The take the rents, or future produce, or

The bequest may consist of the corpus or of the usufruct. Under Muslim law, it is possible that a testator may give to one person and the usufruct to another. Thus, a right to occupy a house during a future period of time, or to take the rents, or future produce, or usufruct for a limited time, or for the life time of the legatee may validly constitute the subject-matter of a will. As has been stated earlier, the testamentary power of a Muslim is limited to the bequeathable one-third.

Bequeathable one-third:

The bequeathable one-third means a third of the estate of a testator as it is left after the payment of his funeral expenses, debts and other charges.

The law in this respect may be stated thus: (i) All schools of Muslim law, except the Ithana Ashari School, hold that the bequest of more than the bequethable one-third is invalid unless consented to by the heirs after the death of the testator. Consent can be inferred from the conduct. Mere silence by other heirs by not participating in the concerned proceedings and by remaining ex parte cannot be considered as implied consent.

(ii) According to the Ithana Ashari School, the consent of the heirs, to validate a bequest of more than one-third, may be given even during the life time of the testator, and it does not need ratification after the death of the testator. The Ithana Asharis also hold that a bequest of any part of the estate even more than bequeathable one third may be made for the performance of the obligatory religious duties or by way of muzaribat or qeraz (both words have the same meaning, an enterprise in which one invests his capital and another his labour with mutual participation in profit is known as mazari bat

or qeraz) on the terms of equal division of profits between the legatee and the heirs. (iii) Under a valid custom, a Muslim may be allowed to dispose of his entire property under his will. The Shariat Act, 1937 does not apply to wills, and, therefore, a Muslim, who has the power to dispose of his entire property under a will, can do so even now. (See Chapter I of this work for details). (iv) If a testator has no heirs, he may dispose of his entire property by a will.

The right of the State to take the property by escheat does not prevent an heirless testator from bequeathing his entire property. (v) A bequest of more than one-third may be validated by the consent of heirs. The rationale behind this rule is that the limitation on the testator’s power of disposition is solely for the benefit of the heirs, and if they want to forego the benefit, they are free to do so. The consent of heirs may be express or implied.

For instance, P bequeaths his entire property in favour of X, a stranger. The will is attested by P’s two sons, A and B, who are the only heirs. After P’s death X enters into possession of the property and recovers rents with the full knowledge of A and B. These facts are sufficient to indicate the implied consent on the part of A and B.

Consent once given cannot be rescinded. (vi) Where a testator dies leaving behind only a wife/husband as the sole heir and no blood relations, then if the testator is a male, he can bequeath 5/6 of his estate, and if the testator is a female, she can bequeath 2/3 of the estate. For instance, a Muslim woman makes a will under which she bequeaths one-half of her properties to her husband. She dies leaving behind her husband and no blood relation.

Under Muslim law, bequests to the heir upto 1/3 of property are valid. Thus, the husband will take 1/3 of the estate (the bequeathable 1/3 under the will and 1/2 of the remaining as an heir. In all he takes 2/3—1/3 under the will and 1/3 as an heir). Ordinarily, the remaining 1/3 will go to the State by escheat, but on account of the bequest of 1/2 to him (a woman can bequeath upto 2/3 under these circumstances), he again takes 1/6 of the remaining 1/3 to complete the one-half estate that is bequeathed to him.

In the result the husband takes 1/3 as heir and 1/3 + 1/6, as a legatee, Le, in all he takes 5/6; the remaining 1/6 goes to the State by escheat. (vii) An heirless Muslim can bequest his entire property. A Muslim who has only his wife as an heir can bequest the entire property minus the share of the wife. (viii) If a Muslim had married or got his marriage registered under the Special Marriage Act, 1954, then Muslim law of succession does not apply to him.

He is governed by the Succession Act, 1925, and, therefore, he can bequeath his entire property by a will.

A bequest in future and contingent bequeaths:

A bequest in future is void; so is a contingent bequest. When a Muslim makes a bequest with a condition, then the condition is void, and the bequest is valid. But this should be read subject to what has been said about life-estates in Chapter X.

Bequest for pious purposes:

A bequest may be made for pious purposes. Such bequests fall under three categories : (i) bequests for Jaraiz, Le., for purposes expressly ordained by

the Koran such as haj (pilgrimage), zakat (tithe) and expiration, (ii) bequests for wajiwat, Le., which are themselves necessary and proper, though not expressly ordained, such as sadaka, Jilrat, charity given on the day of breaking of the fast, and sacrifices, and (iii) bequests for nawafil, or the bequests of purely voluntary nature, such as bequest for the poor, for building mosque, a bridge or an inn. The one-third rule applies to bequests for pious purposes also. The bequests for Jaraiz have priority over the other two, and the bequests for Jaraiz, a bequest for haj has priority over zakat and expiration, and zakat over expiation.

When a bequest violates the one-third rule, and some of the heirs consent to it, while others do not, the bequest is payable out of the shares of the consenting heirs only.

Abatement of legacies:

When a testator bequeaths in violation of one-third rule and the heirs refuse to give consent, the bequests, under the Hanafi law, abate rateably. Thus, if a Sunni Muslim bequeaths 1/2 of his estate to P and 1/4 to Q, since the total exceeds one-third, the legacies will be rateably reduced at the ratio of 1/2: 1/4. Or, suppose a dies leaving behind a will under which he directs Rs. 100 to be paid to his relatives, Rs. 100 to the Fakirs, and Rs.

40 for expiration of prayers that he missed. He leaves behind an estate worth Rs. 216. The total amount of legacies comes of Rs. 240. While the bequeathable one-third is only Rs.

72. Hence, the legacies must abate in the proportion of 72 to 240, Le; they will be reduced to 40, 30 and 12, respectively. Under the Shia law, the rule is different.

Bequest of prior date takes priority over those of later date unless the later bequest was intended to revoke the earlier. For instance, a Shia bequeaths 1/3 of his estate to A, 1/4 to and 1/2 to C. The heirs do not consent. The result will be that A will take 1/3, while and Ñ will not take anything.

Or, suppose a gives 1/12 to P, 1/4 to Q and 1/6 to R. Then P will take 1/12 and Q will take 1/4. Since this completes the 1/3 estate, R will take nothing but if the same 1/3 successively bequeathed to A, and C, then it means that the last bequest is in revocation of the former two. Then Ñ will take 1/3, and A and will take nothing.