXXIV

## **Types of Inventory Proceedings**

366. *Mandatory Inventory.* — When a person dies leaving a surviving spouse or an heir, any one of whom is an interdict, absent person, unknown, or minor, inheritance shall be partitioned, by instituting inventory proceeding only, which shall be called mandatory Inventory proceeding.

367. *Optional Inventory.*— Where the interested parties do not fall in any of the categories mentioned in section 366, the parties may institute inventory proceeding to partition the inheritance, which shall be called as optional inventory proceeding.

368. *Inventory upon divorce, or separation or annulment of marriage.*— (1) After the divorce or separation of persons or annulment of marriage is decreed, the spouses may partition their assets by instituting inventory proceeding which shall be miscellaneous proceeding appended to the suit for divorce, separation of persons or annulment.

(2) Separation of assets in special cases – debts of spouse, insolvency and bankruptcy;

(a) Wherever any spouse seeks separation of common assets or where either spouse is declared as insolvent or bankrupt, the procedure specified in sub-section (1) shall be followed with the following modification:-

(i) the creditor of the indebted spouse or any creditor in case of insolvency or bankruptcy shall have the right to prosecute the inventory;

(ii) debts which are not proved by documentary evidence shall not be approved;

(iii) the other spouse has the right to choose the assets which shall constitute his or her moiety. If such right is exercised, notice thereof shall be given to the creditors who may object to the choice giving the grounds on which such objections are based.

(b) Where the court upholds the objection of the creditors, the court shall order that a second valuation of such assets as have not been properly valued be done by three valuers appointed by the aggrieved spouse, the creditor and the court.

(c) When the second valuation modifies the value of the assets chosen by the aggrieved spouse, he/she may within 10 days from the conclusion of the appraisal, withdraw from the choice exercised. Thereupon, the moieties shall be allotted by draw of lots.

369. *Inventory where a party dies after allotment in inventory proceeding which were finally disposed of.*— Where, after the partition is effected in any inventory, any interested party dies leaving no assets other than those that have been allotted in the inventory, such inheritance shall be partitioned in the same inventory proceeding that was finally disposed. The person to whom the office of head of family belongs shall take oath of office and the procedure set out hereafter shall be applicable.

370. *Inventory upon death of the surviving spouse.*— (1) Where the inventory of a predeceased spouse is concluded, the inventory on the death of the surviving spouse shall be continued in the former inventory proceeding.

(2) In the event there are additional assets in the proceeding referred to in sub-section (1), their serial number shall be in continuation of the last item in the former inventory proceeding.

(3) Where, after allotment or after the death of the surviving spouse, inventory proceeding is instituted, the assets which have been already valued in the prior inventory need not be valued again in the subsequent inventory, unless there are strong grounds to believe that their value has changed. In the event of change of value of currency, such change shall be taken into consideration. In addition to the valuation already made, due description of assets previously made shall be retained. If separate inventory is filed, the description shall be reproduced in the separate

inventory.

371. *Additional partition.*— (1) Where, after the conclusion of an inventory, it is found that some assets are left out, such omission per se is not a ground to set aside the partition. An additional partition shall be effected of the assets left out in the same proceeding if the parties do not opt for partition by deed. In no other case, the inheritance shall be partitioned piecemeal.

(2) Where, at the time of the inventory on the death of the surviving spouse, it is found that some assets were left out in the inventory of the predeceased spouse, such assets shall be described and partitioned in the inventory of the surviving spouse.

372. *Inventory in the event of dissolution of joint family.*— (1) When a joint family as governed by Decree dated 16-12-1880 is dissolved, the estate may be partitioned by instituting inventory proceeding and the procedure hereafter provided shall be applicable.

(2) The member of the joint family who was in the charge of management of its assets shall be the head of the family.

(3) The general rules that regulate partition among co-heirs shall be applicable to partitions amongst the members of the family.

## CHAPTER XXXV

### Jurisdiction

373. *Jurisdiction.*— (1) The court having jurisdiction over the place where the succession opens is competent to entertain inventory proceeding for—

(a) partition;

(b) declaration of a person as heir or representative of the deceased.

(2) The place of the opening of the succession shall be determined as follows:—

(i) If the deceased had a permanent residence in the State of Goa, the succession opens at the place of his permanent residence;

(ii) If the deceased did not have a permanent residence in Goa, the succession opens where his immovable properties are situated in Goa. If his immovable properties are situated at different places in Goa, the succession opens where the major part of these properties are situated. Such major part is calculated on the basis of the value of the properties.

(iii) If the immovable properties of the deceased who was governed by this Act are situated partly in Goa and partly outside Goa, the succession opens in Goa irrespective of the value of the properties;

(iv) The succession of a person, who died outside the State of Goa, and he did not have a permanent residence in Goa, nor did he own any immovable properties in Goa but has movables in Goa, opens at the place where major part of the movable assets are located;

(v) If the deceased did not have a permanent residence nor immovable properties in Goa, the succession opens at the place where he died in the State of Goa.

(3) The rule that the Court competent to entertain the inventory proceeding is the Court where the inheritance opens is subject to the exceptions that the court in which the inventory was instituted upon the death of one of the spouses shall have jurisdiction to entertain the petition for inventory which may have to be initiated upon the death of the surviving spouse, unless the marriage is contracted under the regime of absolute separation of assets.

374. *Consolidation of inventories.*— (1) It shall be lawful to consolidate inventories in order to

partition assets comprised in different inheritances:—

- (a) when the persons among whom the properties are to be partitioned are the same;
- (b) when the inheritances left by both the spouses are to be partitioned.

(2) Where the partition is dependent upon one or more other partitions:—

(i) If the dependence is total because in one of the partitions there are no assets other than those, which are to be allotted to the deceased in the other, the application for consolidation shall not be refused.

(ii) If the dependence is partial because there are other assets, the application for consolidation shall be decided, taking into consideration the interests of the parties and the smooth course of the proceeding;

(3) Lack of pecuniary or territorial jurisdiction to entertain one of the inventories shall not be a bar to the grant of an application for consolidation even if, in one of the inventories, there are heirs under disability.

## CHAPTER XXXVI

### Head of the family

375. *Petition.*— (1) Inventory proceeding shall be instituted by presenting a petition. Such petition may be presented by the interested party in person or through a duly constituted attorney. Any party or, where a party is subject to orphan's jurisdiction, the personal representative of the person under disability shall present the petition accompanied by the death certificate of the estate leaver.

(2) Where the death of the estate leaver has not been registered, other admissible evidence may be adduced.

(3) The words "interested party" mean heir, moiety holder of the deceased, the executor in a will where there are minor, interdicted or absent heirs or legatees and the persons who have the right to usufruct of a part of the inheritance without specifying its value or the thing, and also the executor.

(4) The petition shall set out the name, address, locus standi of the petitioner, the name of the estate leaver, facts determining the jurisdiction of the court, value of the inheritance, identification of the person who will discharge the functions of the head of the family and whether there are heirs subject to orphan's jurisdiction.

376. *Order of appointment of head of the family.*— (1) When the petition is duly filed, the court may hold an inquiry to decide who shall hold the office of head of the family and shall upon considering the petition and documents accompanying it, appoint a person as the head of family and notify him to take oath that he shall discharge his duties diligently and faithfully and make a declaration stating:—

(i) the name and status of the estate leaver, date on which and the place where he died;

(ii) the name, status, age and capacity of the heirs, testamentary or legal, without excluding those who are known to have been conceived and the degree of kinship of the legal heirs;

(iii) whether the estate leaver has left a will or a gift and, if so, the head of the family shall produce the original or a certified copy of the will or of the gift deed;

(iv) whether the estate leaver was married and, whether there was an ante-nuptial agreement and if so, he shall produce a certified copy of the agreement;

(v) where a party is subject to orphan's jurisdiction, the names of persons who shall constitute the family council. The court may accept or reject the proposed names;

(vi) whether there are assets to be collated and give the names of the conferees. The head of the family shall also give the names and addresses of the legatees and of the creditors;

(vii) what are the assets of inheritance.

(2) At the time of the head of the family makes the declaration, he shall produce the certified copy of the renunciation deed if any, and such other document as may be relevant to the case.

(3) Where the head of the family makes a reference to any document in his declaration, he shall, whenever possible, give particulars in respect of date of the original document, place where drawn or registered and the number of registration with book number and page.

(4) The declaration of the head of the family may be made by affidavit, copies of which shall be supplied to all the interested parties and may be accompanied by a list of assets and by documents.

377. *Inquiry for appointment of head of the family.*— Where the court is satisfied upon a perusal of the declaration the person appointed as head of the family that the office belongs to another person, the court shall, upon inquiry, if necessary, appoint such other person as the head of the family.

378. *Evidentiary value of the declaration of the head of the family.*— (1) The declarations of the head of the family, given both initially and subsequently, are presumed to be true until the contrary is proved, unless they are made in his own interest or they are in respect of facts which are required by the law to be proved in a particular manner or which require the agreement of all or of the majority of the parties.

(2) The function of the head of the family shall not be performed through a constituted attorney, unless there is no other interested party available in the country for such appointment, or if all the parties or their representatives consent to such appointment.

(3) Where the functions of head of the family are performed by a constituted attorney, such functions, including statement made, shall bind the principal and he shall be held liable for all legal consequences as if such acts of commission or omission were performed by him.

379. *Rights and Duties of the Head of the family.*— (a) The head of the family, as manager of the estate, shall receive all income and profits of the assets in his possession and shall meet the normal liabilities of the inheritance and shall every year render accounts to the court, in the miscellaneous proceeding, in case the usufruct of the assets does not belong to him.

The head of the family is bound to render accounts from the date he takes charge of the assets of the inheritance and to deposit the balance amount in a Nationalized Bank, after the amount required to meet the expenses for management of the assets is deducted. Any sum handed over to the heirs under section 252 shall be included in the expenses.

(b) The head of the family shall not alienate any of the assets of the inheritance except fruits and other perishable articles. However, the head of the family may create a lease of a temporary nature which shall come to an end upon the conclusion of the inventory proceeding.

(c) The head of the family shall be bound to defend and protect the estate.

(d) The head of the family shall take such legal steps as may be necessary to recover debts

payable to the inheritance when they are likely to become time barred, and in case the head of the family files a suit for recovery of a debt, any of the co-heirs may apply to the court that he be made a party to the proceeding.

(e) The creditors of the inheritance may sue the head of the family to secure a preventive relief. But, in a matter relating to title to the properties or to recovery of debts, he shall not be so sued without impleading all the co-heirs.

(f) The head of the family is entitled to be reimbursed for the expenses incurred by him on account of the estate, with interest thereon; but he shall not be liable to pay interest in respect of the amount received by him on account of the estate, except from the time he is in default.

380. *Concealment of assets by head of the family.*— Assets are deemed to be concealed when the head of the family fraudulently does not include an asset of the inheritance in the list of assets or denies that such asset is part of the inheritance and a complaint is made to the court in this regard.

381. *Consequences of concealment.*— (a) Where the head of the family has concealed assets, he shall forfeit any right he may have to the assets concealed in favour of the other heirs.

(b) Where the head of the family has concealed the title deeds necessary to know the nature or the charges of the assets, he shall be liable for damages resulting from such concealment.

382. *Consequence of giving a list of assets based on false documents.*— Where the head of the family has included in the list of assets and liabilities, credits, rights or charges based on sham, false or forged documents, he shall be liable for the damage caused.

383. *Duration of office of head of the family.*—The head of the family shall continue to manage the estate till the order of homologation becomes final.

384. *Removal of the head of the family.*— (1) The head of family may be removed when he,—

- (i) delays in filing the list of assets and liabilities;
- (ii) fails to indicate to the valuers the assets which are to be evaluated;
- (iii) does not appear in court, when required;
- (iv) does not produce the required documents;
- (v) does not give declarations or statements which are required from him; or
- (vi) does not manage the assets with zeal and prudence;
- (vii) in any other manner fails to discharge the duties of the office.

(2) Any party or, in case the inventory is of orphan's jurisdiction, the personal representative, may apply for the removal of the head of family. The court shall then hold a summary inquiry with a short notice to the head of the family wherein not more than 3 witnesses shall be examined by either side.

(3) When the head of family is removed, another shall be appointed in accordance with this Act and the provisions of section 376 shall be thereafter complied with.

(4) Where the cause for the removal of the head of the family is his failure to do an act for which he was duly notified, the head of the family shall be liable to be punished for disobedience of order of the court as provided in Order XXXIX Rule 2-A of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(5) Where the removal takes place after the family auction (licitation), the successful bidders

may apply that the respective assets be delivered to them. The successful bidder shall be considered to be the head of the family in respect of the assets, which are delivered to him.

(6) The above provisions shall be applicable to the person who has the duty to collate, and fails to discharge his duties of special head of the family in respect of the assets which he has to collate.

385. *Discharge of the head of the family from holding office.*— (1) The head of the family may apply that he may be discharged from holding the office:—

(a) when he is seventy years of age or above;

(b) when he is unable to perform his functions properly on the grounds of ill health;

(c) when he resides outside the jurisdiction of the court.

(d) when the functions as head of family are incompatible with the functions of the public post he is holding.

(2) The application for discharge shall be decided upon a summary inquiry.

## CHAPTER XXXVII

### Hearings

386. *Hearings in the inventory proceeding.*— (1) All hearings in the inventory proceeding shall be in open court and a record (roznama) of every hearing shall be maintained. Whenever the court prepares a chart of partition, preliminary chart of partition or other document, the same shall be prepared expeditiously and a copy thereof shall be supplied to the parties or their Advocates, on the next date of hearing.

(2) Copies of the list of assets and of all applications, written replies and objections filed by a party, shall be supplied by such party to the other interested parties present for the hearing, and their acknowledgment of receipt be obtained.

387. *Prosecution of inventory.*— (1) Where the court is satisfied upon perusal of the declaration of the head of the family that there is no ground for the inventory to proceed, the court shall drop the proceedings after hearing the head of the family.

(2) Where the court is satisfied that the inventory is maintainable, it shall fix a date for the submission of the list of assets and for production of such documents, which the head of the family was unable to produce earlier notice of which shall be given to the head of the family.

(3) The court shall order that first summon or original process be served on the moiety holder of the estate leaver, on the heirs, on their spouses, unless they are married under the regime of absolute separation of assets, on the legatees and the creditors. Summon is not required to be served on the head of the family, notwithstanding that he is an heir or representative of an heir.

(4) Notice shall be issued to the donee, whether he is bound to collate or not, to appear on the date fixed for taking oath that he will discharge his duties as special head of the family in respect of the assets which have been gifted to him.

(5) Failure to serve the first summon on the heirs, or on their spouses, or the moiety holder shall render all proceeding subsequent to the initial petition null and void. The application for annulling the proceeding may be filed in the inventory court at any stage of the nullity is discovered.

(6) Where a mandatory inventory has been instituted on the ground that a party is absent, if the court is satisfied, upon perusal of the declaration of the head of the family and after hearing the applicant, or on the basis of official information, that the party is at a specific place within the

country, or in a foreign country, such proceeding shall be dropped.

(7) Where the head of the family declares, or record discloses, that there are unknown legatees and creditors, they shall be served by substituted service by affixing the summon in some conspicuous place in the court house.

(8) The first summon shall bring to the notice of the parties the next date of hearing, on or before which, they may file objections, if any, and such summon shall be accompanied by a copy of the declaration of head of the family of list of assets, if any, submitted by the head of the family.

(9) When any of the interested parties is under disability, the court shall appoint a personal representative for him before ordering the issuance of first summon.

388. *Proceeding in absentia.*— The inventory shall proceed in the absence of the parties who, after having received the first summon or notice of the proceeding, do not attend the Court personally or through their advocates and said parties shall not be entitled to any further notice of any stage of the proceeding. However, such parties, who reside within the jurisdiction of the Court, shall be given notice of the licitation and homologation at the registered address. Unless after the service of summon, a party files a memo of his registered address within the jurisdiction of the court, which is different from the address given by the head of the family, the latter shall be deemed to be registered address of the party. Where a party files a registered address, he shall state the house number, street name, ward name, village or city.

389. *Parties under disability.*— (1) A party under disability shall be represented in the inventory by his natural guardian. A guardian ad-litem shall be appointed to represent a party under disability only when his natural guardian representative has an adverse interest.

(2) A curator ad-litem shall also be appointed to represent a party absent at an unknown place, when the said party does not put in appearance or when no curator has been earlier appointed to look after his interest.

(3) When the party under disability can be represented by his parents, no family council shall be appointed and its functions shall be performed by the parents.

(4) Where the inventory proceeding are concluded and it is necessary to make a provision for the management of the assets allotted to a person absent at unknown place, the said assets shall be entrusted to the curator ad-litem who has been already appointed, upon his furnishing a security, when deemed necessary. Such curator shall have powers to manage the assets only and has the duty to act as a prudent man and he shall render accounts every year.

(5) Where a personal representative is already appointed by a competent court under a special law, such personal representative shall be personal representative for the inventory proceeding. Where such personal representative has an adverse interest to such party, the court shall appoint a guardian ad-litem.

(6) Where the disability arises from insanity, the insanity shall be proved by a certificate issued by the Director of any Institute of Psychiatry and Human Behaviour, where the party is an internee of such an Institute. In other cases, the insanity shall be proved by certificate issued by two Psychiatrists or by referring the concerned party to the nearest Institute of Psychiatry and Human Behaviour.

390. *Discharge of guardian, etc.*— (1) When the guardian, guardian ad-litem, curator ad-litem, member of the family council, or the administrator wishes to be discharged as such, he shall present an application giving the grounds for seeking discharge and file a list of witnesses and documents on which he relies.

(2) The court shall, after recording evidence, if necessary, and hearing the parties, pass

appropriate orders.

391. *Discharge or removal of guardian, etc.*—(1) Any member of the family council, or relative or the guardian up to the sixth degree, may apply on grounds set out in the application that the guardian be discharged or removed from office.

(2) The respective guardian shall be given notice to give his say and upon hearing the parties the Court shall pass appropriate orders.

392. *Composition of the Family Council.*— (1) The family council shall consist of three members, wherever possible, one from the paternal side, second from the maternal side and third one from either side.

(2) The members of the family council shall be chosen from amongst the relatives of the person under disability having regard to the proximity of relationship, friendship, qualities, age, residence and interest shown by them in the person under disability.

(3) The family council may be reconstituted when a relative with better rights applies to the court that he be included in substitution of another member. All resolutions and actions taken earlier by the previous family council shall be saved.

(4) Where there is a conflict of interest between the person under disability and the natural guardian, spouse or ascendants or descendants, the person under disability shall be represented by a guardian ad litem appointed by the court.

393. *Death of moiety holder or heir during the pendency of the proceeding.*— (1) Inventory proceeding shall not abate by reason of death of the moiety holder or any heir.

(2) Where the moiety holder or any heir dies before the final disposal of the inventory, the head of the family shall make an application to bring the heirs of the deceased on record, and after a supplementary declaration of the head of the family is recorded, summon shall be served on the persons proposed to be made parties.

(3) Both the persons summoned and the parties notified may dispute the status of the persons as heir sought to be impleaded, on or before the next date of hearing.

(4) If no such dispute is raised, the persons indicated by the head of the family shall be considered as heirs, without prejudice to the provisions of section 395.

(5) Where any creditor or legatee served with summon in the inventory proceeding dies, his heirs may make an application to get themselves impleaded by following the procedure prescribed in section 395.

394. *Challenge to the maintainability of the proceeding and other objections.*— (1) Any of the parties may on the date of hearing but within 30 days from the receipt of the summon,—

(i) challenge the maintainability of the inventory proceeding;

(ii) contend that any of the parties to the inventory is under disability;

(iii) dispute their own locus standi or the locus standi of any other party who has been served with summon, unless they have been served with the summon as creditors;

(iv) challenge the competence of the head of family to hold such office;

(v) apply that the partition should be restricted to certain assets on the ground that the remaining assets have been legally partitioned only.

(2) The application and the objections shall also state what evidence is proposed to be led. The Court shall, after such evidence is led and upon hearing the parties, decide the dispute.

(3) Where the challenge or dispute is raised before the service of summons on all the heirs, no order shall be passed thereon without completion of the said service.

(4) When the competence of the head of the family appointed during the proceeding, is challenged, the provisions of this section shall be applicable.

395. *Application to be declared interested party, legatee or creditor and to be made party to the proceeding.*— (1) Any person may, at any stage of the Inventory proceeding, apply that he may be impleaded as interested party, legatee or creditor. Such application shall be accompanied by documents and a list of witnesses relied upon.

(2) The vendee of a share in an undivided inheritance may at any stage of the inventory proceeding, before the licitation takes place, apply that he may be impleaded as interested party and such application shall be accompanied by documents and a list of witnesses relied upon.

(3) The head of the family and the parties may give their say along with documents and list of witnesses to be relied upon. After recording evidence, if any, and hearing the parties, the Court shall pass appropriate orders, including on the validity of the sale of the share.

396. *Intended sale of a share in an undivided inheritance.*— Where a co-heir or a moiety holder intends to sell his respective share or moiety in an undivided inheritance to strangers institutes inventory proceeding to enable the parties entitled to pre-empt to exercise their right and shall state in the application initiating the proceeding the price and conditions of the proposed sale. Upon such inventory proceeding being initiated, the court shall proceed to appoint the head of the family, and where necessary, appoint guardians, curators or the family council, and thereupon, convene a conference of the interested parties solely for the purpose of exercising the right of pre-emption. The procedure laid down in section 398 shall *mutatis mutandis* be followed.

397. *Sale of share in the undivided inheritance.*— Where any of the heirs has sold his undivided share in the inheritance to a stranger, or the moiety holder has sold his moiety, without notice to the co-heirs, the co-heirs may exercise the right of pre-emption in the inventory proceeding within 60 days from the date of notice of the application by the vendees to be brought on record.

398. *Order of priority and procedure.*— (1) The order of priority to exercise the right of pre-emption shall be as follows:—

(i) all the co-heirs jointly in a conference;

(ii) the moiety holder;

(iii) individual heir.

(2) Where such an application is made by the vendee, the head of the family or any heir may apply to the court that a conference of all interested parties be convened to resolve whether all the co-heirs jointly wish to exercise their right of pre-emption in favour of the inheritance. Where such right is not exercised, and upon moiety holder also failing to exercise such right, the heirs may exercise their individual rights in accordance with the succeeding sub-section.

(3) (a) Where more than one heir wishes to exercise the right of pre-emption, the largest share holder shall have preference.

(b) If any interested party expressly pre-empts and, then, fails to make the payment or deposit the price within 15 days time, he shall forfeit his right. Such failure shall be brought to the notice of next largest shareholder, who has exercised the right of pre-emption, and he shall have to make the payment or deposit the price, within 15 days from the date of receipt of the notice, and

so on.

(c) Where the shares are equal, all those who applied for pre-emption, shall be summoned to appear in court for licitation. Minutes of the licitation shall be drawn and the highest bid of each bidder shall be recorded. The highest bidder shall make the payment within 15 days from the date of the licitation, failing which he shall forfeit his right. Such failure shall be brought to the notice of the next highest bidder who shall have to make the payment or deposit the price within 15 days from the date of receipt of the notice and so on.

## CHAPTER XXXVIII

### **Initial list of assets**

399. *Initial list of assets.*— (1) The assets shall be listed by the head of the family item wise starting with debts due to the estates, securities, actionable claims, money, foreign coins, objects of gold, silver and precious metals and such other objects and thereafter all the remaining movables and livestock, the immovables, including mortgages, easements, leases and other encumbrances thereon and lastly debts due by the estate.

(2) A space of about 5 cms. shall be kept between the items.

(3) Separate lists shall be prepared of the assets, which are to be valued by different persons and by different methods.

(4) Every page of the list shall be initialed and the last page shall be signed by the head of the family or when he does not know or cannot write, he shall affix his thumb impressions on all pages.

(5) The assets shall be listed by giving all the necessary particulars for their proper identification. Immovable properties shall be identified by their land registration details, description and inscription details of source of title thereto, land revenue (Matriz) number, survey number, their location and area. All the shares and securities of the same type with their respective numbers shall be clubbed together in one item except those which have been issued by different entities.

(6) Movables of the same type for which the same value ought to be given, taking into account their material utility and condition, shall also be included in one item.

(7) Improvements made by the inheritance in properties belonging to a third party shall be described in kind when they can be separated from the properties in which they were made and if they cannot be so separated, they shall be listed as debts due to the inher

(8) Improvements made by third parties in the property of the inheritance shall be described as debts due by the inheritance, when they cannot be removed by the person who made such improvement.

(9) The Head of the family besides listing the assets referred to in preceding sub-sections, shall also state their estimated value.

400. *Objections to the list of assets and other objections.*— (1) Within 30 days from the date the head of the family submits the list of assets, the parties may raise the following objections:—

(a) that all assets have not been listed;

(b) that the head of the family or the donee denies the existence of the assets in his possession;

(c) that the head of the family or the donee denies his duties or obligation to collate;

(d) that the head of the family or the donee disputes that he has received assets which are

attributed to have been received by him.

(2) Any party may, at any time after the expiry of 30 days, raise objection that all the assets have not been listed, provided such party satisfies the Court that he acquired knowledge of the existence of the properties only within the last 30 days before the presentation of the objection. But failure to raise such objection shall not deprive the party from seeking additional partition as provided in section 371.

(3) Where an objection has been raised that all assets and liabilities have not been listed, notice of the objection shall be given to the head of the family or the donee and they shall be called upon to list out the assets or liabilities left out or to give their say.

(4) Where the head of the family or donee who has been served with notice of the objections admits the existence of the assets or liabilities and acknowledges that they belong to the inheritance but requires time to list them, he may apply for time for the said purpose.

(5) Where the head of the family or the donee denies the existence of the assets or liabilities or declares that they do not belong to the inheritance, the court shall hold a summary inquiry as deemed necessary and decide whether the assets or liabilities should be listed.

(6) Where the dispute cannot be decided summarily and it is necessary to hold a detailed inquiry, the parties shall be directed to file a suit, if they so desire, in respect of the disputed asset or liability and the inventory shall proceed in the respect of the remaining assets and liabilities.

(7) Where the head of the family or the donee fails to give his reply on the date fixed therefor, it shall be presumed that he admits the existence of the assets or liabilities and the duty to list them.

(8) (a) Where the head of the family or the conferee denies the existence of the assets in his possession or the duty to describe them or to collate or he dispute as to the assets which have been received by him, the disputes shall be decided summarily by the court.

(b) The provisions of sub-section (6) shall be applicable to this sub-section.

(c) Where the dispute cannot be decided in the inventory proceeding, the head of the family or the donee shall not receive the assets allotted to him without furnishing a security corresponding to the value of the disputed assets.

401. *When co-heirs are called upon to give a list of assets.*— Where the head of the family declares that he is unable to give a list of some of the assets belonging to the inheritance on the ground that the said assets are in possession of some other co-heirs, such co-heirs shall be called upon to list them within such time limit as may be fixed by the court. Thereafter, the provisions of section 399 shall be followed.

402. *Deletion of assets listed in the preliminary list.*— Where any co-heir or a third party claims ownership of any of the assets listed in the inventory and applies for their removal from the list of assets of the inheritance, the dispute shall be decided, after hearing the head of the family, or the person who has listed the assets, and after recording of evidence.

403. *Disputes relating to concealment of assets.*— (1) The person who conceals the asset is deemed to be merely in custody of those assets and the court may order such person to hand over these assets to the head of the family.

(2) The issue whether there is concealment of properties shall be decided in the inventory when the dispute can be decided on perusal of the application and replies of the parties and the documents and other material on record.

(3) Where a detail inquiry is required, the court shall direct the parties to file a Civil Suit, if they so desire.

## CHAPTER XXXIX

### Liabilities of the inheritance

404. *Payment of debts of inheritance.*— The liability for the payment of debts of the estate-leaver is of the inheritance. However, after the partition is effected, the co-heirs are liable to pay the debt in proportion to the share of the inheritance allotted to them.

405. *Funeral expenses.*— The funeral expenses of the estate leaver shall be paid by the inheritance, whether there are forced heirs or not.

406. *Redemption of certain encumbrances in rem.*— (1) Where immovable properties of the inheritance are mortgaged, or are charged with redeemable instalments, any of the co-heirs may, if there are funds available in the inheritance, demands that the said liabilities be satisfied before the partition.

(2) Where immovable assets are listed for partition alongwith the said encumbrances, or any other charges, the assets shall be valued as if there were no encumbrances; thereafter the amount corresponding to the encumbrances shall be deducted and the heir, to whom the immovable property is allotted, shall pay the said encumbrances exclusively.

(3) The co-heir who has paid a common mortgage debt or part thereof in excess of his share, shall by reason of the failure to deduct the encumbrance of mortgage, have only the right to recover from other co-heirs such part thereof as they are liable to pay, in proportion to their shares in the inheritance, even if the co-heir, who had paid it, gets subrogated in the rights of the creditor.

407. *Creditor's claim.*— (1) Any creditor may make an application in the inventory proceeding seeking acknowledgement and payment of the debts due to him by the inheritance which have not been listed by the head of the family.

(2) Such application may be made till the date of the order as to the manner in which the partition is to be carried out is passed, unless the respective creditor had been summoned to take part in the inventory.

(3) Where the respective creditor was so served, he may put up his claim till the date the conference of the parties for approval of debts, is held.

(4) Failure to do so, does not debar him from claiming the payment by filing a civil suit. However, in such a case, even if the defendants do not resist the suit, the creditor shall be liable to pay costs, whatever be the outcome of the suit.

408. *Debtor's denial.*— (1) Where any debt due to the inheritance listed by the head of the family is denied by the alleged debtor, the court shall, upon hearing the head of the family and the debtor, decide if the debt shall be retained in the list or shall be removed from the list.

(2) If the debt is retained in the list of assets, the debt shall be deemed to be litigious; if the said debt is removed from the list, the right of the parties to demand its payment by filing a civil suit, is saved.

409. *Valuation.*— (1) Where no objections have been raised as regards the list of assets or the

objections raised have been already decided, the court shall order that the assets be valued as on the date of the opening of the inheritance and shall, for that purpose, appoint a valuer. In the order of appointment of the valuer, the court shall fix his fees and a date for submission of the valuation report.

(2) The valuation shall be done by a valuer appointed by the court. The court may, however, appoint different valuers for the valuation of various types of assets if their special nature so demands.

(3) The valuer shall be served with the order of his appointment and be furnished with the respective list of assets.

(4) The valuer shall give the value of the each asset, as on the date of the opening of the inheritance, records such alteration or addition to the list which, in his opinion, are necessary and give the basis for the value arrived at by him as against each asset in the 5 centimeters space left for the said purpose, in the list.

410. *Valuation by officer of the court.*— Where there are assets, the value of which can be determined by a mere arithmetical operation, the file shall be referred to an Officer of the court for such purpose immediately after the lists have been submitted and such officer shall determine the value within 15 days, unless the time limit is extended by the court.

## CHAPTER XL

### **Final list, conference of the parties and payment of debts**

411. *Final list.*— (1) After the valuation is finalized, the court shall fix a date for submission of final list of assets and liabilities by the officer of the court in charge of inventory proceeding, indicating their values.

(2) As regards movable of small value, notwithstanding that they are of different nature, lots shall be made so that, as far as possible, in each item, assets of the value of not less than Rs. 500/- are included.

412. *Division by metes and bounds.*— (1) Where the inheritance comprises, among other assets, of divisible immovable properties other than residential houses, any party may, after the final list of assets is made, apply that the said immovable properties be divided by metes and bounds in accordance with the shares and be allotted to the respective interested parties. Two or more interested parties may state that they agree to take a joint sub divided plot. Where divided plots are equal in area, lots shall be drawn for the purposes of allotment.

(2) Where an application for division by metes and bounds is made, the court shall appoint a commissioner who shall submit a report stating whether the immovable properties are divisible in accordance with the rules and regulations relating to sub division of lands in force. Where the properties are divisible, he shall sub divide them into plots. Where the commissioner submits a report that any immovable property is not divisible, such immovable property shall be put to licitation.

413. *Objection to overvaluation, conference, application for licitation.*— After the final list is prepared, any of the heirs or moiety holders of the deceased may within 15 days—

- (a) raise the issue that assets have been overvalued;
- (b) state whether they wish that all or certain assets be put to licitation;
- (c) apply that conference of interested parties be convened:

Provided that where gifted and bequeathed properties are to be returned to the mass of the

inheritance on the ground that they are inofficious, the party may apply for licitation till the date fixed for giving their say on how the partition should be effected.

414. *Who may decide on behalf of persons under disability.*— (1) The family council shall be convened, when it has to resolve whether the persons under disability should apply that the assets be put to licitation and whether they should participate therein.

(2) The resolution of the family council shall be included in the minutes of the conference.

415. *Conference of the interested parties.*— (1) The conference of the interested parties shall be convened by the court upon its own motion to resolve on the approval of the debts and the mode of their payment, allotment of emphyteusis as a unit to one person, over-valuation of properties, objections regarding inequalities of the lots and on any doubts or difficulties which may have a bearing on the partition.

(2) The members of the family council shall be given notice of the date of the conference, where the inventory is subject to orphans jurisdiction, and they have to intervene to resolve on the approval of debts and mode of their payment and on the allotment of emphyteusis as a unit to one person.

(3) The resolution passed by the interested parties present at the conference is binding upon those who did not attend it, unless such parties were not given notice of the conference when such notice ought to have been given to him.

416. *Debts payable by the inheritance and mode of payment.*— (1) Debts payable by the inheritance, listed or claimed, which are approved by the interested parties who are major of age and by the family council and by the parents on behalf of the minors, are deemed to have been judicially recognized, and the court shall in the order confirming the partition, direct their payment if the amounts have not been paid before such order.

(2) When the law requires that the debt should be proved by documentary evidence of a certain probative value, the family council or the representatives of the persons under disability shall not approve the debt, unless such document or any other document of equal or of higher evidentiary value, is produced.

417. *Power of the Court to decide on debts.*— Where the parties who are of major in age and the family council or the parents of the minors, object to the approval of the debt claimed, the Court shall, notwithstanding their objection, recognize its existence, provided the creditor produces sufficient documentary evidence for the said purpose, unless the document is challenged as being forged or evidence of equal or of higher probative value is produced which disproves it or where questions, which require a detailed inquiry, have been raised.

418. *Disagreement on the approval of debts.*— (1) Where there is disagreement on the approval of debts, listed or claimed, amongst the interested parties who are of major in age or between them and the family council or parents of the minors, the debt is deemed to have been recognized to the extent of the share of those who approve them.

(2) The creditor shall have to file a suit for the recovery of the balance amount, unless the existence of the debts can be proved as provided in the preceding section.

419. *Payment of debts fallen due.*— (1) The debts which have already fallen due and are approved by all the interested parties, shall be paid immediately in case the creditor demands their payment. Where the inheritance does not have sufficient funds, the court shall order that the assets be sold for the said purpose by public auction. The court shall determine which are the assets to be sold, when there is no agreement in that respect amongst parties who are of major in age or between them and the family council and the parents of the minors.

(2) If the creditor wishes to receive the payment in assets set apart for sale, the said assets shall be adjudicated to him for the price which has been fixed by the court.

(3) A private sale shall be held in case all the interested parties agree, or in case of a mandatory inventory, the court so decides, after hearing the family council and the personal representatives of the minors.

(4) When the assets are to be sold by private sale, the interested parties or the Court shall appoint a person and empower him to sell and shall fix the minimum price. The appointed person shall carry out the sale accordingly and submit his report to the Court.

(5) Movables shall be sold by auction at the place where they are lying or in a nearby place where they may be transferred without causing damage or heavy expenses.

(6) Where an irregularity is committed during the auction or it is discovered that assets have been fraudulently described and such fraudulent description has caused grave injury to any party, objections may be filed by such party and the court shall decide on the objections, after recording such evidence as is deemed necessary. If the court is satisfied that irregularities materially vitiating the auction have been committed, the auction shall be set aside.

(7) The court may then hold the auction in the court premises or the assets may be sold by private sale.

(8) The preceding provisions shall apply also to debts which were approved by the court in accordance with the provisions of section 416 and 418, in case the respective order has become final and no appeal has been preferred before the chart of partition is drawn up.

420. *When debts are approved by some of the interested parties only.*— Where a debt has fallen due but it is approved by some of the interested parties only, the creditor may demand from such parties payment of their corresponding share of the liability. The payment shall be effected immediately, where there are funds, out of the shares of those parties who have approved the debts; where there are no funds, the payment shall be made out of the assets allotted to such parties after partition.

421. *Resolution on mode of payment of debts.*— (1) Notwithstanding that the creditors do not demand the payment of the debts which have fallen due and are approved, the parties may resolve on the mode of payment, either by setting apart money or properties for the said purpose entrusting the payment to one or some of them, or deciding that the debt shall be shared by them in proportion to the assets allotted to them.

(2) The parties may also resolve on the mode of payment of the debts which have been approved but have not yet fallen due.

(3) The resolution, which entrusts the payment to one or some of the parties, binds the creditors but where the creditors do not get fully paid with the properties handed over to the party or parties entrusted with the payment, the creditors may attach the properties adjudicated to the other interested parties.

(4) Where the debts have been approved by some of the parties only acting for themselves, by the family council or by the parents of the minors, only they can resolve on the mode of payment.

422. *When do legatees decide on the mode of payment of debts.*— The legatees may resolve on the liabilities and the mode of their payment, only when the entire inheritance is distributed by way of legacies or when the approval of debts will result in reducing the legacies.

423. *Insolvency.*— Where the debts approved by the parties or recognized by the Court exceed

the mass of the inheritance, the procedure laid down in the law of insolvency in force shall be followed.

424. *Emphyteusis*.— Where an emphyteusis forms part of the inheritance, it shall be resolved to whom the emphyteusis shall be allotted as one unit. If none of the parties wishes to have the emphyteusis, the emphyteusis shall be sold and the proceeds shall be divided. Where the parties do not agree as to whom the emphyteusis should be allotted, the emphyteusis shall be put to licitation.

425. *Overvaluation of assets*.— (1) Where any of the parties contends that the value given to any of the assets is excessive, he shall state which according to him is its fair value and the interested parties shall in the conference resolve as whether the value shall be maintained or decreased. In the latter case, the value shall be fixed in such conference.

(2) But, where a party declares that he accepts the thing for the value given to it, the value shall not be decreased. Such a declaration shall amount to licitation. Where more than one party accepts the valuation, licitation shall be held amongst them and the thing shall be adjudicated to the highest bidder. In case the parties are unable to fix the value, the value given shall subsist.

(3) The objection regarding overvaluation may be raised orally during the conference.

## CHAPTER XLI

### Licitation

426. *Licitation of asset which is not susceptible to division without detriment*.— (1) Where any party to the proceeding applies that an asset, which by its nature is not susceptible to division without detriment, be put to bid but, any co-heir having a major share in it other than by reason of marriage, succession, gift or bequest by the person who leaves the inheritance and such co-heir objects to the licitation, then the licitation shall not be held. In this eventuality, the party may apply for a second valuation.

(2) Second appraisal may also be made when the said co-heir applies for a second valuation on the ground that the thing in which he has the major share, has been overvalued.

(3) The head of family may, at the time he submits the list of assets, raise the issue of indivisibility of the properties and, if he raises such an issue, the valuer shall give his opinion on the divisibility at the time of the valuation. When such an issue is raised at a later stage and there is no agreement between the parties, the issue shall be decided after hearing the valuer.

(4) Where the thing is not subject to valuation the question of indivisibility shall, in the absence of agreement, be decided by the court after the expert appointed by the court inspects the properties and gives his report.

(5) The provisions herein contained are also applicable where there are no forced heirs and the estate leaver has gifted to one of the co-heirs, legal or testamentary, a major share in the thing which, by nature and without detriment cannot be divided and so also where in terms law or by reason of a contract, the things cannot be put to licitation or bid.

427. *Licitation of gifted assets*.— (1) When any party applies that assets gifted by the estate leaver be put to licitation, and the donee, irrespective of whether he has to collate or not, object to the gifted thing being put to bid, a second valuation of the respective assets shall be ordered to be done. The objection of the donee, if any, may be filed within 30 days of the service of the application.

(2) After the second valuation is done and the licitation of the other properties is over, the application shall become ineffective where it is found that the donee is not bound to return any property.

(3) Inofficious gifts: Where the court finds that the gift is inofficious, the following provisions shall be followed:—

(a) Where the application is in respect of an asset which is susceptible to division, licitation in respect of the part which the donee has to return may be held but the donee shall not be allowed to take part in the licitation.

(b) Where the application pertains to an asset which by its nature is not susceptible to division without detriment, licitation may be held and the donee is allowed to take part in it.

(c) If none of the preceding provisions of this chapter are applicable, the donee shall be permitted to choose such of the gifted assets as are necessary to fill up his share in the inheritance and the charges or encumbrances on the gift. The donee shall return the properties in excess of his share and the assets so returned shall be put to licitation, if applied for, or has already been applied for, but, the donee shall not be allowed to take part in the licitation.

(d) The objection of the donee, should be raised within 30 days of the service of notice of the application if, at that time, licitation of the gifted assets has already been applied for or during the conference itself where licitation is applied for, and the donee is present. If none of the above conditions are satisfied, the donee shall be notified before the licitation to raise his objection within 10 days.

(4) Irrespective of any application referred to in this section, the donee may apply for a second valuation of some or all the gifted assets, within 30 days from date of notice of the first valuation, it is found that the gift is inofficious.

428. *Licitation of bequeathed assets.*— (1) Where any party applies that the bequeathed assets be put to licitation, the legatee shall be notified to give his say, if any, within three days.

(2) If the latter objects, no licitation shall be held, but it is lawful to the heirs to apply for second valuation of the assets, when the undervaluation of the assets may affect them adversely, within 30 days from the date of objection.

(3) Where the legatee does not object, the licitation shall be held and the legatee shall have a right to the respective value.

429. *When licitation is to be held.*— (1) The licitation shall be held within 30 days from the date the conference is held, if possible.

(2) Every licitation shall be conducted by an officer appointed for the purpose by the court. However, such officer shall not declare the highest bidder without the leave of the court.

(3) It is lawful to withdraw the request to have licitation till such time the respective item is put to bid; in such an event, however, any other party shall be allowed to apply for licitation on the same item.

430. *Licitation defined.*— (1) Licitation is a family auction in which only heirs and the moiety holder spouse of the estate leaver, or of the deceased heir are allowed to participate, except in cases where, in terms of the preceding section, the donee or the legatee should also be allowed to make a bid. Such of the properties of the inheritance which are not necessarily to be allotted to any particular party, only may be put to licitation.

(2) The constituted attorney of a person entitled to participate in the licitation may bid on his behalf provided specific powers for such purpose have been conferred on him by the power of attorney. The power of attorney or a true copy thereof duly certified by a notary public shall be placed on record.

(3) Each item as described in the final list shall be put to bid individually, unless all parties agree

to form lots for that purpose, or where there are some properties which cannot be separated without inconvenience. Different parties, may, by agreement, offer a bid over the same item or lot so that may be allotted to them in common. Such a bid shall be deemed to be one indivisible bid and the parties shall be jointly and severally liable to pay or deposit the entire bid amount.

(4) Once the parties have struck down an asset in the licitation, they cannot resale from it.

(5) Immediately after the licitations are over, the parties who have struck down assets are entitled to request the court to hand over the possession of the respective assets to them subject to the homologation of the Partition decision passed in appeal, if any.

(6) Licitation is not a sale in law but a mere partition of the assets of an inheritance. Each heir shall be deemed to be the sole successor of the assets allotted to him from the date of the opening of the inheritance.

431. *When licitation may be annulled.*— Where the Court is satisfied that the interest of any party under disability have not been properly taken care of by his personal representative during the licitation, the court may within 2 weeks from the date of licitation, after hearing the parties, annul the respective auction by a reasoned order.

## CHAPTER XLII

### Second Valuation

432. *Second valuation.*— (1) Where the first valuation discloses that the legacy is inofficious, the legatee may, within 30 days of the notice of first valuation irrespective of the application referred to in section 428, apply for second valuation either of the bequeathed properties or of any other properties which have not been valued for the second time.

(2) The legatee may also apply for second valuation of other properties of the inheritance when it is found, on the basis of second valuation of bequeathed properties and of the licitation, that the legacy has to be reduced on the ground that it is inofficious. The assets which have been auctioned shall not be excluded from second valuation, if the value given in the second valuation is higher than the highest bid offered in licitation. The auctioned assets shall be allotted on the basis of second valuation and not on the basis of the highest bid in licitation.

433. *Inofficious legacy.*— (1) Where the legacy is inofficious, the legatee shall return the excess in specie. Such excess may be subject to licitation in which the legatee shall not be allowed to participate.

(2) Where the bequeathed thing by its nature or without detriment, cannot be divided, the following shall be observed:—

(i) The return shall be made in cash, when the inofficious part is smaller than the other part, and in such a case any party may apply for the second valuation of the bequeathed thing,

(ii) The return shall be done in specie if the inofficious part is equal or larger than the other part, and in such case the legatee may apply for the bequeathed thing be put to licitation.

The provisions of clause (c) of sub-section (3) of section 427 shall be applicable to the legatee also.

434. *Procedure for second valuation.*— (1) The second valuation shall be done by three valuers appointed by the consent of the parties. In the absence of such agreement, each side shall appoint one valuer and the Court shall appoint third valuer. The co-heir, donee, or legatee, referred to in sections 426, 427 and 428 shall form one side and the other parties, competent or under disability, shall form the other side. The minors and other persons under disability shall be represented at the

time of the valuation by their parents, or by the guardians and curators.

(2) Where there are more than one co-heir, donee or legatee in the circumstances mention in sections 426 to 428, all of them who have common interest shall constitute one block against the other parties.

435. *Scheme of partition.*— (1) Upon completion of valuation of assets and licitation, if any, the heirs, head of the family, and the moiety holders shall submit to the court a scheme of partition within 30 days and the court shall thereafter make an order thereon showing the mode of partition. In the said order, the court shall decide all questions including questions which have not been decided till then and which have to be necessarily decided for drawing the chart of partition.

(2) The court may, in exceptional cases, direct the parties to lead such evidence as may be necessary to effect the partition but, if there are questions which require a detailed inquiry, the court shall direct the parties to file a Civil Suit, if they so desire. Questions which are required to be decided in the normal course of the inventory proceeding shall not be left to be decided at the time of passing the order on how the partition should be effected.

(3) No appeal shall lie from the order deciding on the mode of partition. However, such order may be challenged in the appeal, if any, preferred against the final order confirming the partition.

436. *Procedure for filling up the shares of the parties.*— The procedure hereunder shall be followed for the purpose of filling up of the shares of the parties in the inheritance:—

(a) Gifted assets or assets struck down in the licitation shall be allotted to the respective donee or bidder.

(b) Assets of the same kind and nature as the properties gifted or struck down in the licitation shall be allotted to the parties who do not collate or to the parties who are not the highest bidders.

(c) When it is not possible to satisfy the co-heirs with assets of the same kind and nature, where the gifted assets are immovable, the said co-heirs shall be entitled to be identified in money and, if there are no fund in the inheritance, as many assets as may be necessary to secure the sum due, shall be sold in public auction.

(d) However, if the gifted assets are movables, the co-heirs shall be entitled to be satisfied with other movables of the inheritance according to their value.

(e) The same principle shall be followed if some heirs have received legacies, to compensate the co-heirs who have not received legacies.

(f) The remaining assets shall be distributed by drawing lots amongst the parties, after forming equal lots.

(g) Debts due to the inheritance which are disputed, debts which are not sufficiently proved, and assets which have no value shall be distributed proportionately amongst the parties. Debts due by the inheritance which have been approved by all the parties, shall be allotted proportionately, unless a different mode of payment is agreed upon.

## CHAPTER XLIII

### Chart of partition

437. *Chart of partition.*— (1) After the court passes the order on the scheme of the partition, the clerk of the court shall draw a chart of partition within 10 days, complying with the order and the provisions of the preceding sections, subject to the provisions of section 436.

(2) The chart shall be drawn in the following manner:—

(i) The total amount of assets shall be determined by adding the values of each kind of assets as attributed to them in the valuation and in the licitation and by deducting debts which have to be paid by inheritance, legacies and encumbrances which ought to be reduced;

(ii) The amount of the share of each party shall be worked out and also the part which is allotted to the party in each type of asset, shall be shown lastly;

(iii) The allotment of each share will be done by referring to the number of the item in the final list of assets and liabilities.

(3) The lots which have to be drawn by sortition shall be designated by alphabetical letters.

(4) The values shall be indicated by figures only. The numbers of the items of the final list of the assets and liabilities shall be shown in figures and in words and when they are continuous, only the terminal numbers within which the numbers are comprised shall be recorded.

(5) Where a fraction of the items has been allotted to the co-heirs, such fraction shall be mentioned.

(6) In each lot, the nature of the assets of which it is comprised, shall be shown.

(7) The court shall initial every page of the chart of partition and confirm by a note, the corrections, erasures or interlineations.

438. *Preliminary chart.*— (1) Where, at the time of drawing the chart, the clerk of the court finds that the properties gifted, bequeathed or struck down in the licitation exceed the share of the respective party or the disposable portion of the estate leaver, he shall prepare a preliminary chart indicating exactly what is the amount in excess.

(2) Upon perusal of the preliminary chart submitted by the clerk of the court, the court shall issue the following directions:—

(a) Where amidst the properties gifted to a co-heir, there is an indivisible property which does not fit as a whole in the share of the donee, the court shall direct that such property shall form part of the mass of the partible properties as any other property of the inheritance;

(b) In other cases, the court shall issue notice to the donee to exercise within 10 days his right to choose from amongst the gifted properties those necessary to make up his share in the inheritance and, if he fails to exercise such choice, his share shall be filled with such properties as the court deems fit;

(c) Where the gift made to a stranger is inofficious it shall be reduced in accordance with sections 111 to 121 of this Act;

(d) The court shall notify the unsuccessful bidders, and those who did not take part in the licitation, who are to be paid owelty monies by the successful bidders, to demand within 10 days the payment of the owelty money, if they so desire, unless such amount has already been deposited; Where the payment is not demanded, owelty money shall carry an interest @ 5% p.a. from the date of the final order confirming the partition and the creditors shall have a lien on the properties allotted to the debtor. If the demand is made, the successful bidder shall be notified to deposit within 15 days the amount due and, if he fails to pay or deposit, the licitation shall stand cancelled and the court shall fix a fresh date for licitation. The party who has defaulted in paying owelty money shall not be allowed to participate in the new licitation.

(3) When two or more parties have made a joint bid for a property, they shall be jointly and severally liable for the entire owelty amount and in the event the entire owelty amount is not paid or deposited within time, the licitation shall stand cancelled in respect of the entire property and none of the defaulting parties shall be allowed to take part in the new licitation.

439. *Rectification.*— (1) The parties may, if necessary, within 10 days after the preliminary chart is drawn, apply for rectification of the partition or may object that the lots are not equal or that the order directing the partition has not been complied with. Such objection shall be decided within the next 10 days. The conference of the parties may be convened if the objection is as regards the inequalities of the lots.

(2) The order upholding the objection shall direct that the necessary modification be made to the chart. If necessary, a new chart of partition shall be drawn up.

440. *Sortition.*— Upon disposal of objections to the preliminary chart, lots shall be drawn, if required. Each lot shall be identified by an alphabetical letter, which shall be written on pieces of papers and placed in a box. At the time of drawing of the lots, first preference shall be given to the moiety holder of the estate leaver. So far as the co-heirs are concerned, the order of priority shall be alphabetical order of their names, starting with first name. The Judge shall draw lots on behalf of the parties who fail to remain present for the sortition. The name of the party to whom the lot falls shall be recorded in the file. After the draw of lots is over, the parties are free to exchange between themselves the lots, which have fallen to them. However, to exchange the lots fallen to the persons under disability, the court's permission has to be obtained. In the case of a prodigal, so declared by the court, the exchange shall not be permitted, unless the prodigal consents thereto.

441. *Second and third chart of partition.*—

Second chart:

(1) When the moiety holder of the estate leaver, is a party, the chart shall consist of two portions and after the portion of the estate leaver is ascertained, a second chart shall be drawn for partitioning the said portion amongst the heirs.

Third chart:

(2) Where, by reason of the right of representation, the shares are unequal, after the determining the share of the person who is represented, a third chart shall be drawn to partition the shares amongst the representatives.

(3) When any heir is benefited with a major part of properties, the lots shall be formed, if possible, in such a way that the draw of lots amongst the other co-heirs be done out of equal portions.

(4) Where it is not possible to draw the second chart and have a sortition in respect of the second chart at the time sortition of lots of the first chart is made and so also when it is not possible to have a sortition of the lots of the third chart at the time the sortition of the lots of the second chart is made, the provision applicable in relation to the first chart shall be followed, both as regards the drawing of the charts as well as regards drawing of lots of the second and the third chart.

## CHAPTER XLIV

### Confirmation of partition

442. *Confirmation of the partition.*— (1) The court shall make a final order declaring who are the successors or heirs of the estate leaver, and confirming the partition in accordance with the chart of partition and the draw of lots within 10 days, after evidence of payment of duty is produced. The order confirming the partition shall have the force of the decree and accordingly a decree shall be drawn.

(2) The decree shall contain—

(a) the name of the original applicant and of the estate leaver;

- (b) names of the heirs or legatees and creditors;
- (c) description of the assets;
- (d) chart of Partitions;
- (e) outstanding debts due by the inheritance or heirs including their approval and mode of payment;
- (f) order confirming the partitions.

(3) A party to an inventory proceeding may file a certified copy of the partition decree with the Registering Officer under the Registration Act, 1908 (16 of 1908), within the local limits of whose jurisdiction the whole or any part of the assets is situated and such officer shall file such decree in Book No.1 maintained under section 51 of the Registration Act, 1908 (16 of 1908).

443. *Costs.*— The costs of the inventory shall be paid by the heirs and the moiety holder, in proportion to what they have received and, where the inheritance is distributed by way of legacies only, the legatees shall be liable for the payment of costs in the same proportion.

444. *Safeguards to be observed when the assets are delivered before the order of homologation becomes final.*— An interested party may receive the assets which have been allotted to him in the partition before the order of homologation becomes final; however, the assets shall be handed over only upon such party furnishing security, in case of negotiable instruments, shares and securities an endorsement shall be made that the holder shall not transfer or assign such assets, without the order of the Court. Security shall also be obtained in cases where a paternity suit, suit for annulment of a will, or any other suit the decision of which is likely to affect the partition is pending.

445. *Fresh partition.*— When, as a result of a decision in an appeal or a suit, it is necessary to make a fresh partition, the head of the family shall immediately be put in possession of the properties which no longer belong to the party who has received it. The inventory shall be corrected only to the extent it is strictly necessary to implement the decision and the valuation and description of the assets shall be maintained, notwithstanding that there is a complete substitution of the heirs.

## CHAPTER XLV

### **Amendment and rescission of partition**

446. *Amendment of partition.*— The partition may be amended, even after it has become final and no appeal has been preferred, in the very same inventory proceeding by agreement of the parties or their representatives, where there is a mistake of facts in the list of assets or in the classification of the assets or any other error, which vitiates the will of the parties:

Provided that where in the order there are clerical or arithmetical mistakes or any material errors arising from accidental slip or omission, they may be corrected at any time by the court, either of its own motion or on application of any of the parties.

447. *Suit for amendment of partition.*— A party may file a suit for amendment of the partition, when subsequent to the final order the party acquires knowledge of a mistake of fact or classification or other error which vitiates the will of the party, and the other parties are not in agreement to have the partition amended, amicable.

448. *Rescission of partition.*—

(A) Suit for rescission:

(1) A suit for rescission of the judicial partition which has become final, may be filed where

there is preterition or non joinder of any of the co-heirs and if it is found that the other parties acted fraudulently or malafide, whether the malicious conduct relates to the preterition or to the partition.

(B) Application for review:

(2) Rescission of a judicial partition may be obtained by filing a review application in the same court in the following circumstances:—

(a) When it is proved in criminal proceeding, resulting in a conviction which has become final, that the order which is sought to be reviewed was passed by giving of bribe, corruption or influence;

(b) When a judgement and order of conviction which has become final is produced wherein it was held that the depositions or declarations of the experts, which might have affected the order that is sought to be reviewed, are false.

The period of limitation to file a review on both the above grounds is 30 days reckoned from the date on which the order on the basis of which the review is filed had become final.

(3) The review application may be filed in the very same court which passed the order, within 30 days from the date on which the party has secured the document, or acquired knowledge of the fact which is the basis for the review, on the following grounds:—

(a) When a decision is based on a false document or judicial act and this issue was not considered in the proceeding when the decision was given;

(b) When a new document is produced, which was not in the possession or power of the party or the party did not know about the existence and such document is itself sufficient to cancel the evidence on which the decision is based;

(c) When the admission, withdrawal or compromise on which the judgement is based, is revoked or there is a valid ground for revoking the same;

(d) When the admission, withdrawal or compromise is null, due to lack of mandate or insufficiency of powers of the attorney, unless the order homologating or ratifying the partition has already been personally served on the principal;

(e) When the inventory proceeded by default and the party was not served with summon or the summon is null;

(f) When the judgement is contrary to another judgement which constitutes *res judicata* and the party proves that he had no knowledge of the judgement during the pendency of the proceeding.

(4) Where the rescission is sought on the basis of a document, the plaint or the review petition, as the case may be, shall be accompanied by the respective certified copy.

449. *Settlement of share of the heir left out in the inventory.*— (1) Where the heir left out wishes to have his share paid in cash, he may apply in the inventory that a conference of the parties be convened to work out the value of his share.

(2) Where the parties do not reach an agreement, the assets in respect of which there is a difference in value shall be valued again and the parties may apply for a second valuation and, thereafter, the amount to which such heir is entitled, shall be fixed by the court.

(3) A fresh chart of partition shall be made so that the changes resulting from the payments

necessary to make up the share of the heir who was left out, are known. No sooner the share is settled, such heir may apply that the debtors be notified to effect the payment, failing which they will be bound to make good his share by way of the assets, without prejudice, however, to the alienations already made. If the demand is not made, and the amount due is not deposited by the respective parties, the money due shall earn interest @ 6% p.a. from the date of the order.

450. *Finality of the decision.*— (1) Questions decided in the inventory proceeding, other than the questions decided by order made under section 435, shall be considered as having attained finality, as against the head of the family and the persons summoned as heirs, and so also as against the parties who were given an opportunity to be heard before the decision, unless the right to file a suit is expressly reserved by the court.

(2) Where the questions involved are questions of law, or questions of fact which can be decided on the basis of documents produced or ordered to be produced, the court shall not reserve the right to file a suit.

(3) As regards questions of fact which have to be proved by adducing other evidence, the court may decide the question provisionally reserving the right to file a suit when a finding on merits can be given without holding a detailed inquiry.

## CHAPTER XLVI

### Appeals

451. *Appeals.*— (1) An appeal from the final order made in the inventory proceeding shall lie to the competent Court depending upon the value of the assets and such appeal shall be deemed to be an appeal under section 96 of the Code of Civil Procedure, 1908 (5 of 1908).

(2) An appeal from order shall lie from every order, other than a merely administrative order, made in inventory proceeding to the competent court depending upon the value given to the assets at the time the order is made and appeal shall be deemed to be an appeal under section 104 of the Code of Civil Procedure, 1908 (5 of 1908).

## CHAPTER XLVII

### Preventive measures

452. *Appointment of Receiver.*— (1) After the filing of the inventory proceeding, pending appointment of the head of the family, where there is a just apprehension that the assets of the estate are in danger of being wasted, damaged or dissipated or alienated, the court may, upon an application of any party interested in the preservation of the assets, and, or of its own motion, order that a list of the assets with their description and estimated value, be prepared. The court shall place the assets in the custody of a Receiver who may be either the applicants the person in possession or any other interested party. The Receiver shall manage the assets and render accounts. The list of assets prepared under this clause shall form part of the list of assets in the inventory proceeding.

(2) When the court is satisfied that the delay will defeat the very object of the relief sought, it may pass such order, ex parte.

(3) Upon hearing the person dispossessed by the ex parte order, the court may either confirm or vacate the ex parte order passed. In case it is confirmed, such assets shall be handed over to the head of the family appointed in the inventory proceeding.

453. *Temporary Injunction.*— When an interested party has reasonable apprehension that

another interested party may cause damage to the assets of the inheritance, or commit acts which may cause grave and irreparable injury to his right, he may apply for a temporary injunction or such other order as may be just and proper to avoid such injury or damage. The court may pass an interim ex parte order, when it is satisfied that the delay will defeat the very object of the relief sought.

## CHAPTER XLVIII

### Miscellaneous

454. *Cause title.*— (1) The cause title in the initial petition instituting inventory proceeding shall set out the name and full address of the petitioner and the name and the permanent residence of the estate leaver.

(2) It shall be the duty of the head of the family to submit a fresh cause title in inventory proceeding setting out the names of the estate leaver, the petitioner, head of the family, and also the names of all the impleaded interested parties.

(3) It shall be the duty of the head of the family to submit to the court an amended cause title whenever a party is added or deleted.

(4) The causes title in the inventory proceeding shall be in the form as specified below subject to such modifications as may be required.

In the Court of .....

Inventory Proceeding No. .... of .....

IN THE MATTER OF

INHERITANCE OF THE LATE XYZ

1. ABC..... Petitioner.

2. LMN ..... Head of the family.

And

3. PQN.

4. RST.

etc. .... Interested Parties

455. *Stamp duty payable.*— (1) The inheritance shall be liable to pay stamp duty of one percent of the net value of the assets as shown in the chart of partition.

(2) The interested parties shall be liable to share the duty payable in proportion to their share in the inheritance.

(3) Where any of the interested parties does not pay his share of the duty payable, any other interested party may pay such share of duty and recover the amount in the same proceedings with interest at the rate of 10% per annum. Where the defaulting party is entitled to owelty, such amount shall be adjusted against the owelty, and for the balance, there shall be a charge on the assets allotted to him and he shall not be entitled to the possession of those assets.

456. *Fixation of the amount of costs.*— (1) The costs of inventory proceeding shall be at the discretion of the court.

(2) Where a party is guilty of causing unjustified delay, the court may, for reasons to be recorded, make an order requiring such party to pay to the other party or parties such costs as it deems fit.

457. *Enforcement of Order.*— (1) After the final order of partition is made, any party to whom assets have been allotted, may apply in the inventory proceeding that such assets be handed over to him.

(2) If the party in possession fails to hand over immovable assets the delivery of possession shall be made by the court by removing such party from possession of the assets. With regard to movables, the delivery of possession shall be made by the court by handing over such assets to such party.

(3) Where monies are payable, the court shall order the party to liable to pay, to deposit the amount due in the court within a reasonable period failing which the court shall proceed to attach the assets of the defaulting party and sell them in the public auction. The amount realized by such auction shall be paid to the party entitled to it. The balance, if any, shall be refunded to the defaulter.

(4) Any order, other than the final order, which is enforceable, shall be enforced in the manner set out in this section.

(5) The defaulting party shall bear the cost of the attachment and sale.

458. *Summary proceeding.*— Inventory proceeding shall be summary proceeding and shall not be governed by the Code of Civil Procedure, 1908 (5 of 1908), unless specifically provided for.

459. *Power to make rules.*— The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

460. *Repeal and Savings.*— (1) On and from the date of coming into force of this Act, all provisions of the laws in force at present corresponding to any of the provisions of this Act shall stand repealed.

(2) Notwithstanding such repeal,—

(a) anything duly done or suffered or any right, privilege, obligation or liability acquired, accrued or incurred or any penalty, forfeiture or punishment incurred under any law so repealed shall be deemed to have been done, suffered, acquired, accrued or incurred, as the case may be, under the corresponding provisions of this Act;

(b) any fee, duty, charges, fine, etc. payable under any law so repealed or any books, forms, etc. in use of under any law so repealed shall, to the extent permissible and expedient, continue to be payable or used, as the case may be, till new fees, duties, charges, fines, books, forms, etc. are prescribed or fixed, as the case may be, under the provisions of this Act.

(3) All proceedings pending under the repealed laws before any court in the State of Goa, as on the date of the coming into force of this Act, shall be continued in terms of the procedure provided in this Act.

Secretariat,  
Porvorim-Goa.  
Dated: 22-09-2016.

SUDHIR MAHAJAN,  
Secretary to the  
Government of Goa,  
Law Department (Legal Affairs).