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Quotes about Life, Death, and Property

- Americans think that death is optional. Jane Walmsley, *Brit-Think, Ameri-Think* (2003)
- A man's dying is more the survivor's affair than his own. Thomas Mann, *The Magic Mountain* (1924)
- All men think all men are mortal but themselves. Edward Young, *Night Thoughts on Life, Death and Immortality* (circa 1742)

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MEANING OF ESTATE

An Estate is the total property, real and personal, owned by an individual prior to distribution through trust or will.

Real property is real estate.
Personal property includes everything else E.g., cars, household items and bank accounts.

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ESTATE PLANNING

Estate planning is the process by which an individual or family arranges the transfer of assets in anticipation of death or incapacitation.

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ESTATE PLANNING VS. LEGACY PLANNING

- Your estate includes all assets of any value that you own. This includes non-financial assets as well as financial assets, including real property, business interests, investments, insurance proceeds, retirement accounts and personal property.
- Your legacy also includes important decisions that ensure your family's core values, responsible behaviors and community involvement, are passed on to future generations. Legacy also includes personal effects, such as family heirlooms, stories, and accumulated wisdom and life lessons of your family.

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What is Estate Planning?



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What is Legacy Planning?

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OBJECTIVES OF ESTATE PLANNING

- Transfer of Assets to Beneficiaries
- Pay least amount of taxes
- Planning for incapacity - Power of Attorney
- Orderly business succession
- Who shall receive and when

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Successful Successions

- Seventy Percent (70%) of all estate plans fail.

Including beneficiaries in the long-term strategic planning creates a Cooperative environment where everyone “buys-in” instead of being dictated a course.

A Good Family Mission Statement helps too.

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Who Needs To Plan

Almost Everyone

- Married Couples
- Parents
- Divorced Couples
- Professionals
- Business Owners

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Almost Everyone

- Real Estate Investors
- Inventors
- Painters, Writers, Performers
- Pro Athletes
- Future Millionaires

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LIFE CHANGES & ESTATE PLANNING

- Marriage
- Birth or adoption of child(ren)
- Divorce
- Death of child or spouse
- Opening new business
- Changes in your financial property

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WILL

Section 2(h) of the Indian Succession Act, 1925, defines Will as meaning
 “the legal declaration of the intention of testator with respect to his property, which he desires to be carried into effect after his death.”

Characteristic – Revocability by testator during his lifetime

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KEY ASSUMPTIONS TO AVOID MAKING A WILL

- Will live forever
- Will never be disabled
- Will never require long term care
- Will never need another person to make medical decisions for you



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KEY ASSUMPTIONS TO AVOID MAKING A WILL

- Estate tax laws won't apply to you
- Estate planning is easy, any one can do it, at any time
- No need to think about planning today as there will always be tomorrow.



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ASSUMPTIONS TO AVOID MAKING A WILL

- Will live forever
- Will never be disabled
- Will never require long term care
- Will never need another person to make medical decisions for you
- Estate tax laws won't apply to you
- Estate planning is easy, any one can do it, at any time
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EXCUSES

- Only the wealthy have estates
- My spouse will inherit all my property tax free
- I don't need to do any planning

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10 QUESTIONS TO ASK YOURSELF

- Are you expecting to live longer
- Do you have children, are they from more than one relationship
- Have you been married more than 1x
- What are your hopes and dreams
- What have you done to assue achieving your hopes & dreams?

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10 QUESTIONS TO ASK YOURSELF

- Are you prepared for a catastrophic event?
- Are your assets protected in the event of long term care?
- Do you want your estate to incur the costs, delays, expense and public nature of a probate process?
- What have you done to minimize state or federal estate taxes?
- If you have done nothing how will you protect your family and assets?

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ESTATE PLANNING


- PRIMARY FUNCTION OF AN ESTATE PLAN
 - PEACE OF MIND
 - MAINTAIN CONTROL
 - PROTECT ASSETS FOR YOURSELF & LOVED ONES
 - ESTATE TAXES
 - CREDITORS
 - SPECIAL NEEDS
 - AVOID PROBATE



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ESTATE PLANNING

- WHAT CONSTITUTES A GOOD ESTATE PLAN
 - WELL THOUGHT OUT
 - COMPREHENSIVE
 - ACHIEVES YOUR GOALS AND OBJECTIVES DURING YOUR LIFETIME AND BEYOND



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ESTATE PLANNING

- WHAT CONSTITUTES A BAD ESTATE PLAN
 - NOT THOUGHT OUT;
 - NOT PREPARED FOR THE UNTHINKABLE;
 - DOES NOT PRESERVE FAMILY HARMONY;
 - DOES NOT PRESERVE ASSETS;
 - NO PLAN.

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ESTATE PLANNING

CONSEQUENCES OF POOR OR NO PLANNING

- May need a guardianship
- Medical wishes may not be carried out
- State law via a public probate process decides who receives your assets and in what proportions;
- Court decides who raises your minor children;
- Heirs may unnecessarily incur estate taxes.

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KEY TERMS

- Will is also called as Testament
- Intestate – Dying without a will
Ramesh died intestate.
- Testator – person making the will
- Decedent – an individual who has died
- Descendants or Issue – children, grandchildren, or further generations
- Beneficiary or Legatee – person receiving share of property under the will
- Heir – An individual entitled to property in absence of a will

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KEY TERMS

- Executor – person named in the will who will divide the assets and do legal procedure of asset transfer after testator’s death. Can be more than 1 person
- Probate – distribution of deceased’s assets as per court orders. Lengthy and time-consuming process. Happens in case of intestate or if will is challenged.
- Administrator – person appointed by court who will divide the assets and do legal procedure of asset transfer after testator’s death as per court orders
- Witness – 2 independent witnesses have to sign the will (cannot be beneficiaries)
- Exordium clause – mention testator’s name, residence and that the document is a will

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KEY TERMS

- Guardian - The persons who will take care of your dependents. They should know your children already (if possible), have similar philosophic views to your own, and be financially able to take on the responsibility of caring for your children.
- Trustee – if client’s will creates Trust – responsible for managing the trust’s assets and providing for beneficiaries
- Codicil – a sheet attached to a will stating changes made subsequently. It avoids creation of a new will for incorporating minor changes.

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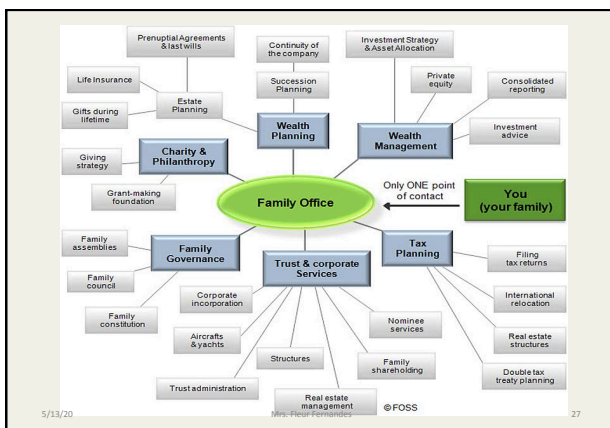
KEY TERMS

- Family trust – A trust established to benefit an individual’s spouse, children or other family members. A family trust is often the bypass trust or credit shelter trust created under a will.
- Family office – An arrangement to coordinate the legal, tax and other needs of the family, either through a true office staffed with employees or through outsourcing to the family’s regular advisors. Often, a family’s private trust company serves as the family office.

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FAMILY OFFICES

- India is home to 90 mammoth single family offices (SFOs) that manage private wealth in excess of \$100 billion.
- While SFOs are the preserves of the rich, the not-so-rich can avail themselves of the services of multi-family offices (MFOs) to manage their wealth. MFOs take wealth management mandates from smaller families for a fee every year. There are close to 30 MFOs in India

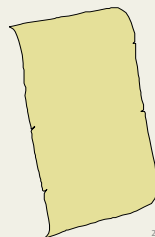
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WILL - REQUIREMENTS

- 18 Years of Age or Older
- Testamentary Capacity (Sound Mind)
- Intent – revocable disposition
- Voluntary - No Undue Influence
- Proper disposal of property – listing all assets and distributing
- Sign and date
- 2 Impartial Witnesses.
- Content knowledge
- Act cannot be delegated
- Final will



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WILL - REQUIREMENTS

- Property should be clearly specified
- Identity of beneficiary, father’s name and relationship with testator to be clearly specified
- Property should be legally bequeathable
- Each bequest of property in new paragraph
- Executors, trustees or guardians clearly described and powers defined, consent of appointment previously taken
- Any corrections or alterations signed by testator and both witnesses
- No blank spaces

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IMPORTANT CONSIDERATIONS WHILE FRAMING WILL

- Evaluate assets and liabilities
- Liquidity needs (current, at death, asset transfer)
- Assessing survivors' needs
- Providing for spouse
- Providing for children (separate medical needs, educational and marriage expenses, financial maturity)
- Beneficiary designation

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TYPES OF WILL

- Privileged Wills – by soldier, airforce or navy personnel giving up property during employment
- Unprivileged will – make by a civilian
- Conditional or Contingent will – Eg. Will to be executed only if testator dies in current year
- Joint will – Two people prepare will as a single document

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TYPES OF WILL

- Mutual will – two testators name each other as beneficiary
- Duplicate will – will prepared in 2 copies – other copy kept in locker or with beneficiary
- Concurrent will – separate wills for properties held in different countries
- Sham will – not for bequeathing but some other objective
- Holograph will – handwritten by testator

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METHODS OF ESTATE PLANNING

- During Lifetime – Trust, Power of Attorney, Gift, Partition
- After death – Testamentary Trust, Will, Succession, Life insurance



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GROUNDS FOR WILL CONTEST

- LACK OF TESTAMENTARY CAPACITY.
- UNDUE INFLUENCE
- FRAUD
- IMPROPER EXECUTION



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TRUSTS

- A separate entity that holds property for the benefit of either the grantor (creator) of the trust or his or her heirs. A trustee manages the assets that are placed in the trust and makes sure that the terms of the trust are followed.

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DEFINITION

Section 3 of the Indian Trusts Act, 1882, defines a Trust:

“A “trust” is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.”

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IMPORTANT MEANINGS

- The person who reposes or declares the confidence is called the “author of the trust” or “grantor”
- The person who accepts the confidence is called the “trustee”
- The person for whose benefit the confidence is accepted is called the “beneficiary”
- The subject-matter of the trust is called “trust-property” or “trust-money”

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IMPORTANT MEANINGS

- The “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner of the trust-property
- The instrument, if any, by which the trust is declared is called the “instrument of trust”;
- A breach of any duty imposed on a trustee, as such, by any law for the time being in force is called a “breach of trust”

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BENEFITS OF TRUST

- No probate
- Property will pass immediately to beneficiaries
- Terms of the trust remain private
- Good way to
 - make gifts to minor children
 - provide for care of elderly
 - manage own future incapacity
- Return on assets, like shares, not subject to taxes

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DISADVANTAGES OF TRUST

- Need to draft trust document
- Loss of legal control of assets

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TYPES OF TRUST

ON BASIS OF INTENTION

- Express Trust
- Implied Trust
- Constructive Trust (life insurance)
- Resulting Trust (own favour)
- Precatory Trust (benefit of definite person or object)

ON BASIS OF PURPOSE

- Private Trust (specific individuals)
- Public Trust (fluctuating body of persons; could be public at large or section of public following particular faith, profession, age; of permanent and indefinite nature; generally charitable trust)
- Religious Trust (either private or public trust)

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REQUISITES FOR A TRUST

- Existence of Author
- Clear intention of author to create a trust
- Purpose of the trust
- Beneficiaries of the trust
- Trust property
- Divesting of ownership by author

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TRUST DEED

- The instrument by which the Trust is declared is called instrument of trust, more commonly Trust Deed.
- Not necessarily written form
- Written form compulsory when:
 - Created by Will
 - In relation to immovable property of Rs.100 or more for a private trust
 - Formation of Society under Societies Registration Act, 1860
 - Formed as a company

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EXAMPLES OF VOID TRUST

- (a) A conveys property to B in trust to apply the profits to nurture girls to be trained up as prostitutes.
- (b) A bequeaths property to B, in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children.
- (c) A, while in insolvent circumstances transfers' property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

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TAX EXEMPTIONS FOR A TRUST

- Income derived from property held under trust wholly for charitable or religious purposes
- Expenditure incurred outside India when such application of income (expenditure) promotes international welfare in which India is interested. Prior approval of CBDT required.
- Voluntary donations received with specific direction of donor that it shall form part of the corpus of the trust
- LTCG and STCG exempt from tax to the extent they are reinvested in a new capital asset applied wholly for religious or charitable purpose
- Upto 15% of income derived during the year from non-charitable or non-religious purposes can be set apart for future purpose or accumulated and is eligible for exemption.

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DEDUCTIONS AVAILABLE TO TRUST

All categories of assesses can make donations under Section 80G of Income Tax Act, 1961 and get tax deductions

Types of Donations not eligible-

Donation to Foreign Trust – not eligible

Donation to Political Parties u/s 80GGC– not eligible, only applicable to individuals

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ELIGIBLE DEDUCTIONS

Donations with 100% deduction without any qualifying limit:

National Defence Fund, Prime Minister's National Relief Fund, National Foundation for Communal Harmony, National Cultural Fund

Donations with 50% deduction without any qualifying limit:

Prime Minister's Drought Relief Fund, Indira Gandhi Memorial Trust, Rajiv Gandhi Foundation

Donations eligible for 100% deduction subject to 10% of adjusted GTI:

Approved local authority or institution promoting family planning

Donations eligible for 50% deduction subject to 10% of adjusted GTI:

Any local authority for any charitable purpose, Any authority dealing with housing accommodation

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Mode of Payment

Contribution can be made via cheque, draft or cash. But deduction is not allowed for donations made in cash exceeding Rs 10,000. In-kind contributions such as food material, clothes, medicines etc do not qualify for deduction.

From FY 2017-18 onwards

Any donations made in cash exceeding Rs 2000 will not be allowed as deduction.

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DOCUMENTS REQUIRED TO CLAIM DEDUCTION U/S 80G

Stamped Receipt issued by recipient trust containing –

- Name, address and PAN of trust,
- Registration no. of Trust issued by IT Department u/s 80G,
- Name of donor,
- Amount donated in figures and words

In case of donation eligible for 100% deduction, Form 58 also required from trust.

Registration no. of Trust issued by IT Department u/s 80G must be printed on receipt.

Earlier, registration was valid for 2 years only and required renewal. From 1 October 2009, renewal not required for firms already registered as on that date.

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Role of the Estate Planner

- What exactly is the **estate planner's role**?
 - To do **exactly** what the client says that they want?
 - To **educate** the client?
 - To be a **zealous advocate**?
 - To be the **messenger of mortality**?
 - To transmit property with the **lowest possible tax consequences**?
 - To help the client put together a **legally binding estate plan** that can withstand attack by disgruntled folks?

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