

**Testate Succession General Rules**

**Devolution of Property on death**

- property may succeed under provision of an ante nuptial contract
- a inter vivos trust
- a donatio mortis causa trust
- a will or codicil
- or in terms of the law of intestate succession

created while alive  
created by the will upon death

**Definition and nature of a will and codicil**

- Will: defined as a declaration in a document executed in the manner required by law by the person making it, the testator, in regards to the devolution of the testator's property after the testator's death
- Codicil: defined as a testamentary document executed in the manner required by law, constituting an addendum or supplement to a will previously made, for the purpose of adding to or varying the provisions of that Will

**Joint or Mutual Wills**

two or more people may execute their Wills in one document. Joint Wills are prima facie, construed as separate Wills of the parties.

Should they wish to execute reciprocal benefits it should not be written by either of them as the survivor would be automatically be disqualified from the will

**The importance of the date of execution and the date of death**

The Will can only speak from the date of death and any and all beneficiaries have only *spes successionis* and cannot claim their part of the estate before the Will can bequeath them any part thereof. And only if they have the necessary capacity at that time

**The revocable nature of a Will and Pacta Successoria**

- dispose of property
- dispose of rights in property
- dispose of rights to property belonging to third parties
- release debtor from debt
- appoint executors, trustees and administrators and regulate their powers
- appoint guardians and appoint persons to be vested with the custody of his/her minor children

**Matters which may be regulated by Will**

i'm part owner of a property, but don't want it any more

cannot make a contract to give you part of an estate after my death to evade law of succession

i cannot sign you into a binding contract giving you something that i might inherit as a heir.

- may at any time prior to death revoke the Will
  - only exception is where there is a joint or mutual Will that has massed estates and the one testator has adiated to that Will
  - A Will regulating succession (pactum successoria) is invalid except where there is a donatio mortis causa that came into effect
  - or where there is a provision for the devolution of a property to succeed is based in an antenuptual contract
- Pacta Successoria*
- contracts where the *pactum* relates to rights of succession to one or both of the contracting parties
  - contracts where the *pactum* relates to an expected succession to a third party by one of the contracting parties