PARALEGAL SERIES

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Wills, Trusts, and Estates for Legal Assistants

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Chapter 6

CHANGING CIRCUMSTANCES AFTER WILL EXECUTION— PROPERTY

Chapter Objectives

- Define and distinguish specific, general, demonstrative, and residuary gifts
- Identify ways in which a testamentary give may be adeemed
- Explain how a change in the value of property impacts a testator's planned distribution
- List the order in which testamentary gifts abate
- Describe the concept of tax apportionment

Classification of Testamentary Gifts

- Devise
- Bequest
- Legacy
- Specific gift
- General gift
- Demonstrative gift
- Residuary gift
- Private gift
- Charitable gift

Types of Gifts

- **Legacy**: A testamentary gift of money
- **Demonstrative gift**: A general testamentary gift to be paid from a designated source
- **Residuary gift**: A testamentary gift of property remaining after specific, general, and demonstrative gifts are satisfied
- **Private gift**: A gift to an individual for personal enjoyment
- **Charitable gift**: A gift to a qualifying entity for social benefit

Ademption by Extinction

- **Ademption by extinction**: The failure of a specific gift because the property is not in the testator's estate at death.
- **Identity theory of ademption**: a gift is adeemed if the exact item is not in the testator's estate.
- **Intent theory of ademption**: a gift may be saved from ademption by tracing or other circumstances.

Ademption by Satisfaction

- The failure of a specific gift because the property has been transferred to the beneficiary before death

Appreciation and Depreciation

- The **appreciation** (an increase in value) or **depreciation** (a decrease in value) of specifically gifted property between the time of will execution and time of death is not considered when distributing the testator's property.
- The beneficiary of a specific gift receives that item, regardless of any changes to its value.

Order of Abatement

1. Intestate property
2. Residuary gifts
3. General gifts
4. Specific gifts

Tax Apportionment

- Death taxes are apportioned as charges to individual gifts rather than charged to a residuary gift.