

Why should one set out terms clearly in wills?

Joint wills are made by two or more testators and treated as the individual will of each one. Mutual wills, if specified otherwise, cannot be revoked

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A will is an instrument by which a person makes a disposition of his movable and immovable properties, which will take effect after his death. The Indian Succession Act, 1925, enlists the various requirements for writing a valid will. Though there is no prescribed format for the wordings to be used for writing a will, the words should be such that the intention of the person writing the will (testator) can be ascertained clearly. This will ensure that the testator's wishes are carried into effect fully and his properties are accordingly distributed after his death.

Although there is no codified

law regarding joint and mutual wills, there have been several instances where the courts have interpreted the words of the will and have categorised the will in question as a joint will or a mutual will.

Joint will

In various judgments by the high courts and the Hon'ble Supreme Court, a joint will has been described as a will which is made by two or more testators as a single document. Each testator may dispose of either of the properties solely owned by him and/or properties jointly owned by him with other testators through a single joint will. Joint wills can be revoked at any time by either of the testators so far as it applies to each testator and his properties unless the

testators specify otherwise. If the testators specify that neither of them is entitled to revoke a joint will then it cannot be varied, revoked or modified later. To put it simply, a joint will is in effect a single instrument whereby two or more persons give effect to their intentions regarding the manner in which their respective properties are to be bequeathed after their death. Thus, a joint will is in essence a will of each of testator making the will and it will take effect on the death of each testator as his individual will and his property would be disposed of in the manner described in the joint will. To illustrate, a husband and a wife execute their wills in a single document with respect to inheritance of their respective properties. The husband

predeceases the wife and his property is disposed of according to his wishes as stated in the joint will. Both before and after the death of the husband, the wife is free to revoke or modify the will and settle her properties according to her wishes unless it has been otherwise specified in the joint will.

Mutual wills

Mutual wills, as distinguished from a joint will are also described as reciprocal wills or mirror wills. Mutual wills may be made either by a joint will or by separate wills. By making mutual wills, two or more testators confer upon each other reciprocal benefits. Reciprocity of benefit means that there has been a bargain to give and take. In the context of mutual wills, the testators perform the roles of

testator and beneficiary towards each other but where the testators are not each other's beneficiaries; there can be no question of a mutual will.

The testators are free to specify whether or not such mutual wills are revocable by them. If the testators desire that the mutual wills are irrevocable, they must specify clearly in their mutual wills. In the absence of express or clear wordings, courts will interpret the will to gather the intention of the testators. Merely because a mutual will has identical/ reciprocal terms is not sufficient to establish that a mutual will is irrevocable. If no such clear understanding is established, each testator remains free to revoke his/her will. To illustrate, a husband and wife entered into a binding agreement to create irrevocable

mutual wills under which their properties were to be inherited by their son and daughter in equal proportion. The husband predeceased the wife. His property devolved according to the terms agreed upon in the mutual will. Subsequently, the wife executed a new will under which she bequeathed her property only to the son. The subsequent will of the wife is invalid as she was bound by her agreement and was under an obligation not to revoke the earlier executed mutual will.

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