Forms of Wills and the Requirements for their Validity

Description

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A will is the most satisfactory means of arranging for the devolution of a person's property after death. While making a will, the testator makes a disposition of his/her property through a unilateral declaration of intention which does not require receipt by another party to become complete. There are three types of wills. These are public wills, holographic wills and oral wills. All of them are required to be made by following the formal requirements prescribed by the law. Failure to fulfill these formal requirements may cause the invalidation of the will as a whole. The law is so strict as far as fulfillment of the formal requirements is concerned.

1. **Public Will and the Requirements for its Validity**

A public will is a will that is read in the presence of the testator and witnesses. To be valid Will the public will has to fulfill the following requirements:-

a. **The public will shall be made in writing in the presence of the testator and witnesses**

The public will can be made by the testator before four witnesses or before an authority with two witnesses.

In case of public will before four witness: The testator can write the will in the presence of the witnesses. That is, the testator may write the will by himself/herself or he/she may get it written by another person under his/her dictation in the presence of witnesses. The most important thing, as far as a public will is concerned, is the will has to be written in the presence of the testator and of four witnesses. In this regard the federal Supreme Court cassation bench had given interpretation under file number 14238.

In case of public will before an official and two witnesses :When the public will is before a registrar or a notary acting in the discharge of his duties.in order for a will to be valid, the testator must declare their wishes in front of a registrar or notary, who is considered as two witnesses in this context. The testator's words must be clearly heard by both the official and the two other witnesses present then the registry write it down. Additionally, the official must be in their workplace while this process occurs. This interpretation has been clarified by the Federal Supreme Court Cassation Bench under file number 774734.

b. **The Will has to be read before the testator and the witness**

Reading the will in the presence of the testator and of four witnesses is mandatory. But Reading the will in the presence of the testator and of four witnesses is not sufficient. There must be an indication of the fulfillment of this requirement in the will itself. It can be indicated in the following manner: *"…This will is read in the presence of the testator and of four witnesses."* If the will does not contain such an

indication, it could be invalidated. The absence of such indication may cause the invalidation of the will. But the indication of reading the will in the above manner in not required in case of public will before a court registrar, a notary or a judge in his/her official capacity.

c. **The testator and the witnesses should put their signature immediately**

After the will is read the testator and the witnesses should put their signature or tub immediately. This is a very strict rule. Assume that one of the witnesses goes out after the completion of the reading but before the will is signed. If he/she comes back after a little while, and when he/she is back, the testator and the three witnesses have already signed the will, the will shall be of no effect and it is subject to invalidation. But if one or two of the testators sign on the will on other days after the checking what is written and read in their presence it creates no problem.

d. **The date on which the will is written must be indicated**

A will is considered invalid unless it includes the date it was written. It's important to note that the date of writing the will and the date it is presented to witnesses may differ. However, this is not an issue because the law does not require these dates to match. What matters legally is that the date of writing is clearly indicated, not the date on which the will is read to witnesses.

e. **The number of witness shall meet what is stated in the law**

For public will to be valid the numbers of witnesses have to be four. What the law wants is the meeting of the minimum requirement there no problem if the number of witnesses exceed what is stated in the law.

The presence of a notary or judge holds significant weight when acting in an official capacity. If their name is listed as a witness on the will, they are regarded as fulfilling the role of three ordinary witnesses. However, if the notary or judge is not indicated as a witness, the legal framework stipulates a possibility to reduce the number of required witnesses to two. In this scenario, one of the witnesses must be a court registrar, notary, or judge acting in their official capacity. It's important to note that social court judges are included in this provision, meaning they also represent three ordinary witnesses when participating as a witness in an official capacity. The Federal Supreme Court has clarified this interpretation in case file number 17742, volume 5, reinforcing the role of social court judges in the witness requirements for wills.

f. **Capacity to be a witness**

Witness capacity is a special form of legal capacity. According to the Revised Family Code, a person can start being a witness when they turn 16. Before that age, a minor cannot witness a will. To be a witness, a person must understand the language of the will and be able to read it. Additionally, people related by blood to the person making the will (the testator) can also be witnesses.

A deaf person can take part in a will as a witness if he/she is literate. He/she can read the contents of the will just after it is drawn up. If he/she is unable to read the contents of the will, his/her presence serves no useful purpose as he/she has no mechanism of knowing the contents of the will. Blindpeople may take part in a will as witnesses so long as they hear when the contents of the will are read.The only thing expected of them is to understand the language in which the will is drawn up.

2. **Holography Will and Requirements for its Validity**

Holograph will is a will that is totally made by the testator himself/herself in the absence of witnesses. Only literate persons may make a holograph will. It is the testator that writes a holograph will totally and if there is an additional word (even if it is a single word) written by the hand of another person, that is a sufficient cause to invalidate the will wholly. To be valid will the holograph will has to fulfill the following requirements.

a. **The testator has to be a literate person**

Only literate persons may make a holography will. This because unless the testator is a literate person it is difficult for him/her write and even understand what he/she wrote. Accordingly the law says that a holograph will shall be of no effect where it appears that the testator, being illiterate or not knowing the language in which the will is drawn up, has reproduced graphic symbols without understanding their meaning.

b. **The testator must clearly state that the document is a will**

The testator must explicitly indicate, in the holograph will, that it is a will. Absence of such an indication is also a ground for the invalidation of the will. This is intended to distinguish holographic wills from other similar documents.

c. **Requirement of date, month, year and signature**

For a holographic will to be considered valid, the testator needs to date and sign every page. If there is single page that is not signed and dated the hole will became invalid.

3. **Oral Will**

Oral will is a will made verbally to two witnesses. Testator does not make an oral will under normal circumstances. He/she makes such a will when he/she feels that he/she is going to die within short period of time, particularly after accidents, shocks or similar situations. The testator can make only restricted testamentary dispositions through an oral will. By means of an oral will, a testator may only give directives regarding his funeral, make dispositions for particular legacies the amount of each of which may not exceed five hundred Ethiopian dollars,make provisions regarding the guardian or the tutor of his minor children.

If a testator made an oral will that exceeds five hundred birr, the will remains valid. However, the beneficiary will only receive five hundred birr, and any amount exceeding that will be reduced accordingly.

To sum up,the validity of wills is crucial for ensuring the proper devolution of a person’s property after

death. There are three main types of wills—public, holograph, and oral—each with specific requirements that must be strictly adhered to. Failure to meet these specific requirements can lead to the invalidation of the will, so it is important to follow legal requirements in will making.

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