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# **kcmHeirloom**

**Succession Planning**

**Thou Shalt Not Fight!**

**The What, Why and How of “No Contest” Clauses in Wills**

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### Background

#### Welcome to **kcmHeirloom**

Succession planning and family governance are more than just legal or financial matters—they shape the legacy of generations. **kcmHeirloom** is a dedicated publication offering insights into the complexities of succession planning, wealth preservation, and the stewardship of family assets. From 'The challenges of passing down a family business' to 'Selecting the best instrument for succession' or 'Steps which can be taken to ensure effectiveness of a will'—these are not just technical topics but real-life concerns that influence families, businesses, and legacies.

Through expert perspectives, case studies, and evolving best practices, we aim to provide clarity on key challenges and opportunities in sustaining family wealth across generations. Whether you are a business owner, trustee, or next-generation leader, **kcmHeirloom** will serve as a valuable resource for informed decision-making and enduring legacies. Stay engaged as we explore the legalities, principles and strategies that define lasting family wealth.

### Introduction

*"If any beneficiary under this Will contests or challenges this Will or any of its provisions in any manner, be it directly or indirectly, all benefits given to the contesting or challenging beneficiary under this Will are revoked."*

This is a very simple version of what is popularly known as a "no-contest" clause. In simple terms, it's a provision that states that if any beneficiary contests the Will and loses, they forfeit their share of the estate. If drafted thoughtfully into the will, it is a great way to discourage beneficiaries (heirs) to the will from challenging the same.

Very recently, this clause has attracted significant attention due to Ratan Tata's inclusion of the same in his Will. For high-net-worth individuals, it is becoming a common tool in succession planning. For those with significant wealth or complex family dynamics, like Tata, this clause is emerging as a fortress around one's legacy.

Though a no-contest clause is a decent tool for discouraging will contests, one must not consider it a panacea to will contests. It is imperative to understand fully, the extent of protection which a no contest clause provides for the testator's wishes.

In this article we attempt to answer a few interesting questions – Is a no contest clause legally valid in India? What aspects must you bear in mind when using a 'no contest' clause? How jurisdictions like the US and the UK have dealt with this clause?

### Legal Validity

### Legal Validity of No-Contest Clauses in India

In India, the law relating to testamentary succession (i.e., the law governing inheritance through wills) is codified in the Indian Succession Act, 1925 ("Act"). The Act permits conditional bequests/legacy and more specifically, it is valid to have a provision in your will which provides that a particular bequest shall cease to have effect on the occurrence/non-occurrence of a specified event<sup>1</sup>. This event-based condition can also be linked to some action/inaction by the beneficiary. For instance, Mr. Gupta's will may state that the estate which has been bequeathed to his son shall be revoked if he marries before achieving 25 years of age, unless he obtains the consent of the executors of the Will. So where, Mr. Gupta's son marries at the age of 24 without securing executors' consent, he loses such inheritance under Mr. Gupta's will. Similarly, a no-contest clause can be viewed as a condition attached to a bequest, where the bequest to a particular beneficiary(s) is revoked if she contests the Will.

Hence, a no-contest clause is legally valid as per Indian laws and should be upheld as a solemn wish of the testator. This position has also been validated by a pre-independence decision from the High Court of Sindh<sup>2</sup>.

<sup>1</sup> Section 134 of the Indian Succession Act, 1925

<sup>2</sup> Gopaldas Metharam Vs. Hemandas Ramrakhionmal and Ors. AIR 1942 Sindh 145

## Practical Aspects which You Must Consider for No Contest Clauses

### No-contest clause protects, but how far?

The scope of a no contest clause is clear – it threatens to strip the contesting beneficiary of his bequest under the will<sup>3</sup>. Thus, it only acts as a deterrent to will contests from persons who are in fact named as beneficiaries in the will. In fact, a person having an interest in the testator's property such as creditors, can contest the will without the fear of losing any inheritance (since they would not be involved in the succession plan anyway) – a no contest clause would not work here.

Now, consider the case of Mr. Sharma. His family consists of his wife, a married son and an unmarried daughter. In his will, Mr. Sharma has chosen to exclude his son because of strained personal relations and other similar reasons. In such a case, if Mr. Sharma puts in a no-contest clause in his will, then also junior has nothing to lose if he goes ahead and challenges the will (except maybe the litigation costs). This means the point of having a no-contest clause is lost if Mr. Sharma has excluded some of his heirs who would have received an inheritance had Mr. Sharma died without a will (i.e., if the will contest succeeds and it is declared invalid). At this point, the reader should note that simply disinheriting (i.e., exclusion of a legal heir from your succession plan) of any of the legal heirs cannot be the reason to suspect the genuineness of the Will<sup>4</sup>, however Sharma Junior may contest the will just to test his chances or harass the other beneficiaries or for any other reason.

In short, one must ensure that the heirs have "something to lose" if they challenge the will.

3 For this reason, it is often referred to as an "in-terrorem" clause ('in terrorem' is Latin for 'in fear')

4 R.Saroja Ammal (Deceased) vs R.Karunakaran 2023:MHC:3997

### Balance the implications

A no contest clause may operate like a double-edged sword and may end up hurting the very beneficiaries whom the testator wanted to protect. For instance, consider Mr. Rajan's case. When Mr. Rajan died in 2021, he left his son Karan ₹50 lakhs only if he wasn't abusing substances and didn't contest the will. His daughter Aarti, learning of Karan's recent drug charges, sought a court declaration to disqualify him. But the will had a no-contest clause – anyone challenging it would forfeit their share. Aarti approached the civil court to seek a declaration that Karan is disqualified from inheriting since he is engaging in substance abuse. Karan argued Aarti's action was itself a challenge. And the things went on just as they do... forever. To mitigate occurrence of such cases, one may consider softening the no contest clause by putting in requisite relaxations/exceptions as found viable. For instance, a softer no contest clause would state that all erosion/loss of estate due to prolonged litigation, taxes, expenses of administration, and legal fees of the estate shall be shifted to the Will contestant.

### Adding further clarity helps

One may also consider providing in their will as to who shall get the bequest which a particular beneficiary ends up losing as a result of the no contest clause. This provision indicating the successor beneficiary is popularly known as a gift-over clause. A no-contest clause coupled with a gift-over clause provides further clarity pertaining to the disposition of testator's property. In absence of a gift-over clause, one must ensure that there is no vacuum or lacuna pertaining to what happens with that revoked bequest. One effective way of ensuring this is that your will should have a universal beneficiary clause which mentions the person who shall be entitled to the remainder of the testator's estate about which there is no specific direction in the will. So, in case the no contest is triggered and there is no gift-over clause the universal beneficiary gets the revoked bequest.

## Consider Providing For Mediation

The fundamental idea behind having a no contest clause is to prevent frivolous and vengeful will contests. As pointed out in an earlier point, there may be genuine cases where the family is open to discuss the case and sort things out. To address such cases, one may consider providing mandatory mediation before any challenge in court. Apart from forcing heirs to try and resolve disputes outside the court, mandatory mediation also serve as a device which may end up providing psychological satisfaction to an upset heir who may have otherwise gone and challenged the will in court. Note that the mediation clause must be drafted with due care.

## Position of no-contest clauses in Foreign Jurisdictions

Countries such as the United States of America (USA) and the United Kingdom (UK) have witnessed extensive litigation surrounding Wills, yet a universally settled position on the validity of no-contest clauses is still absent. Nonetheless, the overarching principle that the testator's intent must be honoured has generally led courts to uphold these clauses as valid.

At the same time, many jurisdictions have recognised important limitations. A recurring judicial view, particularly in the U.S., is that a no-contest clause should not be enforced if the challenge to the Will is made in good faith and based on probable cause – in other words, where the contestant has genuine reasons to believe that the will is invalid due to some reason.

This exception is intended to ensure that such clauses do not have a chilling effect on genuine claims. The principle has been codified in states like Texas, where the Probate Code and Property Code explicitly exempt contests brought in good faith and with probable cause from

triggering forfeiture. Several other U.S. states have also adopted this position through judicial pronouncements.

Another point which is often deliberated in foreign courts is the concept of 'gift-over'. This legal principle holds that a no-contest clause will be considered valid only where it specifies the person to whom the benefit shall pass to when a beneficiary contests the will and loses his benefit i.e. the alternate beneficiary. The inclusion of a gift over is treated as an indication of the testator's genuine intention to effect an alternative disposition in favour of another beneficiary, rather than merely to coerce compliance by the original donee<sup>5</sup>.

It is important to note that this principle is rooted in English law, but it has been specifically rejected in India. The Law Commission of India, in its report<sup>6</sup>, has recognized the unsuitability of the English rule in the Indian context stating that section 134 of the Indian Succession Act, 1925 gets rid of the condition of 'gift-overs'. Hence, though a gift-over can be included in a no-contest clause in India, such a clause should not be considered void merely because it does not mention an alternate beneficiary in case of the will being contested by a beneficiary.

It is also a settled legal position that seeking interpretation of the terms i.e. a suit to 'construe a Will' and not to 'thwart the Will of the testator' does not constitute a contest to its validity<sup>7</sup>. In the US, the procedure of declaratory judgement is used for determining such questions.

Since other jurisdictions such as the UK and the US have had extensive litigation over no-contest clauses, we can take cues from these to structure and safeguard such clauses in India.

<sup>5</sup> *Evanturel v Evanturel* (1874) LR 6 PC 1

<sup>6</sup> Law Commission of India – One hundred and Tenth Report on the Indian Succession Act, 1925

<sup>7</sup> *First Methodist Episcopal Church South v. Anderson* 110 S.W.2d 1177 (Tex. Civ. App. 1937)

### Conclusion

No-contest clauses are potent tools when used and applied thoughtfully. It is essential to know the shortcomings of a no contest clause and provide for these gaps in time. If done right, no contest clauses serve as a strong deterrent against potential Will contests. Of course they are not foolproof, particularly when a challenger has a legitimate claim. Precedents and cases of other jurisdictions certainly help in developing a better understanding and provide us with a clearer perspective. Having deliberated on no contest clauses we must not limit ourselves to only one smartly drafted provision for safeguarding the testator's wishes. There can be alternative mechanisms like voluntary waivers from the potential heirs and family arrangements – these also offer a flexible and harmonious solutions to inheritance disputes, while still preserving the testator's intent. And finally, there is the million-dollar question – Should your will have a no contest clause? Well, sure – no reason why you should not. But let's make sure you deploy it effectively and fairly!

## About **kcm**Heirloom

**kcmHeirloom** KCM Heirloom is a specialized publication by the Succession Planning team at K C Mehta & Co LLP, focused on inheritance planning, estate structuring, and family business governance. It explores key challenges, evolving regulations, and best practices in wealth succession, offering valuable insights for families, business owners, and trustees.

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