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Inheritance Laws & Succession Planning

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Key Topics

- *Key Inheritance Laws in India*
- *Importance of Succession Planning*
- *Initial Steps*
- *Wills*
- *Trusts*
- *Other Relevant Laws*

Key Inheritance Laws

Intestate / non-testamentary succession:

- **Hindu, Buddhist, Sikh or Jain:** Intestate succession governed by Hindu Succession Act, 1956.
- **Parsis:** Intestate succession of Parsis is governed by the provisions under Chapter III of the Indian Succession Act, 1925 which also lays down specific rules for disposition of the properties of a Parsi dying intestate.
- **Muslims:** As per the Muslim Personal Law (Shariat) Application Act, 1937, non-testamentary succession of Muslims is governed by Muslim Personal Law.
- **Christians:** Non-testamentary succession of Christians shall be as per the provisions of the Indian Succession Act, 1925.

Testamentary succession:

- Hindu Succession Act permits any Hindu to dispose off by will any property which is capable of being disposed by him / her as per the Indian Succession Act. Indian Succession Act allows any person of “sound mind” to dispose off property by will.

Hindu Succession Laws

- *Succession on death of a Hindu Male*

- Rule for Class I heir
- Rule for Class II heirs

- *Succession on death of a Hindu Female*

- **Hindu Undivided Family**

- 2005 amendment – daughters as coparceners. Example
- Difference between A) pre 1956 – (absolute survivorship) B) 1956 – 2005 (clarified survivorship) and C) post 2005 (succession)

- **Devolution of property:**

- HUF property
- Self acquired property
- Ancestral property
 - pre 1956 - successions opened under pre 1956 law may be subject to Mitakshara system
 - post 1956 – self acquired property by succession does not become ancestral property

Need for Succession Planning

*“..in this world nothing can be said to be certain, except **death and taxes.**”*

Benjamin Franklin

Some of the key reasons to undertake succession planning:

■ *Avoiding Family Disputes* - *Ranbaxy, Ambanis, Singhania, Apollo Tyres*

■ *Personal Perspective:*

- Allocation of specific assets to the relevant successors;
- Ensuring accommodation, funding of basic expenses, maintenance etc.;
- Ensuring devolution of property does not happen to unintended beneficiaries; and
- Disproportionate distribution of assets;

Need for Succession Planning (contd.)

- Business perspective:
 - Succession in family businesses- ownership and management;
 - Instability in control over companies owned by the family.
 - Ensuring continuity of family business;
 - Identifying role of next generation;
 - Running of new businesses;
 - Use of family brand;
 - Right to liquidate holding; and
 - Ring fencing of certain properties.

Succession Planning – First Steps

- **Tax** – *This will be discussed in detail in the next segment.*

- **List of Assets and Liabilities:** It is important to list out all the assets one owns before commencing the succession planning exercise. Important considerations:
 - Whether the asset is wholly owned or jointly owned with other people?
 - Whether the person is the legal owner of the property sought to be bequeathed?
 - If a person is a member of an HUF, whether the asset intended to be bequeathed is HUF property or self acquired property?
 - If a person is a trustee, whether the property intended to be bequeathed is a self acquired property?
 - Location of the asset

- **Determination of fiduciaries & beneficiaries:** Succession planning always includes selection of a person(s) who shall assist with carrying out the wishes of the person undertaking the succession planning exercise for the benefit of a near and dear one or purpose. Considerable thought must thus go into selection of fiduciaries and beneficiaries

Tools of Succession Planning

The following are the main succession planning tools:

- **Wills:** A will sets forth the testator's/ testatrix's wishes regarding the distribution of his/ her property and the care of descendants/ next of kin if any. Properties under the will can be directly bequeathed or bequeathed through a testamentary trust to the concerned legatee.
- **Trusts:** A trust is a fiduciary relationship between the settlor and the trustees where the settlor gives the trustee the right to hold title to property or assets for the benefit of a third party, the beneficiary. Trusts can be based on the ultimate object. A trust can be revocable, irrevocable, discretionary or determinate.

There are certain other associated constructs of succession planning also:

- **Family Constitutions:** This is a document which typically sets out the rules for transition of family business from one generation to the next. It recognizes family values and objectives, roles and responsibilities, business relationships and certain dos and don'ts.
- **Family Offices:** Managing multiple businesses and investments of a family on a day to day basis is not necessarily the role of KMPs of the main company. To address this, business families are setting up family offices which run and manage the family business independent of the main company.

Wills

Every individual who is a major, of sound mind and with free consent is capable of making a will. Some of the key considerations while coming up with a will are:

- *Bequest of specific assets eg. paintings & art, jewelry, securities etc.*
- *Beneficiary waterfall*
- *Choice of Executors and Witnesses*
- *Process of applying for probate / letters of administration*

Wills – Practical Considerations

- *The will must set out the intention of the testator to bequeath his estate unambiguously.*
- *Wills can be revoked at any time during the lifetime of the testator.*
- *A will is not required to be stamped. A will need not be registered.*
- *A will need not be printed on legal paper, it may be printed on plain paper as well.*
- *International wills probated outside the country can be enforced in India subject to an application made to the relevant court seeking letters of administration for the Indian estate mentioned in the will.*

Trusts

Classification of Trusts

- ***Beneficiary based***
 - Public trusts
 - Private trusts

- ***Distribution based***
 - Specific trust (or determinate trust)
 - Discretionary trust (or indeterminate trust)

- ***Revocation based***
 - Revocable trust
 - Irrevocable trust

Key Trust Concepts

- *Private trusts (used in succession planning) are governed by the Indian Trusts Act, 1882*
- *Settlor, trustee and beneficiary(ies)*
 - Settlor - any person competent to contract
 - Trustee –any person competent to contract
 - Corporate Trustee as trustee
 - Protector/ Administrator – Untested commodity
 - Beneficiary - any person competent to hold property
- *Trustee holds property for the benefit of & not on behalf of the beneficiary*
- *Rule against Perpetuity*
- *Revocation of Trust*
 - *By the settlor at will*
 - *Consent of all beneficiaries*
- *Amendment of Trust*
 - *As per trust deed or by consent of all beneficiaries*

Benefits of a Trust as a tool of Succession Planning

- ***Trust comes into effect during lifetime of settlor***
 - Trust allows settlor to identify and solve issues relating to management / administration during lifetime.
 - Settlor may be trustee – can implement and see results during lifetime.
- ***[Almost] Perpetual***
- ***No process involved in settling a Trust***
 - A Will may require a probate which is a time consuming process.
- ***Enables provision of financial security to dependents through trusts***
 - In certain cases, children and other dependents e.g. dependent child, elderly parents, etc. may be financially protected by settling certain assets in a trust, to be administered by the trustee for the benefit of the dependents.
- ***Segregation of ownership and management possible under a Trust***
- ***Trusts applied for succession planning of promoters of listed companies***
- ***Flexibility of common control over assets possible under a Trust***
 - Linking distribution of the assets to certain milestones, such as education, marriage, age, so as to protect against dissipation of assets and yet provide for the financial needs to the beneficiaries.
 - Gives children benefits of family wealth without losing control over key assets.

Other Laws - SEBI Takeover Regulations

- **Wills/ Intestate inheritance**

- Acquisition by way of transmission, succession or inheritance is exempt from open offer requirements

- **Trust Structures:**

- Requires exemption under Regulation 11 from SEBI. Automatic exemption under Regulation 10 not available.
- Trustees and beneficiaries to be individual promoters/ their relatives/ lineal descendants
- On dissolution, assets to be distributed to beneficiaries/ legal heirs
- Transferors to be disclosed as promoters for at least 3 years – impact on demergers / newly listed companies

Other Laws - Foreign Exchange Laws

■ **Wills**

- Inheritance by resident of foreign assets – Permissible
- Inheritance by non-resident of Indian assets - Permissible.

■ **Trust**

- Transfer to trust a capital account transaction – Prohibited unless permitted.
- Beneficial interest – May require RBI approval for distributions from trusts.

Other Laws- Stamp Duty

- **No stamp duty on wills.**
- **No stamp duty on inherited property. Court fees however would be payable.**
- **Transfers and distributions from Trusts – Stamp duty is payable as per applicable rates.**

Inheritance Enforcement Process

■ *Steps for enforcing / receiving inheritance.*

- *Probate - granted to executor identified in will*
- *Letter of administration – granted to a relative of deceased if the deceased died intestate*
- *Legal Heirship Certificate issued by District Manager.*
- *Steps*
 - *Application to competent court (High Court / District court of place of residence or immovable property)– annex proof of death and will. Typically High Court is approached especially if properties are located across states. The Court fees would be payable ~2-8% of property value. Pecuniary value also relevant in determining High Court / district court.*
 - *Notice to next of kin*
 - *Publication in newspapers regarding the request for grant of probate*
 - *List of assets to be submitted for valuation.*
 - *If uncontested, probate / letter of admiration is issued. In case of a probate an authenticated copy of the will is annexed to the grant. If contested, it becomes a civil suit.*
 - *Process takes around 1-1.5 years if uncontested.*
- *Upon grant of probate / letter of administration, the executor/ administrator becomes the deceased's legal representative and property is vested in him as such.*

Joint Ownership / Nomination

■ Nomination:

- For bank accounts/ insurance etc. – Does not confer any interest in the property.
- For Shares – Conflicting Bombay HC decisions. Pending at SC.

■ Joint Ownership:

- Shares – Will transfer to the co-owner
- Others – Depends primarily on terms of ownership. However, default position appears to be tenants in common.
 - Tenants in Common (heirs receive on death) vs. Joint Tenants (passes to the co-owner)



Annexures

Key Class I Heirs

- *Son / Daughter*
- *Widow*
- *Mother*
- *Son/ Daughter of pre deceased son [i.e. Grandchildren];*
- *Son/ Daughter of pre deceased daughter [i.e. Grandchildren];*
- *Widow of pre-deceased son*
- *Son/ Daughter of pre deceased son of a pre-deceased son; [i.e. Great-grand children]*



Key Class II Heirs

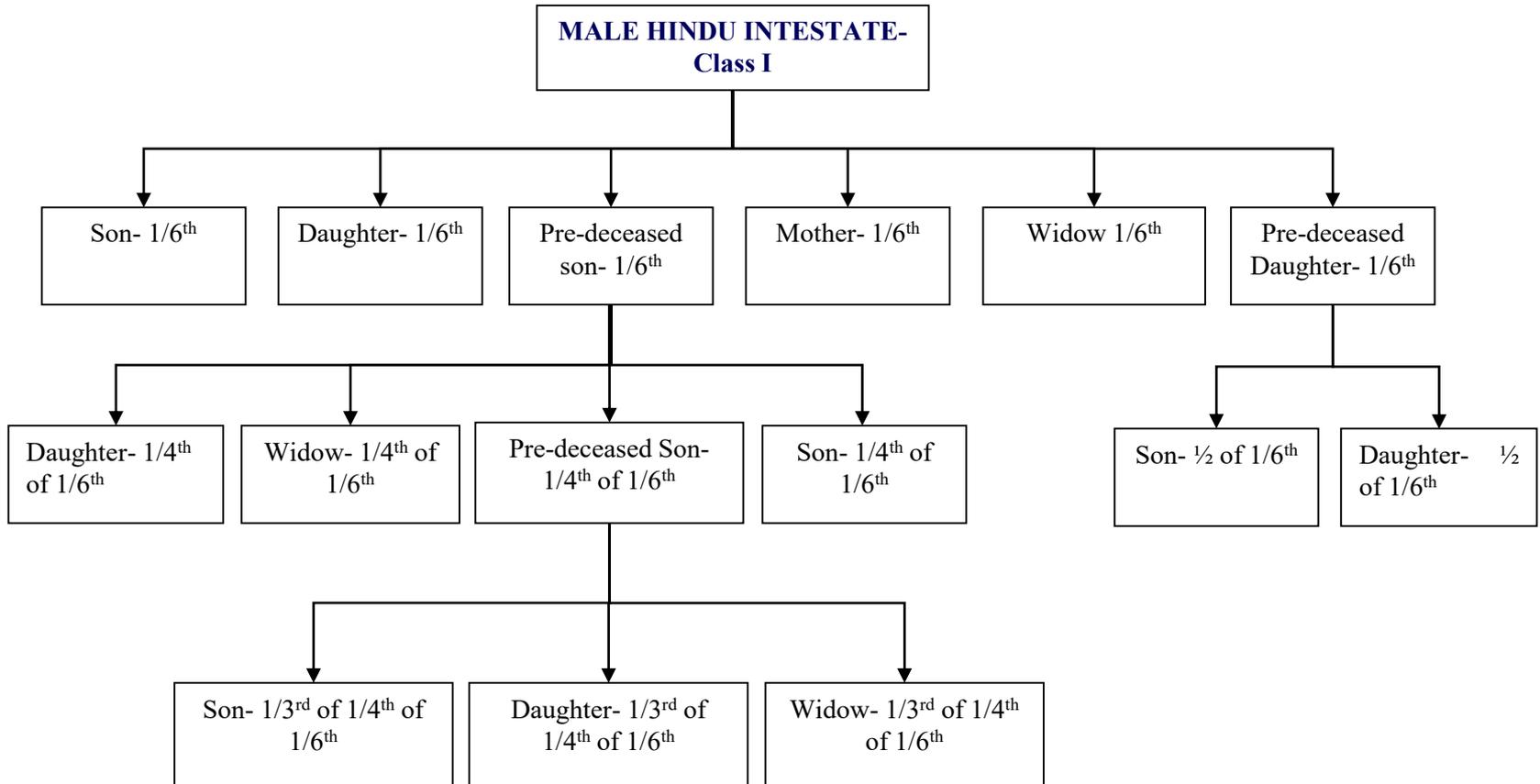
- *Father*
- *Son's daughter's son; son's daughter's daughter; brother, sister*
- *daughter's son's son; daughter's son's daughter; daughter's s daughter's son; daughter's s daughter's daughter*
- *Brother's son; Sister's son; Brother's daughter; Sister's daughter*

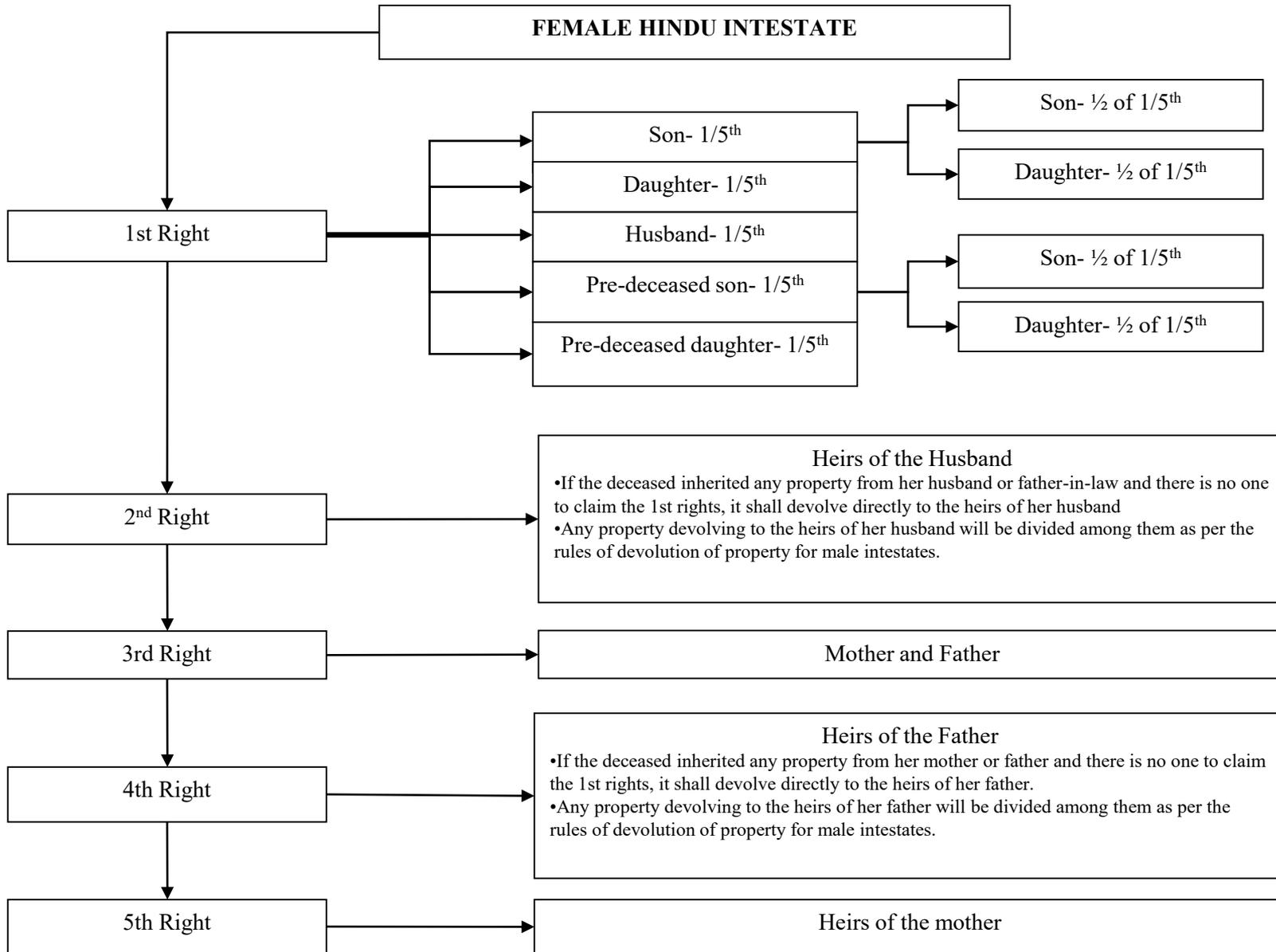
Hierarchy of succession for Hindu Females

- *Firstly, sons and daughters and husband*
- *Secondly heirs of husband*
- *Thirdly mother and father*
- *Fourthly heirs of father; and*
- *lastly heirs of mother.*

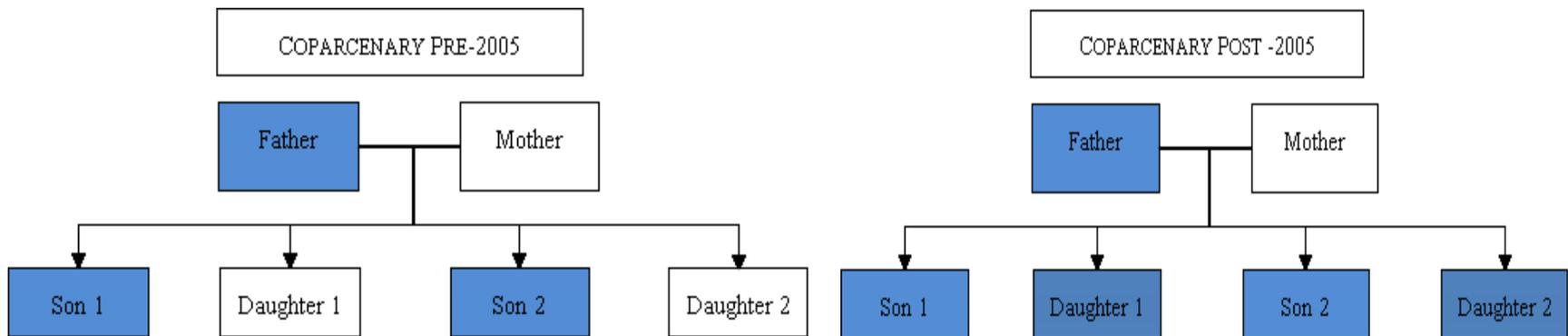
Exceptions for (i) ancestral property of Hindu Female; and (ii) property inherited from husband or father in law; in the case of absence of own son or daughter

Example of Share in Property





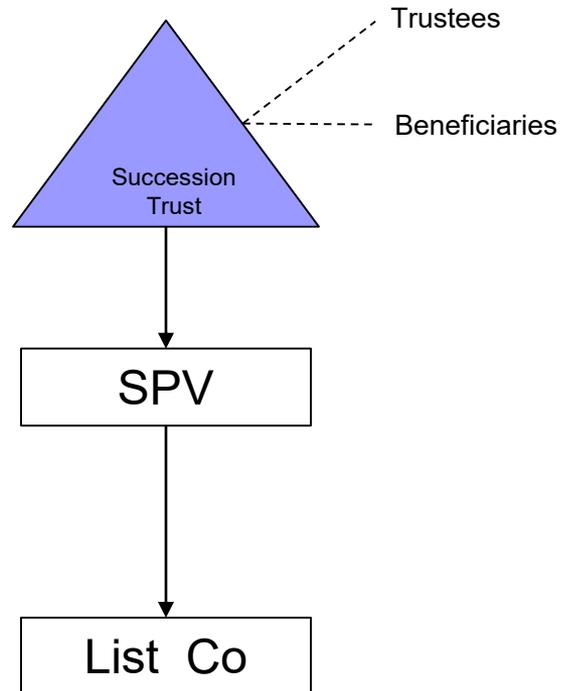
Example of HUF Share pre and post 2005



Distribution of Coparcenary property among members of the family after a Coparcener's death

<u>Member</u>	<u>Pre-2005</u>	<u>Post-2005</u>
Mother	$0 + 1/15^{\text{th}}$ (i.e., $1/5^{\text{th}}$ of father's share)	$0 + 1/25^{\text{th}}$ (i.e., $1/5^{\text{th}}$ of father's share)
Son 1	$1/3^{\text{rd}} + 1/15^{\text{th}}$	$1/5^{\text{th}} + 1/25^{\text{th}}$
Son 2	$1/3^{\text{rd}} + 1/15^{\text{th}}$	$1/5^{\text{th}} + 1/25^{\text{th}}$
Daughter 1	$0 + 1/15^{\text{th}}$	$1/5^{\text{th}} + 1/25^{\text{th}}$
Daughter 2	$0 + 1/15^{\text{th}}$	$1/5^{\text{th}} + 1/25^{\text{th}}$

Typical Trust Structure





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Thank you.

